

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of NEAL G. ABERNATHY and DEPARTMENT OF THE ARMY,
U.S. ARMY TRAINING & DOCTRINE COMMAND, Fort McClellan, AL

*Docket No. 98-2458; Submitted on the Record;
Issued March 28, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained emotional stress, hypertension, or aggravation of a heart condition in the performance of duty causally related to compensable factors of his federal employment.

This is the third appeal in the case. In an order dated November 15, 1993, the Board remanded the case to the Office of Workers' Compensation Programs to make findings regarding the compensability of the allegations made by appellant.¹ In a decision dated December 9, 1996, the Board affirmed decisions of the Office dated April 6 and August 30, 1994, finding that appellant had not met his burden of proof in establishing an injury in the performance of duty.² The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

In a letter dated February 19, 1997, appellant requested reconsideration of his claim and submitted additional evidence. By decision dated May 15, 1997, the Office denied modification of its prior decisions. In decisions dated August 7, 1997 and May 13, 1998, the Office again denied modification of the claim.

The Board has reviewed the record and finds that appellant has submitted sufficient evidence to require further development of the evidence.

In the present case, appellant has submitted additional reports from Dr. Alan S. Gertler, a cardiologist. As the Board noted in its December 9, 1996 decision, the previous reports from Dr. Gertler had stated only that appellant was placed in a new job situation that resulted in a worsening of his cardiovascular symptoms. In a February 11, 1997 report, Dr. Gertler provided

¹ Docket No. 93-105.

² Docket No. 95-134.

a history and stated that appellant experienced emotional stress since he was required to perform a position that he had no training for and he suffered harassment from his supervisor. Although harassment has not been substantiated in this case, the Board clearly stated in its December 9, 1996 decision that a reaction to the inability to adequately perform his regular or specially assigned duties is a compensable factor of employment.³ Therefore Dr. Gertler has identified a compensable work factor. Dr. Gertler concluded, "In the field of cardiology, it is difficult to quantitate the role that emotional stress and anxiety plays in the worsening of underlying cardiovascular conditions. However, knowing [appellant] for the last eight years, it is my strong opinion that the change in job position in the three-month period from October 1991 to January 1992 was detrimental to [appellant's] primary medical problems, including atherosclerotic heart disease, labile hypertension, and anxiety depression." Dr. Gertler also submitted a report dated November 4, 1997, in which he reiterated his conclusions.

The Board finds that appellant has submitted probative medical evidence with respect to causal relationship between a compensable factor of employment and appellant's medical condition. Although not sufficient to establish the claim, it is uncontroverted and is sufficient to require further development.⁴ On remand, the Office should prepare a statement of accepted facts distinguishing compensable and noncompensable employment factors, and refer appellant to an appropriate specialist. After such further development as necessary, the Office should issue an appropriate decision.

³ The May 15, 1997 Office decision cites *Mildred D. Thomas*, 42 ECAB 888 (1991) with respect to an allegation of lack of training itself not constituting a compensable work factor. The distinction must be drawn between a general frustration at the employing establishment for not granting a request for training, and the situation presented here: a reaction from the difficulty in actually performing the regular or specially assigned duties.

⁴ See, e.g., *John D. Ayers*, 48 ECAB 440 (1997).

The decisions of the Office of Workers' Compensation Programs dated May 13, 1998 and August 7, 1997 are set aside and the case remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
March 28, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member