

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. STILES and DEPARTMENT OF AGRICULTURE,
MARIBA JOB CORPS CENTER, Winchester, KY

*Docket No. 98-961; Submitted on the Record;
Issued September 19, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that he sustained a recurrence of disability causally related to his employment-related adjustment disorder; and (2) whether he established that he sustained an occupational disease causally related to factors of employment.

On September 2, 1991 appellant, then a 49-year-old supervising counselor, filed an occupational disease claim, alleging that factors of his federal employment caused a stress disorder. He stopped work on August 10, 1992. Following further development of the claim, which was adjudicated by the Office of Workers' Compensation Programs under file number A06-555287, on July 14, 1993, the Office accepted that he sustained an employment-related adjustment disorder that resolved on January 25, 1993. By decision dated October 21, 1993, the Office formalized the finding that appellant's employment-related adjustment disorder resolved by January 25, 1993.

Appellant, through counsel, requested a hearing which was held on March 14, 1993. He returned to work in a limited-duty capacity in February 1994 at a different location. In a June 9, 1995 decision, an Office hearing representative remanded the case to the Office to pay compensation after January 25, 1993. The Office continued to develop the claim and, by decision dated October 18, 1995, determined that appellant's actual earnings as a counselor represented his wage-earning capacity.

On November 25, 1995 appellant filed a recurrence of disability claim, alleging that when ordered by the employing establishment to return to his original position, he lost all control and had to be hospitalized. He stopped work on May 31, 1995 and has not returned. By letter dated February 20, 1996, the Office informed appellant of the type of evidence needed to support his claim and also advised that the evidence of record indicated that he had sustained a new injury rather than a recurrence of disability and he should, therefore, submit a Form CA-2, notice of occupational disease, claim. Appellant submitted additional evidence and, in a May 6, 1996 decision, the Office denied the recurrence of disability claim, finding that the evidence of record

failed to demonstrate a causal relationship between the claimed disability and the accepted injury.

Appellant timely requested a hearing that was held on November 19, 1996. At the hearing he testified that, following the initial injury, he returned to limited duty with less stress but had a breakdown when he was ordered to return to his original position. He also indicated that the limited-duty position caused stress. In a February 27, 1997 decision, an Office hearing representative affirmed the May 6, 1996 decision that appellant failed to establish a recurrence of disability. The hearing representative, however, stated that she advised appellant that he should submit a Form CA-2, notice of occupational disease, concluding: "The factual and medical evidence support a *prima facie* acceptance of the occupational disease claim once the appropriate claim form is submitted."

On April 8, 1997 appellant submitted an occupational disease claim for employment-related stress, in which he indicated that he was following the instruction of the hearing representative and that the Office had his case record. He also submitted a copy of the February 27, 1997 hearing representative's decision. An Office memoranda dated June 30, 1997 indicates that the case record for file number A06-555287 could not be located and, in a letter dated that day, the Office informed appellant that he needed to furnish additional information. The Office adjudicated the occupational disease claim under file number A06-677650. In a July 29, 1997 letter, appellant reiterated that he had been told to file an occupational disease claim at the hearing. By decision dated November 5, 1997, the Office denied appellant's occupational disease claim on the grounds that he had not submitted supporting evidence as requested. The instant appeal follows.

Regarding appellant's recurrence of disability claim, the Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated February 27, 1997 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The Board further finds that this case is not in posture for decision regarding appellant's occupational disease claim.

Proceedings under the Federal Employees' Compensation Act¹ are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.² Although it is the burden of an employee to establish his or her claim, the Office also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source, as in the instant case, the evidence was contained in an Office file.³

¹ 5 U.S.C. §§ 8101-8193.

² See *Claudia A. Dixon*, 47 ECAB 168 (1995).

³ See *Carol Cherry (Donald Cherry)*, 47 ECAB 658 (1996).

Furthermore, Office procedures in effect at the time of the November 5, 1997 decision indicate that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further provides that cases should be doubled as soon as the need to do so becomes apparent.⁴ The facts in this case indicate that appellant followed the instructions of an Office hearing representative and filed an occupational disease claim on April 8, 1997 alleging that his emotional condition was caused by employment factors. As the Office did not associate the occupational disease claim with appellant's prior claim, the Board will remand the case to the Office for consolidation of Office file numbers A06-555287 and A06-677650, to be followed by a *de novo* decision on the merits of the claim to protect appellant's appeal rights.

The decision of the Office of Workers' Compensation Programs dated February 27, 1997 is hereby affirmed. The decision dated November 5, 1997 is set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
September 19, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ FECA Bulletin No. 97-10 (issued February 15, 1997) regarding case doubling.