

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. McCARTHY and INTERNATIONAL DEVELOPMENT
CORPORATION AGENCY, AGENCY FOR INTERNATIONAL DEVELOPMENT,
Washington, D.C.

*Docket No. 97-2631; Submitted on the Record;
Issued June 18, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained chronic fatigue syndrome in the performance of duty.

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained chronic fatigue syndrome in the performance of duty.

On June 26, 1995 appellant, then a 47-year-old economist, filed a claim for an occupational disease, Form CA-2, alleging that he sustained chronic fatigue syndrome, which developed from the nightly disturbance of hearing howling dogs in the neighborhood from 3:00 a.m. to 5:00 a.m. from September through November 1990 when he was trying to sleep in his U.S. Embassy housing unit in Niger. Appellant stated that his inability to sleep while the dogs howled created a permanent sleep disorder, eventually resulting in chronic fatigue syndrome. He stated that his employer refused to correct the problem; that the commotion was within the domain of a government official; and that his employer did not cooperate in assisting him in filing a workers' compensation claim, stating that he was ineligible for workers' compensation. Appellant stated that the effects to his health created adverse perceptions of him by the employing establishment and that his employment was terminated. He stated that he also sustained stress anxiety. Appellant further stated that due to his disease, he has been unable to find employment since October 15, 1993.

Appellant submitted medical evidence to establish his claim. A progress note dated October 26, 1990, stated that appellant had not been sleeping well because of dogs barking next door. Another progress note dated February 28, 1991, stated that appellant was under much stress at work. In a report dated April 2, 1991, Dr. Siemy Y. Tan, a Board-certified internist, diagnosed osteoporosis. A progress note dated October 17, 1991, noted that appellant was having problems with his sleep patterns. In a progress note dated September 25, 1992,

Dr. Richard F. Adamson, a general practitioner, noted fatigue and that appellant just returned from Africa.

In his March 24, 1995 report, Dr. Stephen B. Kemble, a Board-certified internist, psychiatrist and neurologist, stated that he had treated appellant for symptoms consistent with chronic fatigue syndrome since March 1994 and that the origin and development of his symptoms were consistent with the diagnosis. He stated that appellant was unable to persuade his supervisors at work to correct the causes of his malady and was unable to find “an efficacious treatment” for his malady from the time of its onset in 1990 until 1994.

In his May 16, 1995 report, Dr. Adamson stated that he had treated appellant on a few occasions for “fatigue malaise and anxiety symptoms which appeared to be consistent with [appellant’s] description of stresses and problems experienced during his prolonged overseas work assignment in Africa from September 1990 to September 1992.” He stated:

“The persistence of these symptoms over such a long period of time ... are consistent with general descriptions of chronic fatigue syndrome, and/or a number of other tropical viral maladies contractible under stressful living and working circumstances in West Africa.

“While, in general, it is difficult to establish a cause and effect relation for such maladies, it can be said that a heightened level of stress in the workplace or living environment, is a typical take-off point for their development. In this particular case, the sleep deprivation over a period to three months, noted by [appellant], is a typical type of trigger for the maladies in question.”

Dr. Adamson further stated that appellant’s employment had been uncertain, and the difficulty for appellant in establishing and obtaining treatment for his diagnosis had adverse effects on his former employment and subsequent unemployment.

In a report dated June 23, 1995, Dr. Pierre Pincetl, a Board-certified internist, stated that he saw appellant on March 24, 1993 and appellant complained of fatigue and fainting spells. He stated that the level of diagnosis and treatment possible at that time was limited due to appellant’s inability to follow-up.

In his March 24, 1996 report, Dr. Kemble stated that appellant gave a history of abrupt onset of severe insomnia related to exposure to loud noises at night while stationed in Niger while working for the employing establishment. He stated that “since the causes of chronic fatigue are not well understood, I cannot make a definitive statement about causality.” Dr. Kemble also stated that he was unaware of any relationship between osteoporosis and osteopenia and chronic fatigue syndrome and stated that he did not diagnose any bone-related disorder.

By decision dated April 10, 1996, the Office of Workers’ Compensation Programs denied the claim, stating that appellant failed to establish that his claimed condition was causally related to factors of federal employment.

By letter dated January 21, 1997, appellant requested reconsideration of the Office's decision and submitted additional medical evidence. In a report dated June 3, 1996, Dr. Kemble stated that he could not verify the events surrounding the onset of appellant's chronic insomnia because he did not treat appellant until several years later. He stated, however, that he could say "that in general, it is medically plausible that a persistent disturbance interrupting sleep, such as that which he says he experienced when he was stationed in Niger while employed by AID could precipitate insomnia."

Two medical reports, one dated July 11, 1996, signed by Dr. James W. Pearce, a Board-certified psychiatrist and neurologist, and the other dated July 31, 1996, signed by Dr. Lloyd E. Jones, a Board-certified internist with a specialty in anesthesiology, from the Queen Emma Clinics, are identical. The doctors stated that in general once an initial sleep disturbance establishes a strong physiological/psychological imprint on a disturbed sleep pattern of a patient, it is likely to continue if there is no effective treatment and make the return to a normal pre-disturbance pattern more difficult. The doctors further stated:

"The causal mechanism of nightly arousal by an intense and prolonged noise disturbance over a period of months, was potentially and intrinsically sufficient to imprint a strong sleep disturbance pattern.

The fact that treatment was unavailable for a prolonged period and that the strain of the disturbed sleep pattern created additional related physical ailments, would tend to make the ultimate return to a normal sleep regime even more difficult and tenuous.

Therefore, given the circumstances, it is not surprising that [in appellant's case, his condition has endured for a long period of time and that even the best of treatment regimes, once initiated, might take quite some time to reverse the tendencies of the disturbed sleep patterns."

By decision dated April 30, 1997, the Office denied appellant's reconsideration request.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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, generally, is 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 appellant'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 appellant.¹

In the present case, none of the medical evidence appellant submitted establishes that his chronic fatigue syndrome arose from his federal employment. The contemporaneous medical evidence dated 1990 through 1992, indicates that appellant was suffering from fatigue and in the October 26, 1990 note documented that appellant had not been sleeping well due to dogs barking next door. The medical reports did not address causation.

In his June 23, 1995 report, Dr. Pincetl noted that appellant complained of fatigue and fainting spells but did not address the cause of these conditions. His opinion is, therefore, not probative.² Dr. Adamson's May 16, 1995 report, in which Dr. Adamson generally stated that sleep deprivation over a period of three months is a "typical trigger for the maladies in question" and that stress is "a typical take-off point" for such "maladies' development" is not specific to appellant's situation and, therefore, is not sufficiently rationalized to establish the requisite causation.³ Further, Dr. Kemble's reports dated March 24, 1995, March 24 and June 3, 1996 are also insufficiently rationalized to establish the requisite causation. In his March 24, 1995 report, Dr. Kemble stated that the origin and development of appellant's symptoms were consistent with his diagnosis of chronic fatigue syndrome but offers no opinion on what specifically caused appellant's condition. In his March 24, 1996 report, Dr. Kemble stated that since the causes of chronic fatigue were not well understood, he could not make a definitive statement about causality. In his June 3, 1996 report, Dr. Kemble stated that a persistent disturbance interrupting sleep such as what appellant stated he experienced "could" precipitate insomnia. His opinion is speculative and, therefore, is not probative.⁴ Further, the reports of Drs. Pearce and Jones dated July 11 and 31, 1996, in which they generally stated that prolonged noise "potentially and intrinsically" was sufficient to imprint a strong sleep disturbance pattern which, without effective treatment, could take a long time to resolve, is insufficiently detailed and specific to appellant's situation to establish the requisite causation. Their opinions are also speculative. Although on September 12 and December 4, 1995, the Office advised appellant of the evidence necessary to establish his claim, appellant was not responsive to this request. He, therefore, has not met his burden to establish that his chronic fatigue syndrome arose from his federal employment. Appellant has also not submitted any medical evidence containing a rationalized medical opinion establishing that he sustained stress from his federal employment.⁵

The decision of the Office of Workers' Compensation Programs dated April 30, 1997 is hereby affirmed.

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² See *Ern Reynolds*, 45 ECAB 690, 695 (1994).

³ See *Durwood H. Nolin*, 46 ECAB 818 (1995).

⁴ See *William S. Wright*, 45 ECAB 498, 504 (1994).

⁵ Appellant's contention on appeal that he did not receive the Office's April 10, 1996 decision, in a timely fashion and was thus precluded from filing a request for a hearing is not supported by any evidence of record. Further, appellant's request for a hearing must be directed to the Office; see 20 C.F.R. § 10.131.

Dated, Washington, D.C.
June 18, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member