

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES CAMARATA and U.S. POSTAL SERVICE,
POST OFFICE, New Britain, Conn.

*Docket No. 97-941; Submitted on the Record;
Issued April 21, 1999*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly found that appellant failed to meet his burden of proof to establish that his alleged cervical condition was sustained in the performance of duty; (2) whether the Office abused its discretion by refusing to reopen appellant's cervical condition claim for further review on the merits of his claim under 5 U.S.C. § 8128(a); and (3) whether the Office properly found that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On September 13, 1991 appellant, a 46-year-old letter carrier, filed a Form CA-1 claim for benefits based on traumatic injury, alleging that he was brutally assaulted by a coworker, resulting in injuries to his head, neck and scalp.

In a report dated September 19, 1991, Dr. Steven C. Shifreen, a general practitioner, diagnosed, based on x-rays results, that appellant had a normal cervical, dorsal, lumbosacral spine and a normal skull.

In a disability certificate dated January 3, 1992, Dr. Shifreen released appellant to return to work on January 6, 1992, without restrictions. Appellant, however, did not return to work at that time and accepted an optional retirement offer from the employing establishment on October 2, 1992.

In a decision dated January 13, 1992, the Office initially denied appellant's claim, finding that because he had provoked the fight with his coworker, his alleged injury had resulted from his willful misconduct and was therefore not compensable. Appellant requested an oral hearing by letter dated January 31, 1992 and in an Office decision dated September 4, 1992, an Office hearing representative reversed the Office's previous decision, finding that the assault occurred in the performance of appellant's duties and that appellant's actions in the September 13, 1991

incident did not constitute willful misconduct. By letter dated October 30, 1992, the Office accepted appellant's claim for laceration of the scalp.

In a report dated March 16, 1993, Dr. Shifreen stated that, in addition to the accepted scalp laceration, appellant had also sustained a cervical sprain, dorsal sprain, lumbosacral sprain, bilateral shoulder sprain and degenerative arthritis of both hips. He advised that appellant did improve considerably with residual symptomatology as of January 3, 1992 being localized to the low back and that appellant had been scheduled to return to work as of January 6, 1992. Dr. Shifreen further stated that appellant had not returned for further treatment since January 3, 1992 and that, therefore, he could not comment on his current condition.

In a letter dated September 8, 1994, appellant's attorney requested compensation for "serious physical and psychological harm far in excess of" the accepted scalp laceration and noted that appellant had been under Dr. Marvin Zelman's, Board-certified in psychiatry and neurology, care since September 1, 1994 for "treatment of depression and residual post-traumatic stress symptoms arising from a work-related accident on September 13, 1991."

On October 25, 1994 appellant filed a Form CA-7 claim for continuing compensation, requesting benefits beginning September 13, 1991 and continuing.

Dr. Shifreen submitted an additional report on August 1, 1995 wherein he stated that he had examined appellant on June 6, 1994 and diagnosed objective evidence of residual somatic dysfunction and sprain localized to the cervical spine, dorso spine, lumbar spine and the left shoulder. He also diagnosed clinical depression at that time and referred appellant to Dr. Zelman in view of his depressive symptoms. Dr. Shifreen accorded appellant a permanent impairment rating of 6 percent to the cervical spine, 6 percent to the dorso-lumbar spine and added 75 percent disability due to his psychiatric problems.

Dr. Zelman examined appellant on September 11, 1994 and submitted a report dated October 10, 1994. He stated that appellant had a history of adjustment difficulties, including alcoholism and treatment for depression in conjunction with his divorce, which required hospitalization. Dr. Zelman also noted a long history of antisocial behavior, noting that he had been arrested several times for breach of the peace. Dr. Zelman stated:

"Since the incident at work, [appellant] has continually been depressed and anxious. He spends most of his time at home. He has had ongoing nightmares about the assault and he worries excessively[,] thinking that he will die. He has also had ongoing suicidal thoughts, which at times have been quite intense. In addition to these symptoms, he also complains of ongoing profound insomnia.

"In my opinion, [appellant] is suffering from a major depression in addition to residual post[-]traumatic stress symptoms. I believe that his depression is causally related to the work[-]related accident on September 13, 1991. The assault at work led to both physical and psychological symptoms. I believe [appellant's] symptoms were aggravated by the fact that he informed his superiors well in advance that the particular coworker who assaulted him represented a

significant workplace risk. [Appellant] feels strongly that his injuries could have been prevented if his superiors heeded his advice.”

In a decision dated June 22, 1995, the Office denied appellant’s claim, finding that appellant failed to submit medical evidence sufficient to establish that the claimed condition was causally related to employment factors resulting from the September 13, 1991 employment injury.

In a letter dated July 1, 1995, appellant requested an oral hearing, which was ultimately scheduled for February 14, 1996.

Appellant subsequently submitted a July 18, 1995 medical report from Dr. Zelman, who opined:

“[A]ll of [appellant’s] emotional and psychiatric problems are directly related to the assault at work. While it is true that his ex-wife died of a drug overdose/suicide, this event occurred two years after his divorce. [Appellant] did mourn, appropriately, the loss of his ex-wife but he was not overwhelmed by this incident. As time progressed he recovered and went on with his life. The suicide occurred on September 9, 1989 and he was assaulted two years later on September 13, 1991.”

Dr. Zelman also noted that although appellant had been addicted to the prescribed medication for which he underwent alcohol detoxification, he had been drug free for seven months at the time of the assault.

Dr. Zelman also submitted a medical report dated March 8, 1996 in which he stated that, because he did not personally examine appellant until September 11, 1994, he did not have objective evidence of his psychiatric condition for the period in question beginning September 13, 1991 until his retirement the following year. He stated:

“[I]t is quite clear from the record that he was physically impaired to the point that he could not do his regular job at all. In addition, he was severely discouraged because of his discharge from the [employing establishment] and also because he was deprived of a livelihood. The combination of the physical and emotional injuries sustained as a result of the accident and aggravated by punitive administrative procedures left appellant in a very vulnerable and compromised state. In fact, I would go as far to say that the work[-]related injury and the administrative consequences both led to [appellant’s] total disability.”

In a decision dated July 12, 1996, an Office hearing representative affirmed the Office’s previous decision. The hearing representative found that there was no rationalized medical evidence in support of appellant’s contention that his claimed cervical and psychiatric conditions were causally related to the September 13, 1991 employment incident. The hearing representative found that Dr. Shifreen’s reports did not contain a rationalized, probative opinion that appellant’s alleged cervical condition or disability was causally related to the September 13, 1991 employment incident and that therefore appellant failed to meet his burden

to establish that his current cervical condition was compensable under the Federal Employees' Compensation Act.

With regard to the psychiatric claim, the hearing representative stated that Dr. Zelman's reports did not reflect an accurate knowledge of appellant's job duties and were not based on a complete, accurate history of the work factors alleged to have caused the claimed condition. Therefore, the hearing representative determined, Dr. Zelman's opinion was of diminished probative value in establishing causal relationship. The hearing representative specifically stated that Dr. Zelman did not discuss the fact that the claimant was released to return to full duty on January 6, 1992 by Dr. Shifreen, and failed to explain why appellant waited three years before seeking psychiatric treatment for a brief scuffle at work which resulted in the Office accepting only for scalp laceration. The hearing representative opined that Dr. Zelman only addressed the issue of causal relationship in his July 18, 1995 report by making a "generalized statement" that appellant's emotional and psychiatric problems were directly related to the assault at work, which the hearing representative stated was totally devoid of rationale.

In a letter dated October 22, 1996, appellant's attorney requested reconsideration of the Office's July 12, 1996 decision. Accompanying the letter was an August 17, 1996 report from Dr. Shifreen, who essentially reiterated his earlier findings and conclusions and stated that "I believe there is a clear case for causation and it also appears quite clear that [appellant's] complaints and injuries are consistent with the history provided by him on the occasion of his "initial visit" on September 13, 1991.

By decision dated December 30, 1996, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board affirms the Office's finding that appellant failed to meet his burden of proof to establish that his claimed cervical condition was sustained in the performance of duty.

An employee seeking benefits under the Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.⁵

In the present case, the Office accepted the fact that appellant suffered an injury in the performance of duty on September 13, 1991 and accepted the claim for a scalp laceration. Appellant has submitted no medical evidence, however, which indicates that appellant's alleged cervical condition resulted from the employment incident of September 13, 1991. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁶ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷ Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit. In the instant case, none of the medical reports pertaining to the claimed condition contain any rationalized medical opinion which relates the cause of this claimed condition to the September 13, 1991 employment injury.

The reports from Dr. Shifreen do not constitute sufficient medical evidence demonstrating a causal connection between appellant's September 13, 1991 injury and his cervical condition. Causal relationship must be established by rationalized medical opinion evidence. The reports from Dr. Shifreen merely state his findings and conclusions that appellant had a cervical condition based on examination and x-ray results, and do not indicate that this condition was causally related to the September 13, 1991 employment injury.

⁴ *Id.*

⁵ *Arlonia B. Taylor*, 44 ECAB 591, 595 (1993).

⁶ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁷ *Id.*

As there is no probative, rationalized medical evidence addressing and explaining why his claimed condition and disability were caused by his original injury, appellant has not met his burden of proof in establishing that he sustained a cervical condition stemming from his accepted September 13, 1991 employment injury. The Board therefore affirms the Office's finding that appellant did not sustain a compensable physical condition or disability.

The Board affirms the Office's finding that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The first issue to be addressed is whether appellant has cited factors of employment that contributed to his alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.⁸ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁹

A claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.¹⁰ The Board has underscored that, when working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹¹ The Office has the obligation to make specific findings with regard to the allegations raised by a claimant. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Mere perceptions of harassment or discrimination do not constitute a compensable factor of employment. Only when the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted may the Office then base its decision to accept or reject the claim on an analysis of the medical evidence.¹²

Appellant's claim, however, is not primarily one involving harassment or perceptions. Rather, this issue in this case concerns whether the claimant's emotional condition is causally related to incidents and conditions of his employment.¹³ Appellant attributes his emotional

⁸ *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *See id.*

¹⁰ *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

¹¹ *Norma L. Blank*, 43 ECAB 384 (1992).

¹² *Id.*

¹³ *Ralph O. Webster*, 38 ECAB 521 (1987).

condition to the September 13, 1991 employment incident in which his coworker brutally assaulted him and for which the Office has already accepted his claim for a physical injury sustained in the performance of duty; *i.e.*, a scalp laceration. Such physical contact by a coworker may give rise to a compensable employment factor for an emotional condition under the Act.¹⁴

The Board finds that the September 13, 1991 assault by his coworker constitutes a compensable factor of employment. However, appellant's burden of proof is not discharged by the fact that he has merely identified an employment factor which may give rise to a compensable disability under the Act. Appellant also has the burden of submitting sufficient rationalized, probative medical evidence to support his allegation that he sustained a specific emotional injury due to the accepted physical altercation/injury which occurred on September 13, 1991.¹⁵

The Board finds that appellant failed to submit medical evidence sufficient to establish that he sustained a specific emotional injury causally related to the accepted physical altercation/injury which occurred on September 13, 1991. Causal relationship must be established by rationalized medical opinion evidence. In this case, appellant has submitted supporting medical evidence consisting of the October 10, 1994, July 18, 1995 and March 8, 1996 medical reports from Dr. Zelman. In his October 10, 1994 report, Dr. Zelman opined that appellant had been continually depressed and anxious since the September 13, 1991 assault, noting that he spent most of his time at home, experienced ongoing nightmares about the incident, worried excessively that he would die and had ongoing suicidal thoughts and profound insomnia. He diagnosed a major depression and residual post-traumatic stress symptoms which he advised were causally related to the September 13, 1991 employment accident, which led to both physical and psychological symptoms. Dr. Zelman diagnosed a major depression and residual post-traumatic stress symptoms causally related to the September 13, 1991 employment accident, which led to both physical and psychological symptoms and advised in his July 18, 1995 report that all of appellant's emotional and psychiatric problems were directly related to the assault at work. The Board finds, however, that Dr. Zelman's reports were not based on a complete, accurate history of the work factors alleged to have caused the claimed condition.¹⁶ He conceded in his March 8, 1995 medical report that, because he did not personally examine appellant until September 11, 1994, he lacked objective evidence of his psychiatric condition for the period in question beginning September 13, 1991 until his retirement the following year. In addition, the hearing representative properly noted in his July 12, 1996 decision that Dr. Zelman did not discuss the fact that the claimant was released to return to full duty on January 6, 1992 by Dr. Shifreen, and failed to explain why appellant waited three years before seeking psychiatric treatment for a brief scuffle at work which resulted in the Office accepting only for scalp laceration.

¹⁴ *Karen E. Humphrey*, 44 ECAB 908 (1993).

¹⁵ *Chester R. Henderson*, 42 ECAB 352 (1991), note 2.

¹⁶ *See Geraldine H. Johnson*, 44 ECAB 745 (1993).

Furthermore, Dr. Zelman's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.¹⁷ He did not describe the process through which appellant's accident would have been competent to cause the claimed emotional condition. Dr. Zelman's opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only stated summarily in his July 18, 1995 report that appellant's emotional and psychiatric problems were directly related to the assault at work.

As appellant has failed to submit a probative, rationalized medical opinion in support of his allegation that he sustained a specific emotional injury due to the accepted physical altercation/injury which occurred on September 13, 1991, the Board affirms the Office's finding that appellant failed to establish that he sustained an emotional condition in the performance of duty.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his cervical condition claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.¹⁸ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹⁹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²⁰

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law and has not advanced a point of law or fact not previously considered by the Office. The only new medical evidence appellant submitted in support of his request for reconsideration, with regard to his claim for compensation based on an employment-related cervical condition, was Dr. Shifreen's August 17, 1995 medical report, whose only reference to an alleged causal relationship was his brief statement that "I believe there is a clear case for causation." His report therefore does not contain any relevant medical evidence indicating that appellant's current condition or disability was caused or aggravated by his September 13, 1991 employment injury. Appellant's attorney generally contended in his October 22, 1996 letter that appellant sustained a cervical condition causally related to his accepted September 13, 1991 employment injury, but failed to support this contention with new and relevant medical

¹⁷ *William C. Thomas*, 45 ECAB 591 (1994).

¹⁸ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

¹⁹ 20 C.F.R. § 10.138(b)(2).

²⁰ *Howard A. Williams*, 45 ECAB 853 (1994).

evidence. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's cervical condition claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated December 30 and July 12, 1996 are therefore affirmed in accordance with this decision.

Dated, Washington, D.C.
April 21, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member