U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARL D. FANNING and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

Docket No. 03-645; Submitted on the Record;
Issued August 6, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant established that his claimed disability after May 26, 1999 was causally related to his April 13, 1999 employment injury.

On May 24, 1999 appellant, then a 37-year-old distribution clerk, filed an occupational disease claim for employment-related stress. He last worked April 13, 1999 and was hospitalized from April 14 to 22, 1999 for a major depressive episode, severe without psychotic features. Appellant's physician, Dr. John G. Schulte, a Board-certified psychiatrist, released him to return to work on May 26, 1999. The only restriction was that he not work between the hours of 8:00 p.m. and 4:00 a.m. due to the likely side effects of the medication he had been prescribed. Appellant returned to work May 26, 1999, but he worked sporadically and on the days he actually worked, he averaged one hour a day until July 2, 1999, when the employing establishment extended him a limited-duty job offer at another facility working 8:00 a.m. to 5:00 p.m. On November 4, 1999 the employing establishment terminated appellant for cause.[1]

Appellant attributed his claimed emotional condition to the constant harassment he received because of a previous job-related injury. He also alleged that he was intimidated by supervisors, managers, an injury compensation specialist and labor relations personnel. Appellant stated that he sustained an employment-related traumatic injury on October 19, 1995 that resulted in multiple ruptured discs in his cervical spine and lower back. Since the time of his 1995 injury, he claimed that management constantly harassed him. He also alleged that he was ordered to work outside his restrictions, which resulted in further injury requiring surgery.

Additionally, appellant alleged that he was fired on April 14, 1997 for being unable to perform the duties for which he had been hired. He successfully appealed the termination and was reinstated effective November 22, 1997. But after only one and a half hours of work,

[1] The termination was based on improper conduct, causing undue anxiety to a supervisor and submitting an altered medical document.

appellant stated that he was sent home because of his injury and the work accommodations required. He returned to work on December 3, 1997, however, the harassment allegedly continued and the employing establishment purportedly failed to fully accommodate his medical restrictions. Appellant later filed an Equal Employment Opportunity (EEO) complaint on September 23, 1998 for alleged discrimination based on his disability. The harassment reportedly continued, resulting in a second EEO complaint being filed on October 17, 1998.

Appellant claimed that his supervisors closely scrutinized his work, interrupted work-related conversations, denied him overtime and intimidated him by blocking access to his automobile. He also alleged that a supervisor interfered with the EEO process on January 13, 1999 and cursed at him. Appellant also received two 14-day suspensions in March 1999 for working too slowly, which he alleged were false charges. On April 9, 1999 a supervisor reportedly approached appellant in the parking lot while he was on his break and stated: "Oh, you have a new car, hope you are able to pay for it." He stated that after this incident he realized he could not take the harassment any longer and he sought medical attention.

The Office of Workers' Compensation Programs accepted appellant's claim for depression. His improper termination in 1997 was the only compensable factor of employment. Additionally, the Office accepted appellant's claim for disability during the period April 14 through May 26, 1999. He received appropriate wage-loss compensation.

On October 27, 2000 appellant filed a claim for recurrence of disability beginning May 25, 1999 (Form CA-2a). Additionally, on November 15, 2000 appellant filed a claim for compensation (Form CA-7), for the period May 23, 1999 through November 15, 2000.

By letter dated January 17, 2001, the Office acknowledged receipt of appellant's recently submitted Form CA-2a and Form CA-7. The Office advised appellant that, because the postal service had not provided work within his doctor's restrictions prior to July 2, 1999, appellant was entitled to compensation for seven hours a day for the period May 26 through July 1, 1999. The Office also questioned why appellant claimed disability compensation for the entire period of May 23, 1999 to November 15, 2000, when time and attendance records showed that he missed only nine days of work during the period May 27 to July 1, 1999 and he worked continuously from July 2, 1999 until his termination for cause on November 4, 1999. The Office further advised that, because appellant's termination was unrelated to his accepted condition, he was not entitled to compensation after November 4, 1999. Additionally, the Office stated that, unless otherwise advised, it would assume that his claim for recurrence of disability was for the nine days of work he missed during the period May 27 to July 1, 1999.[2]

Appellant filed another Form CA-7 on February 1, 2001, claiming disability compensation for the period July 1, 1999 to the present. The Office also received a February 16, 2001 attending physician's report (Form CA-20), from Dr. Garry S. Grayson, a Board-certified psychiatrist, who diagnosed major depressive episode, recurrent. He noted that appellant had been hospitalized from October 13 to 20, 2000 for recurrent major depressive episode and crisis intervention. Dr. Grayson attributed appellant's current condition to his employment and

[2] The time and attendance records reflect that appellant was absent from work 10 days during the period May 27 to July 1, 1999.

reported that appellant was partially disabled from May 25 to November 4, 1999 and total disabled from November 5, 1999 to present.

In a decision dated March 16, 2001, the Office denied appellant's claim for recurrence of disability. The Office considered the period of the claimed recurrence to be several days of work appellant missed during the period May 27 to July 1, 1999. Dr. Grayson's opinion was found to be insufficient for a number of reasons, including the fact that he did not verify disability for any day appellant was off work during the period May 27 to July 1, 1999. The Office also noted that while Dr. Grayson indicated that appellant became totally disabled on November 5, 1999 following his termination, the November 4, 1999 termination for cause was not related to appellant's accepted injury.

On December 26, 2001 appellant requested reconsideration. He stated that the Social Security Administration found him disabled as of April 13, 1999. Additionally, appellant submitted a November 26, 2001 report from Dr. Michael G. Gibson who found him permanently and totally disabled from gainful employment.

By decision dated March 4, 2002, the Office denied modification of the March 16, 2001 decision.

The Board finds that appellant failed to establish that his claimed disability after May 26, 1999 was causally related to his April 13, 1999 employment injury.

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3]

The definition of a recurrence of disability also includes a work stoppage caused by withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. However, this withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties.[4] Appellant's limited-duty assignment effective July 2, 1999 accommodated both his prior back injury and was consistent with Dr. Schulte's May 25, 1999 recommendation that appellant not be required to work between the hours of 8:00 p.m. and 4:00 a.m. The record reveals that, effective November 4, 1999, the employing establishment terminated appellant for cause. The termination was upheld by the Merit Systems Protection Board on August 31, 2000. As appellant was terminated from his limited-duty position for reasons unrelated to his accepted condition of depression, he is not entitled to disability compensation on or after November 4, 1999 merely because the limited-duty work was no longer available to him.

The time and attendance records provided by the employing establishment indicate that appellant worked full time during the period July 2 through November 3, 1999. Appellant's

[3] 20 C.F.R. § 10.5(x).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(1)(b) (May 1997).

several claims noted varying periods of disability dating back to May 23, 1999 and extending to the present time. His most recent Form CA-7 dated February 1, 2001 requested disability compensation for the period July 1, 1999 to the present. Appellant, however, did not submit any evidence establishing that he did not work full time during the period July 2 through November 3, 1999. By definition, a recurrence of disability is an inability to work.[5] As the record establishes that appellant worked full time during the period July 2 through November 3, 1999, he is not entitled to additional wage-loss compensation for the period in question.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[6] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.[7] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[8] While a physician's opinion supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9] Moreover, the physician must support his conclusion with sound medical reasoning.[10]

The medical evidence of record fails to establish that appellant was disabled due to his employment-related depression during the period May 27 to July 1, 1999 and on or after November 4, 1999. Dr. Gibson's November 26, 2001 report does not establish that appellant was disabled due to his employment-related depression. Although he stated that appellant was permanently and totally disabled from gainful employment, this assessment was based solely on appellant's lumbar and cervical condition. Dr. Gibson is associated with the Birmingham Pain Center. He provided a history of appellant's October 19, 1995 back injury and subsequent treatment, including the treatment Dr. Gibson administered for appellant's back pain. He also identified the "significant accommodation" that would have to be made in order for appellant to work "even at a sedentary level." Dr. Gibson's only reference to appellant's psychiatric condition reads as follows: "[Appellant] claims that he was subsequently fired from his job and this have caused him a great deal of emotional difficulty. He has been seen by a psychologist and is currently being treated for a generalized anxiety disorder and depression." In concluding that appellant was permanently and totally disabled, Dr. Gibson only identified physical limitations associated with appellant's lumbar and cervical condition. Consequently, his

[5] 20 C.F.R. § 10.5(x).

[6] 20 C.F.R. § 10.104(b) (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[7] *See Helen K. Holt, supra* note 6.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[9] *Norman E. Underwood*, 43 ECAB 719 (1992).

[10] *See Robert H. St. Onge, supra* note 6.

November 26, 2001 report does not establish that appellant is disabled as a result of his accepted depression.

The record also includes a December 9, 1999 report from Dr. Schulte, who noted that appellant had been under his care since April 13, 1999, when he presented with an approximate two-year history of increasingly depressed mood, poor sleep, severe anxiety and suicidal thoughts. Dr. Schulte stated that appellant clearly met criteria for major depression at that time. He also stated that, while appellant's condition improved with antidepressant medication and psychotherapy, he continued to suffer from some depressive symptoms. Dr. Schulte stated that appellant related the onset of these symptoms to his having been unfairly terminated from his job with the postal service in April 1997. He also noted that appellant's termination was reversed and he was reinstated to his job in December 1998. Appellant reported that he was treated unfairly by his supervisors after his reinstatement. Dr. Schulte commented that he was not in a position to know whether appellant was, in fact, treated unfairly prior to his coming to see him. However, based on his own experience, Dr. Schulte found appellant's employer to have been very unsupportive as appellant struggled to recover from his depression. As an example, he noted that, when he recommended that appellant not be scheduled to work the night shift because of his severe depression and need for regular sound sleep, the employing establishment scheduled appellant to work only from 7:00 p.m. to 8:00 p.m. rather than allow him to work daytime hours. Dr. Schulte stated that this appeared to be an obvious attempt to humiliate appellant.

Dr. Schulte also explained that appellant did not have a history of depression or mental disorder prior to his 1997 termination and that job loss and adversarial relationships with supervisors are common precipitants of depression. Dr. Schulte further stated that untreated depression tends to worsen with time, particularly when one has limited support from one's work supervisor. He indicated that it was entirely reasonable to believe that the major depression experienced by appellant was precipitated by job stress and the failure of appellant's depression to remit had been largely a result of the ongoing conflict between appellant and his now former supervisors at the United States Postal Service.

Dr. Schulte's December 9, 1999 report is insufficient to establish that appellant was disabled due to his depression during the period May 27 to July 1, 1999 and on or after November 4, 1999. First, it was Dr. Schulte, who released appellant to return to work on May 26, 1999. As previously noted, the only restriction was that he not work between the hours of 8:00 p.m. and 4:00 a.m. Appellant's time and attendance records indicate that he did not work from May 27 to May 30, June 2, 6, 18 to 20 and July 1, 1999, for a total of 10 days.[11] Dr. Schulte's December 9, 1999 report does not specifically address appellant's absence from work on the above-noted days. Although he noted that appellant was scheduled to work only from 7:00 p.m. to 8:00 p.m. rather than being scheduled to work daytime hours as requested, Dr. Schulte did not provide any explanation or justification for appellant's failure to report to work on 10 different days during the period May 27 to July 1, 1999. Additionally, his report does not establish appellant's claimed disability on or after November 4, 1999. Dr. Schulte did

[11] Appellant took eight hours of leave without pay on each day except June 6, 1999, when he used eight hours of sick leave.

not specifically find appellant totally disabled, but merely noted that he "continues to suffer from some depressive symptoms at this time."

Additionally, the record includes an earlier report from Dr. Grayson dated November 17, 2000, which purports to establish a causal relationship between appellant's employment and his current disability due to recurrent major depression. The only explanation for attributing appellant's current condition to his employment was by reference to Dr. Schulte's December 9, 1999 report. However, as previously discussed, Dr. Schulte's December 9, 1999 report is insufficient to establish that appellant was disabled by his employment-related depression after May 26, 1999. Furthermore, Dr. Grayson remarked that appellant had been recently hospitalized from October 13 to 20, 2000 for "stabilization and crisis intervention following marital separation and associated decompensation in his psychological adjustment."[12] This latter remark undermines the doctor's assessment that appellant's current disabling condition was caused or aggravated by his employment. Additionally, Dr. Grayson reported that appellant was totally disabled from April 13, 1999 to November 15, 2000, notwithstanding the fact that appellant worked full time from July 2 to November 3, 1999.

Dr. Grayson's February 16, 2001 report is also insufficient to establish employment-related disability. He reported a history of onset of major depressive episode in April 1997 "linked to protracted conflict [with] [the] [employing establishment]." Dr. Grayson diagnosed major depressive episode, recurrent and responded "yes" to the question of whether he believed the condition was caused or aggravated by an employment activity. He provided no explanation regarding causal relationship other than to reference the history of injury previously reported. The Form CA-20 noted a period of partial disability from May 25 to November 4, 1999 and total disability from November 5, 1999 to the present. Again, Dr. Grayson remarked that appellant had been hospitalized from October 13 to 20, 2000 for recurrent major depressive episode and crisis intervention.

In his February 16, 2001 form report, Dr. Grayson did not provide an explanation for why he believed appellant's current condition was related to his employment. He merely checked the "yes" box and referred to the previously reported history of injury. An opinion on causal relationship that consists merely of a "yes" response on a Form CA-20 is of little probative value and is, therefore, insufficient to establish causal relationship.[13]

Lastly, appellant stated that the Social Security Administration found him to be disabled as of April 13, 1999. Although the record does not include a decision from the Social Security Administration, the record does include a March 15, 2001 decision from the Office of Personnel Management denying appellant's application for a disability retirement. This latter decision specifically commented on the absence of medical evidence regarding appellant's claimed psychological condition. Neither the Board nor the Office is bound by decisions of other administrative agencies with respect to whether or not an employee is disabled especially where causal relationship to an employment injury is at issue under the Federal Employees, Compensation Act.

[12] The record indicates that appellant's estranged spouse subsequently shot him three times on May 3, 2001.

[13] *E.g.*, *Lee R. Haywood*, 48 ECAB 145, 147 (1996).

The medical evidence of record, particularly the reports of Drs. Gibson, Schulte and Grayson, is insufficient to establish that appellant was disabled by his employment-related depression after May 26, 1999. Accordingly, the Office properly denied appellant's claim for recurrence of disability.

The March 4, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 6, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member