

On July 21, 2004 appellant, then a 48-year-old air traffic control specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained irritable bowel syndrome (IBS) as a result of employment-related stress. In a narrative statement, he indicated that in 2001 he had transferred from Erie, Pennsylvania to the Cleveland Center, where he was required to

have radar training as part of the certification process. Appellant indicated that the training process caused stress and aggravated his IBS condition.

The record indicates that in a June 18, 2004 letter to the employing establishment appellant requested withdrawal from the radar training as he had experienced pain from his diagnosed IBS due to stress from the training and work environment. On June 24, 2004 he requested a “Category 1 hardship transfer” to the Erie Air Traffic Control Tower. An August 4, 2004 letter from the employing establishment advised appellant that he had not been selected for the Erie position.

In a report dated September 8, 2004, Dr. John Streiff, a family practitioner, reviewed appellant’s treatment since February 2003. He stated that work stressors aggravated his IBS causing enough abdominal pain to distract appellant from doing his job. Dr. Streiff further stated, “I would not consider it safe for [appellant] to control air traffic while experiencing severe abdominal pains caused by his [i]rritable [b]owel [s]yndrome or if he was on anticholinergic medications. I highly recommend a transfer to a less stressful position, but I must add that a location change far from where [appellant’s] child(ren) is (are) finishing school would also be a likely stressor that could aggravate IBS.”

Following additional development of the evidence, on March 7, 2008 the Office accepted the claim for aggravation of IBS. It previously indicated that the compensable work factors were the radar training at Cleveland Center and a work environment that included derogatory remarks about appellant’s work performance. Appellant claimed compensation for wage loss from September 18, 2005 until his retirement on September 30, 2006. A Standard Form (SF) 50-b indicated that effective September 18, 2005 appellant had been transferred to Terre Haute, Indiana. The form indicated that the adjusted annual basic pay had been reduced from \$104,795.00 to \$91,702.00.

By decision dated April 2, 2008, the Office denied appellant’s claim for wage-loss compensation. It stated that appellant’s claim was “without merit since the record does not reflect an adverse action.” Appellant requested a telephonic hearing, which was held on July 15, 2008. He submitted an e-mail from a coworker and union representative, Patrick Forrey, dated July 15, 2005 stating that he had been told by the employing establishment that appellant was going to be removed.

In a decision dated November 24, 2008, an Office hearing representative affirmed the April 2, 2008 decision. The hearing representative found the evidence indicated that appellant had voluntarily accepted a transfer to Terre Haute.

LEGAL PRECEDENT

The term “disability” as used under the Federal Employees’ Compensation Act means the incapacity, because of injury in employment, to earn the wages which the employee was receiving at the time of injury.¹

¹ Donald Johnson, 44 ECAB 540, 548 (1993); 20 C.F.R. § 10.5(17).

ANALYSIS

The Office accepted an aggravation of IBS and accepted as a compensable factor of employment appellant's radar training at the Cleveland Center. Appellant was transferred to a Terre Haute facility in September 2005 and he seeks compensation for wage loss due to a lower pay rate at Terre Haute. The issue is whether the transfer was causally related to the accepted employment injury. If the transfer was the result of the employment injury, and appellant was not able to earn the wages he received at the time of injury, then he has disability under the Act because of an incapacity to earn the date-of-injury wages due to the employment injury.²

In this regard the Office decisions did not make adequate findings on the issue. The hearing representative found appellant voluntarily transferred, but there is little evidence of record regarding the circumstances of the September 2005 transfer. The Office did not secure a clear statement from the employing establishment as to the basis for the transfer to Terre Haute. At the hearing appellant suggested the transfer was required by the employing establishment and the Cleveland Center position was no longer available due to his medical condition. As to medical evidence, he had previously submitted medical evidence regarding his ability to work at Cleveland Center. The Office did not address the medical evidence in any detail.

The case will be remanded to the Office for further development and proper consideration of the relevant factual and medical evidence. After such further development as the Office finds necessary, it should issue an appropriate decision that discusses the relevant factual and medical evidence and makes adequate findings.

CONCLUSION

The Board finds the case must be remanded for proper findings on the factual and medical evidence.

² See *John W. Kunick*, 34 ECAB 479 (1982).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 24 and April 2, 2008 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 5, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board