

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OBIE R. HALE and DEPARTMENT OF THE AIR FORCE,
RICKENBACKER AIR NATIONAL GUARD BASE, Ohio

*Docket No. 97-330; Submitted on the Record;
Issued December 2, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant was disabled beginning December 24, 1995 due to his accepted condition of hepatitis C.

After initially rejecting appellant's claim, the Office of Workers' Compensation Programs, by a hearing representative's decision dated October 7, 1994, accepted that appellant contracted hepatitis C as a result of his employment as a firefighter and emergency medical technician. In November 1993 appellant transferred to the Naval Air Station Oceana in Virginia Beach, Virginia, after his original employing establishment closed. In November 1994 appellant was placed on limited duty, and on December 24, 1995 he was detailed from his firefighter position to one with unclassified duties with no premium pay. Appellant's federal employment was terminated effective February 5, 1996 for inability to perform the duties of his position.

On December 19, 1995 appellant filed a claim for a recurrence of disability, which he attributed to chronic fatigue directly related to his accepted hepatitis C. Appellant listed the date of the recurrence as November 20, 1995, and later filed claims for loss of premium pay from December 24, 1995 to February 2, 1996 and for total disability beginning February 5, 1996.

The Office denied appellant's claim by decision dated March 5, 1996, finding that the evidence failed to demonstrate that his chronic fatigue was causally related to his employment. This decision was affirmed by an Office hearing representative in a decision dated August 2, 1996.

Compensation is payable for loss of premium pay,¹ and is also payable when an employer separates appellant from employment due to an employment-related condition.² Appellant has

¹ *Dempsey Jackson, Jr.*, 40 ECAB 942 (1989); *Thomas Donaghue*, 39 ECAB 336 (1988).

² *Gerald P. Shannon*, 34 ECAB 1718 (1983); *Claude E. Pilgreen*, 33 ECAB 566 (1982).

the burden of proving by the preponderance of the reliable, probative, and substantial evidence that any disability for work is a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to employment.³

The Board finds that appellant has not met his burden of proving that he was disabled beginning December 24, 1995 due to his accepted condition of hepatitis C.

Appellant attributed his inability to earn premium pay after December 24, 1995 and his total disability beginning February 5, 1996 not to his accepted condition of hepatitis C, but to chronic fatigue, which he alleged was “directly related to the hepatitis C.” While such a consequential injury can be payable under the Federal Employees’ Compensation Act,⁴ appellant has the burden of establishing by rationalized medical evidence that the employment-related condition contributed to the consequential injury or condition.⁵ Appellant has not met this burden of proof.

The only medical evidence that lends any support to appellant’s claim that his chronic fatigue is related to his accepted condition of hepatitis C is a November 20, 1995 report from Dr. Frank Westmeyer, Board-certified in internal medicine and in emergency medicine. In this report Dr. Westmeyer stated:

“[Appellant] was diagnosed with chronic Hepatitis C in the summer of 1992. He was treated with Interferon Alpha-2b for a period of approximately six months which normalized his liver function. Three months later his liver function became abnormal again and he was subsequently given six additional months of treatment with Interferon Alpha-2b. The second Interferon treatment normalized [appellant’s] liver function which to date is still normal. I believe that at this time his Hepatitis C is either cured or in a prolonged remission. [Appellant] has had a history of chronic fatigue which is probably directly related to the chronic active Hepatitis C. His job as a firefighter requires him to be in unusually good physical condition. In November 1994, [appellant] was placed on light duty to give him time to get his endurance back. He was instructed to continue with this light duty for a period of at least six months and to slowly work up to more activity. We further discussed ways that [appellant] could do this. We specifically discussed a swimming pool he has in his home, which could be used for conditioning. Local Virginia Beach recreation centers are also available for their exercise equipment and indoor pool.

“I released [appellant] in August 1995 to start aforementioned physical fitness program and on the job at half speed. ... [Appellant] has been trying, but still has no endurance. With [appellant] having had Hepatitis C, it is possible that this

³ *David H. Goss*, 32 ECAB 24 (1980).

⁴ *Sandra Dixon-Mills*, 44 ECAB 882 (1993).

⁵ *Fred Magnotta*, 23 ECAB 125 (1972).

chronic fatigue will be long lasting. Until his problem with chronic fatigue is resolved, [appellant] would be more suited for a position requiring less in the area of physical conditioning. Reading through the Naval Air Station Oceana Fire Department job description, a person with chronic fatigue would certainly not be able to keep up with the major duties and responsibilities. I cannot accurately predict when this problem with chronic fatigue will resolve, if ever. I would, however, suggest that his current position as firefighter is inappropriate.”

This report establishes that appellant is disabled for his position as a firefighter by chronic fatigue, but it does not establish that the chronic fatigue is a residual of, or otherwise related to, appellant’s accepted condition of hepatitis C. Dr. Westmeyer states that appellant’s “history of chronic fatigue ... is probably directly related to the chronic active Hepatitis C.” At the time of the November 20, 1995 examination, however, appellant no longer had chronic active hepatitis C, as Dr. Westmeyer stated this disease was “either cured or in a prolonged remission,” as shown by appellant’s normal liver function. Appellant has not provided, despite the Office’s advice of the specific evidence needed, a rationalized medical opinion explaining how his chronic fatigue is causally related to his accepted condition of hepatitis C. For this reason, he has not met his burden of proof.

The decisions of the Office of Workers’ Compensation Programs dated August 2 and March 5, 1996 are affirmed.

Dated, Washington, D.C.
December 2, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member