United States Department of Labor
Employees' Compensation Appeals Board

LARRY G. SCHLOSSER, Appellant	)	
and	)	**Docket No. 03-1718**
	)	**Issued: February 24, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Billings, MT, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 27, 2003 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated May 19 and February 24, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's loss of vision in his left eye was sustained while in the performance of duty.

FACTUAL HISTORY

On April 15, 1997 appellant, then a 62-year-old welder, filed a claim for an occupational disease attributing his anxiety and depression to stress at work "created by failure of supervisors to treat employees equally." Appellant indicated that he first became aware of his disease or illness on February 11, 1997 and of its relationship to his employment on March 17, 1997. Appellant stopped work on February 11, 1997.

In a statement accompanying the claim form, appellant described a February 11, 1997 incident in which a coworker, "Chris Olson came to the welding shop and challenged me about a problem he thought I had with his wife, Faith Olson, who had been awarded a jacket from the post office. I had n[o]t gotten such a jacket and I did n[o]t know anything about it, but Mr. Olson said he had heard from someone else that I was upset about the situation. I did n[o]t even know about it, but Mr. Olson appeared intent upon creating a problem where none existed."

In a May 23, 1997 statement, appellant described a severe left eye problem, which he attributed to his federal employment. Appellant attributed his left eye problem to high blood pressure due, in part, to stress at work.

On April 3, 1998 appellant filed a claim for a traumatic injury sustained on February 11, 1997 at 8:00 a.m. when Mr. Olson came into the welding room "and started an argument with me causing my blood pressure to go up and an event of ischemic optic neuropathy of the left eye."

In an April 8, 1998 statement, Mr. Olson noted that he heard from a coworker that appellant was upset that Mr. Olson's wife got a jacket. He went to the welding room and stated to appellant that he understood that he was upset that Mrs. Olson got a jacket, and that appellant stated that he was not upset. Mr. Olson related that appellant became upset when he would not tell appellant who he had heard this from. Mr. Olson stated that he did not encourage an argument or raise his voice.

Appellant submitted a May 16, 1997 affidavit from Robert Hammeren, who was the third person in the welding room at the time of the February 11, 1997 incident. Mr. Hammeren stated:

> "I worked with [appellant] on February 11, 1997. Shortly after we got to the welding room, Mr. Olson, a less senior employee, came into the welding shop. He started talking in a loud voice to [appellant], about [appellant] being upset about his wife, Mrs. Olson, getting a jacket. [Appellant] told him he knew nothing about it. [Mr. Olson] would not back off, even when [appellant] insisted he knew nothing about the jacket. He kept pressing until [appellant] got upset; then [Mr. Olson] left welding and [appellant] left shortly after that. What [Mr. Olson] did was totally uncalled for."

In a treatment note dated February 11, 1997, Dr. John J. Malloy, a Board-certified family practitioner, stated that appellant was seen "complaining that he is really stressed out at work" and worried about his blood pressure, which was listed as "162/92 on the right." In a February 18, 1997 note, Dr. Malloy stated: "[S]ince I saw him last he has developed a black spot in his left field of vision and he looks a certain way and he sees some flashing lights in there [sic]." In an April 19, 1997 note, Dr. Malloy stated that appellant "has lost his vision in the left eye due to a retinal vein occlusion."

In a May 7, 1997 report, Dr. Christopher Paris, a Board-certified ophthalmologist, stated: "[Appellant] suffers from retinal telangiectasia with a flame-shaped hemorrhage along the disc margin of the left eye. Differential diagnosis includes branch retinal vein occlusion versus retinal telangiectasia associated with low-tension glaucoma."

On October 23, 1997 the Office accepted that appellant sustained a temporary aggravation of depression that ended by March 11, 1997.

Appellant requested reconsideration and submitted additional factual and medical evidence. In a February 12, 1997 report of appellant's first session with the Employee Assistance Program, a counselor listed an emotional problem related to being unappreciated at work and listed medical conditions of heart surgery in July 1996 and high blood pressure. The report of appellant's next counseling session on February 19, 1997 noted that appellant reported seeing flashes in his left eye and losing vision.

In an affidavit dated November 6, 1997, appellant's wife stated that appellant was "noticeably upset" when she picked him up at work after he called her at about 9:30 a.m. on February 11, 1997 and "complained that his eyes hurt." She continued that they stopped at Osco Drug on the way home and appellant took a blood pressure reading, which was 190/114 and that shortly thereafter they went to St. Vincent's Family Practice Clinic, where a nurse took appellant's blood pressure "and since it was still too high she made an appointment with Dr. Malloy later that day." Appellant's wife stated that on the morning of February 12, 1997 appellant "woke up saying that something was wrong with his left eye. He said that he was seeing flashes of light and dark circles. [Appellant] said he wanted to wait to obtain an appointment with an eye specialist until he spoke with Dr. Malloy on February 18, 1997."

In a report dated March 31, 1998, Dr. Timothy P. Minton, a Board-certified ophthalmologist, set forth a history that appellant experienced a sudden loss of vision of his left eye on February 12, 1997. The patient complained of pain around the left eye at the time of the event and his blood pressure was documented to be greater than 200/110. The elevation of his blood pressure allegedly occurred after an incident with a coworker on February 11, 1997. On examination appellant's visual acuity with present correction was 20/200, he could not read any print with the left eye and he "was able to count fingers in the peripheral field but there appeared to be a central scotoma." Dr. Minton concluded that appellant "experienced an event of anterior ischemic optic neuropathy of the left eye, probably secondary to uncontrolled hypertension from the above incident."

By letter dated June 2, 1998, the Office advised Dr. Minton that appellant's blood pressure when he saw Dr. Malloy on February 11, 1997 was 134/86[1] and asked Dr. Minton whether this changed his opinion. In a July 8, 1998 report, Dr. Minton stated:

> "[Appellant] had his blood pressure checked at a drug store at 10:00 a.m. on February 11, 1997 and at that time the pressure was 200/110. This prompted him to seek medical attention by Dr. Malloy. The blood pressure when he was

[1] This blood pressure reading was contained at the top of Dr. Malloy's February 11, 1997 office note, but the body of this note indicated that appellant's blood pressure was 162/92, which Dr. Malloy confirmed in an April 21, 1998 report.

checked at Dr. Malloy's office, according to the records we have obtained, was 162/92. Given the above information, it really does not change my opinion from my letter dated March 31, 1998."

In a September 7, 1998 statement, appellant acknowledged that he got upset on February 11, 1997 with Mr. Olson. In an April 22, 1998 statement, another coworker stated that Mr. Olson told him "that he was the one that got [appellant] all riled up because of a jacket."

By decision dated November 19, 1998, the Office denied modification of the October 23, 1997 decision that appellant sustained a temporary aggravation of depression that ceased by March 11, 1997. Appellant appealed this decision to the Board which, by decision dated October 23, 2000, found that there was a conflict of medical opinion on whether appellant's depression ended by March 11, 1997.[2] The Board noted that the Office had not issued a final decision on appellant's claim for ischemic optic neuropathy.

Following referral to an impartial medical specialist, the Office accepted that appellant sustained a permanent aggravation of depression.

By letter dated February 21, 2001, the Office requested that appellant provide further information on the February 11, 1997 incident. In a March 6, 2001 affidavit, appellant stated that on February 11, 1997 Mr. Olson yelled at him in a loud voice and "a very aggressive and hostile manner" about the jacket his wife received. Appellant reported this incident to the maintenance managers whose "attitude was indifference and nonconcern," and that one of the managers, Ralph Coleman, told him to "go back to the welding room, sit down and be quiet." Appellant stated that he was upset by Mr. Olson's conduct and "stunned and humiliated when management flipped me off and told me to go sit down and be quiet."

In an April 13, 2001 statement, Mr. Olson noted that on February 11, 1997 he "did not approach [appellant] very angrily, in a hostile or aggressive manner raising my voice," and that appellant got upset when Mr. Olson would not tell appellant who stated that he was upset about Mrs. Olson getting a jacket. In an April 12, 2001 statement, Mr. Coleman, supervisor of maintenance operations, stated that on the date of the incident about the jacket, appellant stayed in the maintenance office one and one-half hours and that appellant was not told to get back to the welding shop.

By decision dated May 10, 2001, the Office found that the February 11, 1997 event did not occur as alleged by appellant. The Office found that appellant knew about the jacket before Mr. Olson asked him about it, that the evidence did not establish that Mr. Olson acted aggressively toward appellant and that management did not ignore appellant and tell him to go back to work.

By letter dated December 13, 2001, appellant submitted a November 30, 2001 report from Dr. Minton, which appellant contended showed that he suffered a consequential injury to his left eye arising directly out of the events of February 11, 1997. In the November 30, 2001

[2] Docket No. 99-895.

report, Dr. Minton set forth a history of a "sudden vision loss of his left eye on February 11, 1997," which he obtained on appellant's first visit on March 10, 1998 Dr. Minton stated:

> "On February 11, 1997 the patient experienced a stressful event at work where his blood pressure elevated and he felt pain around the left eye and a sudden decrease in vision. The patient went to a drug store at approximately 10:00 a.m. and his blood pressure was found to be 200/110. This prompted him to seek medical attention by Dr. Malloy. The blood pressure when he was checked at Dr. Malloy's office according to the records that we have obtained was 162/92. When he was seen by an ophthalmologist there was a flame-shaped hemorrhage noticed off the left optic nerve, which is consistent with an ischemic event to the optic nerve. This condition is called an anterior ischemic optic neuropathy and is similar to a stroke of the brain with the elevated blood pressure causing a compromise of the final arteries delivering blood to the optic nerve."
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> "In summary, it is my impression on a reasonable or not basis, [appellant's] eye damage arose directly out of the severe stress event of February 11, 1997. I can say this because the uncontrolled hypertension caused the blood flow problem to his left optic nerve (anterior ischemic optic neuropathy) especially in light of the underlying low tension glaucoma. This condition has caused permanent damage to [appellant's] left eye and no surgical procedure or medical treatment can restore the vision."

By decision dated May 31, 2002, the Office found that the additional evidence was immaterial and not sufficient to warrant a merit review of its prior decision.

By letter dated August 5, 2002, appellant appealed the Office's May 31, 2002 decision to the Board. By decision dated December 23, 2002, the Board found that appellant's December 13, 2001 letter constituted a request for reconsideration and that the Office's delay of over five months to issue a decision resulted in appellant losing his right to appeal the Office's most recent merit decision. The Board remanded the case to the Office "for issuance of a decision on the merits of appellant's claim for an eye condition related to a February 11, 1997 employment incident."[3]

By decision dated February 24, 2003, the Office found that the evidence submitted in support of appellant's December 13, 2001 request for reconsideration was not sufficient to warrant modification of the Office's prior decisions.

By letter dated March 26, 2003, appellant requested reconsideration and submitted additional medical evidence. In a March 26, 1998 report, Dr. William Dee Woolston, a clinical psychologist, found appellant "to be a reliable, sincere individual. I have found no evidence of

[3] Docket No. 02-2169.

anti-social traits; he is not dishonest, manipulative, coercive, or violent." Dr. Woolston concluded that appellant's "physical reactions to stress exacerbated an underlying hypertensive disease." In a March 4, 2003 report, Dr. Eeva Echeverri, a Board-certified psychiatrist, stated that appellant was already anxious, insecure and paranoid at work, so that "when Mr. Olson confronted him with a loud voice, it was the straw that broke the camel's back" and "his blood pressure increased and he lost vision in his left eye because of this psychological event."

By decision dated May 19, 2003, the Office found "that a discussion about a jacket took place, which did upset the claimant but this event cannot be considered as an event occurring in the performance of duty, as defined by the FECA [Federal Employees' Compensation Act]. It did not come about in the course of the claimant's performance of his work duties and it cannot be established that the claimant was subjected to abusive behavior by a coworker or by management."

LEGAL PRECEDENT

The Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The Board has interpreted this phrase to be "the equivalent of the commonly found prerequisite in work[er]s' compensation laws, namely, 'arising out of and in the course of employment.'"[4] "In the course of employment" deals primarily with the work setting, the locale and time of the employee's performance of his or her work assignment. That is, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in the employer's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.

Larson, in his treatise on workers' compensation, states that, even if the subject of a dispute is unrelated to the work, an ensuing assault is compensable if the work of the participants brought them together and created the relations and conditions, which resulted in the clash:

> "This view recognizes that work places men under strains and fatigue from human and mechanical impacts creating frictions, which explode in myriads of ways, only some, of which are immediately relevant to their tasks. Personal animosities are created by working together on the assembly line or in traffic. Others initiated outside the job are magnified to the breaking point by its compelled contacts. No work is immune to these pressures and impacts upon temperament. They accumulate and explode over incidents trivial and important, personal and official. But the explosion point is merely the culmination of the antecedent pressures. That it is not relevant to the immediate task, involves a lapse from duty, or

[4] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

contains an element of violation or illegality does not disconnect it from them nor nullify their causal effect in producing its injurious consequences."[5]

Establishing that an injury was in the course of employment is not sufficient, in and of itself, to establish entitlement to compensation. The employee must also establish the concurrent requirement of an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment.[6] Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete and accurate factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[7]

ANALYSIS

There is no dispute that the February 11, 1997 employment incident involving appellant and Mr. Olson occurred at about 8:00 a.m., during appellant's regular working hours and in the welding room where appellant regularly performed his duties as a welder.

Appellant's account of the February 11, 1997 incident differs from that of Mr. Olson, with regard to whether Mr. Olson was loud and aggressive and whether appellant became upset because Mr. Olson repeatedly asked him why he was upset about Mr. Olson's wife getting a jacket from the employing establishment or because Mr. Olson would not answer appellant's inquiry as to who told Mr. Olson he was upset about this. The Board finds appellant's version more credible, as it finds support in the statement of the only eyewitness to the event.

However, whose version of the February 11, 1997 incident is accepted as factual makes no difference insofar as compensability is concerned. The February 11, 1997 incident is compensable because the employment brought appellant and Mr. Olson together and created the conditions, which resulted in their verbal altercation.[8] There is no evidence that these two employees had any relationship outside the one at work.[9] Even if appellant were considered the

[5] A. Larson, *The Law of Workers' Compensation* § 8.01(6)(a) (2000) (quoting Hartford Acc. & Indem. Co. v. Cardillo, 72 D.C. App. 52, 112 F.2d 11, 17 (1940). As the Board noted in *Monica M. Lenart*, 44 ECAB 772 (1993), this principle applies with equal force to mental or emotional injuries.

[6] *Veleria Minus*, 46 ECAB 799 (1995); *Joann Curtis*, 38 ECAB 122 (1986); *George A. Fenske*, 11 ECAB 471 (1960).

[7] *Bruce E. Martin*, 35 ECAB 1090 (1984).

[8] *See Shirley I. Griffin*, 43 ECAB 573 (1992) (the Board found compensable an altercation that arose out of the claimant's failure to introduce a coworker to another coworker).

[9] When animosity of dispute, which culminates in an assault is imported into the employment from a claimant's domestic or private life, the assault does not arise out of employment. *Janet Hudson-Dailey*, 45 ECAB 435 (1994).

"aggressor" or "initiator" of the dispute, this also would not render February 11, 1997 altercation noncompensable.[10] The argument between coworkers brought together by their employment is incidental to the employment and brings the claimed injury within the course of employment.

Appellant has not, however, established that his complaints to management on February 11, 1997 were ignored or that he was told to go back to the welding room and quiet down. The managers who allegedly told appellant this has specifically denied it, and stated that appellant stayed in the maintenance office one and one-half hours after the incident with Mr. Olson. This is consistent with evidence that the argument occurred about 8:00 a.m. and that appellant called his wife to pick him up about 9:30 a.m.

Appellant submitted medical reports in support of his claim that his loss of vision in the left eye is causally related to the February 11, 1997 employment incident. The reports of Drs. Malloy and Paris did not address causal relation, but Dr. Minton, a Board-certified ophthalmologist, concluded in a November 30, 2001 report, that appellant's "eye damage arose directly out of the severe stress event of February 11, 1997" and explained the basis of this conclusion.

Dr. Minton's reports, however, are not sufficient to meet appellant's burden of proof for the reason that they are not based on an accurate history. In his November 30, 2001 report, Dr. Minton set forth a history of a "sudden vision loss of his left eye on February 11, 1997." While the record does not clearly establish exactly what day appellant's vision loss occurred, it does establish that it did not occur on February 11, 1997. Dr. Malloy did not mention any eye problem in his February 11, 1997 treatment note, nor did an Employee Assistance Program counselor in a February 12, 1997 report that listed appellant's medical conditions. Appellant's wife averred that appellant told her "he was seeing flashes of light and dark circles" when he awoke on February 12, 1997 and Dr. Malloy's February 18, 1997 note stated that appellant had developed a black spot in his left field of vision and some flashing lights since he last saw appellant on February 11, 1997.

Dr. Minton's reports also reflect an inaccurate history of appellant's blood pressure readings on February 11, 1997. Dr. Minton's March 31, 1998 report stated that "[appellant's] blood pressure was documented to be greater than 200/110," and his July 8, 1998 and November 30, 2001 reports listed it as 200/110 when taken at a drug store on appellant's trip home from work with his wife. The only direct evidence of appellant's blood pressure at the drug store was in the affidavit of his wife, who stated that the reading was 190/114. Appellant's wife also stated that a nurse at St. Vincent's Family Practice Clinic took a blood pressure reading "shortly thereafter." This reading, however, is not contained in the case record.

CONCLUSION

The Board finds that the February 11, 1997 incident arose in the course of appellant's employment, but that the medical evidence is not sufficient to establish that this incident caused the claimed condition of loss of vision of the left eye.

[10] *Allan B. Moses*, 42 ECAB 575 (1991).

ORDER

IT IS HEREBY ORDERED THAT the May 19 and February 24, 2003 decisions of the Office of Workers' Compensation Programs are modified to find that the February 11, 1997 incident arose in the course of appellant's employment and affirmed as modified.

Issued: February 24, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member