U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. FERLEMAN and DEPARTMENT OF THE ARMY
Fort Leavenworth, Kans.

Docket No. 96-958; Submitted on the Record;
Issued February 18, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a recurrence of disability on or after May 11, 1993 causally related to his June 15, 1989 employment injury.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

Appellant has the burden of establishing, by the weight of the reliable, probative and substantial evidence a causal relationship between his recurrence of disability commencing May 11, 1993 and his June 15, 1989 employment injury. This burden includes the necessity of furnishing reasoned medical opinion evidence showing a causal relationship between the recurrence of disability and the prior employment injury.[1]

In the instant case, the record establishes that the Office accepted that appellant, an operations research analyst, sustained an emotional condition on or about June 15, 1989 causally related to his federal employment. The Office accepted appellant's claim for "aggravation of chronic depressive reaction." Appellant last worked for the employing establishment in December 1991. He began to work for the State of Missouri as a social worker on April 14, 1993. Appellant claimed a recurrence of disability as of May 11, 1993, but did not stop work until October 21, 1993. The Office denied appellant's notice of recurrence of disability by decisions dated July 25, 1994, February 21 and October 30, 1995.

Before it can be determined that appellant is entitled to compensation benefits for his alleged disability commencing May 11, 1993, it must first be determined whether appellant sustained a spontaneous return of disability due to his June 15, 1989 employment injury, and that no intervening cause was involved. The Board has previously held that a recurrence of

[1] *Lourdes Davila*, 45 ECAB 139 (1993).

disability is distinguished from a new injury as in a recurrence no event other than the previous injury accounts for the disability.[2]

In this regard, appellant's treating psychiatrist, Dr. Sheridan G. Tucker, a Board-certified psychiatrist, in a report dated January 25, 1994, explained that the mood disorder appellant sustained from his accepted employment injury reduced his resilience to stress and sapped his self confidence. Dr. Tucker stated that appellant had a documented history since 1989 of major mood disorder and what differentiated the effects of his 1993 employment from the effects of his accepted employment injury was that appellant only had partial improvement of his accepted condition, such that he was not able to withstand ordinary stress of his 1993 employment as a case worker and that his perceived difficulties with the new employment exasperated his mood disorder, resulting in increased anxiety, panic and pessimism. Dr. Tucker concluded that "there has been no material worsening of his condition due to Missouri State employment. It is my professional opinion that [appellant's] psychiatric problems experienced while employed by the State of Missouri are causally related to his Fort Leavenworth employment, and do not constitute a new injury."

The Board notes that in previous cases where it was found that appellant sustained a new injury, rather than a recurrence of disability causally related to a previous injury, the medical evidence of record established that the previously accepted condition had resolved, prior to the new event.[3] The medical evidence of record in the present case, however, suggests that appellant's accepted condition of "aggravation of chronic depressive reaction" may not have resolved at the time appellant began his employment with the State of Missouri and at the time he sustained his alleged recurrence of disability. In this regard, the Office's second opinion physician, Dr. James Hasselle, a Board-certified psychiatrist, reported on January 4, 1993 that appellant still had major depressive disorder. Regarding appellant's ability to return to work activities, Dr. Hasselle stated that appellant was able to handle a low stress job with clearly defined tasks and minimal expectation for high performance, such as a "stock person." Dr. Hasselle further related that appellant's ability to cooperate with others and work under deadlines was compromised, and appellant was not able to handle tasks requiring a high level of intellectual activity, which required abstract thinking and conceptual capacity, and was vulnerable to pressures of supervision and competitive work where his performance was tied with those of his coworkers. Appellant's treating psychiatrist, Dr. Tucker, also opined that appellant's accepted condition had not resolved in 1993 when he assumed his new employment. There is no medical evidence of record that appellant had been medically released to perform in a position such as a case worker, which required interaction with others and work under deadline pressures, when he assumed such employment in 1993.

While the Office denied appellant's claim based upon a finding that appellant had sustained a new injury during his 1993 employment, there is no medical report of record which supports such a finding. Rather, the medical evidence of record, while not sufficiently rationalized to explain how appellant's disability in 1993 was due merely to his accepted injury,

[2] *Stephen T. Perkins*, 40 ECAB 1193 (1989).

[3] *Robert W. Meeson*, 44 ECAB 834 (1993); *see also Stephen T. Perkins, supra* note 2.

rather than new events in 1993, supports a general conclusion that appellant sustained a recurrence of disability in 1993 causally related to his accepted 1989 injury. On remand, the Office shall further develop the medical evidence to determine whether the accepted condition of "aggravation of chronic depressive reaction" had resolved or whether it continued to disable appellant after May 11, 1993. After such further development as necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated October 30 and February 21, 1995 are hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
Februaary 18, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member