

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SAMUEL SENKOW and DEPARTMENT OF AGRICULTURE,  
WENATCHEE NATIONAL FOREST, Wenatchee, Wash.

*Docket No. 96-2274; Submitted on the Record;  
Issued May 5, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained Hashimoto's thyroiditis, hepatitis, gait disorder, urinary retention, legionnaires' disease or depression causally related to his August 19, 1994 employment injury.

On August 19, 1994 appellant, then a 44-year-old firefighter, sustained smoke inhalation in the performance of duty.

In a form report dated September 15, 1994, Dr. Martha G. Stearn, an internist, diagnosed smoke inhalation and indicated that appellant was released to full duty as of September 7, 1994.

In a narrative report dated March 10, 1995, Dr. Michael J. Menolascino, a Board-certified internist, related that appellant became ill on March 1, 1995 and was found to have pneumonia in the right lower lobe. Dr. Menolascino related that appellant felt that he had not been completely well since August 1994, at which time he had been hospitalized for smoke inhalation after fighting a fire.

In a hospital discharge summary dated March 23, 1995, Dr. Stearn diagnosed microplasma pneumonia and possible Legionella pneumonia and recommended a follow-up chest x-ray after his symptoms had resolved because he had a history of fire damage to his lungs one-year previously.

In a claim form dated April 28, 1995, appellant sought compensation benefits for loss wages commencing on March 6, 1995 which he attributed to his August 19, 1994 employment injury.

In a hospital discharge summary dated July 5, 1995, Dr. Menolascino diagnosed depression, hepatitis of unclear etiology, history of smoke inhalation and recent bilateral pneumonia of unclear etiology with cultures positive for mycoplasma and positive acute titers for legionella. He related appellant's complaint that his breathing had not been normal since his

smoke inhalation injury in August 1994. Dr. Menolascino related that, since the August 1994 employment injury, appellant had become significantly depressed and on March 10, 1995 presented with bilateral pneumonia.

In hospital discharge summaries dated August 6 and 7, 1995, Dr. Jeffrey D. Rome, a Board-certified psychiatrist and neurologist, and Dr. S.E. Pratt, an internist, provided diagnoses of chronic pain syndrome and depression, Hashimoto's thyroiditis, probable somatoform disorder, and urinary retention.

In a report dated November 16, 1995, Dr. Menolascino stated his opinion that appellant's hospitalizations in March, June, and July 1995 and his current disability were, to a large extent, secondary to his August 1994 employment-related smoke inhalation injury. He related that appellant became depressed after his employment injury because he could not perform his normal activities and this depression worsened with his severe pneumonia. Dr. Menolascino opined that appellant was disabled. He stated:

"Appellant was a quite healthy and robust man without any significant medical problems, psychiatric problems, or one who would seek medical care very frequently. My partner, Dr. Stearn, recalls him as having no significant cognitive, psychological or respiratory problems in the past. [Appellant] was then hospitalized ... after a significant smoke inhalation injury. I stated this is significant as he was hospitalized for five days ... and when he was seen back here on August 31, 1994, he was still having persistent cough, shortness of breath which required antibiotic and expectorant therapy. [Appellant] states that he has had persistent pulmonary symptoms since this time, though they have slowly improved....

"It was quite clear to me ... at the time of [appellant's] hospitalization that he was quite depressed, and that this depression had developed after his smoke inhalation injury. I think the reason that [appellant] became so depressed was that upon returning from his hospitalization ... he found that he could not perform his normal activities.... His depression ... worsened with his severe pneumonia, and, in retrospect, his symptoms that required hospitalization ... were probably and to some extent still probably are somatic symptoms stemming from his depression."

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"I strongly support that [appellant's] hospitalizations in March 1995 and in June and July of 1995 were related to his smoke inhalation in August 1994.... I think the relationship is primary in the case of the pneumonia, as his pulmonary compromise from the smoke inhalation was still resolving and that, I felt, played a significant role in development of his severe pneumonia. Additionally, I think the smoke inhalation as a subsequent disability [was] to a large extent the cause of his depression and secondary somatoform disorder which is still at this time resolving."

By decision dated August 16, 1995, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish causal relationship between his claimed medical conditions and factors of his employment or his August 19, 1994 employment injury.

By letter dated September 19, 1995, appellant requested reconsideration of his claim and submitted additional evidence.

In a report dated August 28, 1995, Dr. Rome stated his opinion that appellant's chronic pain syndrome, depression and tension headaches could be specifically linked to his August 19, 1994 smoke inhalation injury at work. Dr. Rome stated:

"[R]egarding the relationship of his medical problems to the smoke inhalation injury he sustained while working on August 19, 1994[,] [f]irst, it is my opinion that only the diagnoses of chronic pain syndrome, depression, and tension headaches can be specifically linked to the injury. The other diagnoses identified in the correspondence of August 16, 1995, were subsequent or secondary to these primary problems....

"To the best of my knowledge, [appellant] did not suffer from persistent pain, gait disturbance, headaches, or depression prior to his work-related injury. In fact, evidence available to me suggests that he was in good general health and led a very active lifestyle prior to the injury. His symptoms developed in the weeks to months following his occupational injury, providing strong evidence of a causal relationship between the smoke inhalation and these problems/diagnoses. No other accident or illness has been identified which would appear to play a causative role in his present problems. The fact that he does not have specific organic brain disease or another active disease process to account for his ongoing symptoms does not mitigate against the causal role of the accident. One need only to consider the well-established psychiatric diagnosis of post-traumatic stress disorder to recognize that a variety of emotional symptoms, physical complaints and behavioral changes can develop as a result of traumatic life experiences. [Appellant] is fortunate, in fact, to have not sustained any organic/lasting brain disease as a result of smoke inhalation.

"In summary, it is my opinion that there is a clear causal relationship between the smoke inhalation injury and [appellant's] diagnoses of chronic pain syndrome, depression and tension headaches."

By decision dated November 1, 1995, the Office denied modification of its August 16, 1995 decision.

By letter dated December 5, 1995, appellant requested reconsideration of the denial of his claim.

In a memorandum dated May 2, 1996, an Office medical adviser stated that the smoke inhalation accident produced sufficient pulmonary change that appellant's subsequent

pneumonia was superimposed on a predilection for compromised pulmonary function. He stated that he was less persuaded that any other diagnoses were directly or indirectly related to the smoke inhalation.

By decision dated May 7, 1996, the Office modified its August 16, 1995 decision to accept the condition of pneumonia as related to appellant's August 1994 employment injury but denied appellant's claim for any other medical condition.

The Board finds that appellant has met his burden of proof to establish that he sustained the condition of depression as a result of his August 19, 1994 employment injury.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>1</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>3</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>4</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>5</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>4</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>5</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>6</sup>

In the present case, appellant alleged that he sustained an emotional condition because he could not perform his duties due to continuing effects of his employment-related smoke inhalation and pneumonia. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.<sup>7</sup> The Board finds that appellant has identified a compensable factor of employment in the instant case.

Appellant's burden of proof is not discharged by the fact that he has established employment factors which may give rise to a compensable disability under the Act. Appellant must also submit rationalized medical evidence establishing that his claimed emotional condition is causally related to an accepted compensable employment factor.<sup>8</sup>

It is an accepted principle of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.<sup>9</sup> The subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>10</sup> As is noted by Professor Larson in his treatise:

“[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of [the] claimant's knowledge of his condition.”<sup>11</sup>

In this case, in a hospital discharge summary dated July 5, 1995, Dr. Menolascino, appellant's attending Board-certified internist, diagnosed several conditions, including depression. He noted appellant's complaint that his breathing had not been normal since his

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<sup>6</sup> *Id.*

<sup>7</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>8</sup> *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>9</sup> A. Larson 1, *The Law of Workers' Compensation* § 13.00 (1990). See also *John R. Knox*, 42 ECAB 193 (1990).

<sup>10</sup> Larson at § 13.11.

<sup>11</sup> Larson at § 13.11(a).

smoke inhalation injury in August 1994 and that he had become significantly depressed since the injury.

In a report dated August 28, 1995, Dr. Rome, a Board-certified psychiatrist and neurologist, stated his opinion that there was a “clear causal relationship” between appellant’s chronic pain syndrome, depression and tension headaches and his August 19, 1994 smoke inhalation injury at work. Dr. Rome stated:

“To the best of my knowledge, [appellant] did not suffer from ... depression prior to his work-related injury. In fact, evidence available to me suggests that he was in good general health and led a very active lifestyle prior to the injury. His symptoms developed in the weeks to months following his occupational injury, providing strong evidence of a causal relationship between the smoke inhalation and these problems/diagnoses. No other accident or illness has been identified which would appear to play a causative role in his present problems....”

In a report dated November 16, 1995, Dr. Menolascino stated his opinion that appellant’s hospitalizations in March, June and July 1995 and his current disability were secondary to his August 1994 employment-related smoke inhalation injury. He related that appellant became depressed after his employment injury because he could not perform his normal activities and this depression worsened with his severe pneumonia. Dr. Menolascino stated:

“Appellant was a quite healthy and robust man without any significant medical problems, psychiatric problems or one who would seek medical care very frequently. [He had] no significant cognitive, psychological or respiratory problems in the past. [Appellant] was then hospitalized ... after a significant smoke inhalation injury. [T]his is significant as he was hospitalized for five days ... and when he was seen back here on August 31, 1994, he was still having persistent cough, shortness of breath.... It was quite clear to me ... at the time of [appellant’s] hospitalization that he was quite depressed, and that this depression had developed after his smoke inhalation injury. [U]pon returning from his hospitalization ... he found that he could not perform his normal activities.... His depression ... worsened with his severe pneumonia....”

These medical reports from Drs. Rome and Menolascino are sufficient to establish that appellant sustained the condition of depression as a consequential injury causally related to his August 19, 1994 employment injury.

The Board further finds that appellant has not met his burden of proof to establish that the conditions of Hashimoto’s thyroiditis, hepatitis, gait disorder, urinary retention and legionnaires’ disease were causally related to his August 19, 1994 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation or appellant’s belief of causal relationship.<sup>12</sup> The Board has held that the mere fact that a disease or

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<sup>12</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>13</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>14</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>15</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>16</sup>

In a hospital summary dated March 23, 1995, Dr. Stearn, an internist, diagnosed microplasma pneumonia and possible Legionella pneumonia. The Office has accepted that appellant sustained pneumonia. However, there is insufficient medical evidence in this report that appellant sustained legionnaires' disease as a result of his August 1994 employment injury. The diagnosis of legionnaires' disease is not a definite diagnosis and there is no medical rationale explaining how this condition was causally related to the August 1994 employment injury. Therefore, this report is not sufficient to establish that appellant sustained legionnaires' disease as a result of his August 19, 1994 employment injury.

In a hospital discharge summary dated July 5, 1995, Dr. Menolascino diagnosed hepatitis of unclear etiology, history of smoke inhalation, and recent bilateral pneumonia of unclear etiology with cultures positive for mycoplasma and positive acute titers for legionella. However, he did not provide a rationalized medical opinion as to the cause of appellant's hepatitis and legionnaires' disease and therefore this report is not sufficient to establish that appellant sustained these medical conditions as a result of his August 1994 employment injury.

In hospital discharge summaries dated August 6 and 7, 1995, Dr. Rome, a Board-certified psychiatrist and neurologist as noted above, and Dr. Pratt, an internist, provided diagnoses which included Hashimoto's thyroiditis and urinary retention. However, the physicians did not provide a rationalized medical opinion explaining how these medical conditions were causally related to appellant's August 1994 employment injury. Therefore, this report is not sufficient to establish that these conditions were work related.

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<sup>13</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>14</sup> *Ern Reynolds*, 45 ECAB 690 (1994); *James Mack*, 43 ECAB 321 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>15</sup> *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>16</sup> *See Margaret A. Donnelley*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

The decisions of the Office of Workers' Compensation Programs dated May 7, 1996 and November 1 and August 16, 1995 are modified to reflect that appellant has met his burden of proof to establish that he sustained the condition of depression in the performance of duty causally related to his August 19, 1994 employment injury and the case is remanded to the Office for a determination of the compensation benefits to which appellant is entitled due to this condition. These decisions are affirmed as to the conditions of Hashimoto's thyroiditis, hepatitis, gait disorder, urinary retention and legionnaires' disease.

Dated, Washington, D.C.  
May 5, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member