U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND A. NESTER and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Leesburg, Va.

Docket No. 96-1384; Submitted on the Record;
Issued December 2, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or around April 5, 1995 due to his June 28, 1979 employment injury.

On June 28, 1979 appellant, then a 34-year-old air traffic controller, filed a claim for compensation benefits alleging that he sustained cardiac symptoms, later diagnosed as a panic attack, as a result of his federal employment duties. The Office of Workers' Compensation Programs accepted that appellant sustained employment-related generalized anxiety disorder and anxiety neurosis and paid him appropriate compensation benefits for intermittent periods from June 1979 until he stopped work entirely in 1982.

On November 20, 1989 appellant returned to work in an apprenticeship capacity as a Risk and Insurance Manager for Curry Nester Development. By decision dated February 23, 1990, the Office determined that appellant's actual earnings as a Risk and Insurance Manager apprentice, approximately $10,000.00 a year, fairly and reasonably represented his wage-earning capacity. The Office continued to pay appellant compensation based on this wage-earning capacity determination.

On July 7, 1995 appellant filed a claim for a recurrence of disability. He stated that after 1982, when he was ultimately declared medically disabled from his air traffic control job, he was periodically hospitalized for psychiatric treatment, including admissions in 1983, 1984 and 1987. He added that on or around April 5, 1995 he began experiencing mounting stress due to the loss of his family unit, and that this had given rise to a recurrence of identical symptoms of fulminant angioedema and major depression, which he first experienced with his original employment injury, and which now incapacitated him from full-time employment. On May 1, 1995 appellant stopped working for Curry Nester Development.

In support of his reconsideration request, appellant submitted medical reports dated April 5 and September 1, 1995 from his attending physician, Dr. Douglas F. Crane, a Board-

certified psychiatrist. In each report, Dr. Crane provided a comprehensive history of appellant's condition and related treatment since his 1979 employment injury and diagnosed appellant as having major depression, recurrent. In his September 1, 1995 report, Dr. Crane stated that appellant's index episode of depression occurred shortly after his employment-related panic attack, and that during the interval from 1980 through 1994 he experienced numerous recurrences of depression, of varying severity, precipitated by a series of personal and financial losses.[1] Dr. Crane further stated that "it is believed that major depression is likely to be a kindled phenomenon" and that "once an individual has a depression his central nervous system becomes more vulnerable to the changes that result in depression." Dr. Crane concluded that appellant's psychiatric condition at the time he filed his claim for recurrence of disability was precarious and precluded the pursuit of further active employment.

The Office, thereafter, referred the employee's medical records to the Office medical adviser for review. In his report dated November 9, 1995, the Office medical adviser stated that, while he believed that appellant's psychiatric problems were initially precipitated by work, he felt appellant's current psychiatric condition was solely related to his extensive nonwork multiple stresses and his inherent personality make-up.

By decision dated January 17, 1996, the Office denied modification of its initial determination of appellant's wage-earning capacity.[2]

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability on or after April 5, 1995 causally related to his June 28, 1979 employment injury.

It is an accepted principle of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[3]

[1] Dr. Crane specifically noted that beginning in 1980 appellant became increasingly anxious and depressed as his financial status deteriorated; that in the spring of 1983 appellant's second wife divorced him and he further learned that his father was terminally ill; and that in 1993 he had a recurrence of depression following separation from his third wife.

[2] Once a loss of wage-earning capacity is determined, a modification of such a determination is not warranted unless there is a showing of either a material change in the nature and extent of the injury-related condition, or that the employee has been retrained or otherwise vocationally rehabilitated or that the original determination was in fact erroneous. *George W. Coleman*, 38 ECAB 782, 788 (1987); *Ernest Donelson, Sr.*, 35 ECAB 503, 505 (1984). The burden of proof is on the party attempting to show the award should be modified. *Jack E. Rohrabaugh*, 38 ECAB 186, 190 (1986).

[3] *Robert W. Meeson*, 44 ECAB 834 (1993).

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes:

> "[W]hen the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural results' and of claimant's own conduct as an independent intervening cause.
>
> "The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[4]

Thus, it is accepted that once the work-connected character of any condition is established, "the subsequent progression of that condition remains compensable *so long as the worsening is not shown to have been produced by an independent nonindustrial cause.*"[5] (Emphasis added.) If a member weakened by an employment injury, contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."[6]

In a similar case, *Robert W. Meeson*,[7] appellant sustained an employment-related injury which was accepted for lumbar strain. Appellant remained off work, returned to light duty and then to regular duty. Appellant's automobile struck a deer in a nonemployment-related accident. Thereafter, appellant filed a notice of recurrence of disability alleging that he experienced the same symptoms of low back pain and radiculopathy that he had experienced as a result of the accepted injury. Applying the principles noted above, the Board found that the triggering episode for appellant's claimed recurrence of disability was the nonemployment-related automobile accident and not due to the "natural progression" of his prior back condition.

In the present case, appellant has not submitted the necessary medical evidence to establish that his disability after April 5, 1995 was due to the progression of the accepted employment injury. Appellant specifically stated, in a narrative statement accompanying his claim for recurrence of disability, that on or around April 5, 1995 he began experiencing mounting stress due to the loss of his family, and that this had given rise to a recurrence of identical symptoms to those, which he first experienced with his original employment injury. This is consistent with Dr. Crane's account that appellant's condition steadily deteriorated in response to a series of personal and financial losses. Applying the principles noted above,

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[4] A. Larson, *The Law of Workers' Compensation* § 13.11 (1993).

[5] *Id.* at § 13.11(a); *see also Dennis J. Lasanen*, 41 ECAB 933 (1990).

[6] *Supra* note 3.

[7] *Id.*

however, the Board finds that the triggering episode for appellant's claimed recurrence of disability was the nonemployment-related "mounting stress" arising out of his family life, independent intervening events, which interrupted the chain of direct causation, and that, therefore, his recurrence of disability was not due to the "natural progression" of his prior employment-related emotional condition. In addition, Dr. Crane's explanation that it is "believed" that major depression is "likely to be a kindled phenomenon" in that once an individual has a depression his central nervous system becomes more sensitive to the changes that result in depression, is not sufficiently definitive to meet appellant's burden of establishing a causal relationship between his condition at the time he filed his claim for a recurrence of disability and his 1979 accepted emotional condition.[8]

Therefore, appellant did not submit sufficient evidence to establish that he sustained an employment-related recurrence of disability on or around April 5, 1995 and the Office properly denied his claim.

The decision of the Office of Workers' Compensation Programs dated January 17, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 2, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[8] *Ern Reynolds*, 45 ECAB 690 (1994).