U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of S. GOPAL RAJU and VETERANS ADMINISTRATION, FORT WAYNE VETERANS HOSPITAL, Ft. Wayne, IN

Docket No. 98-1744; Submitted on the Record;
Issued October 10, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he developed insomnia and stress and aggravated his diabetes, and hypertension and gained weight as a result of his federal employment.

On May 10, 1996 appellant, then a 61-year-old physician, filed a notice of occupational disease claiming that he developed insomnia and stress with aggravation of his diabetes and hypertension by working 12-hour shifts as a night medical officer. Appellant also stated that the employing establishment denied his request for a change in his work schedule and would not assign him to surgery. He further related that his supervisors disregarded his sufferings and made sarcastic or threatening remarks. Appellant's temporary appointment was terminated effective March 29, 1996 due solely to budgetary constraints.

In support of his claim, appellant submitted prescription slips and treatment notes documenting his conditions and either recommending time off work or limiting the number of hours worked. In a January 5, 1996 report, Dr. Thomandram S. Sekar, a Board-certified pulmonarist, rendered sleep consultation report noting that appellant has been working the 8:00 p.m. to 8:00 a.m. shift at the Veterans Hospital for about four years or so. He further noted that appellant works five days a week and then has two days off. Dr. Sekar stated that appellant usually finishes his rounds by 11:00 p.m. After that he sits and watches the late news until 11:30 p.m. or 11:45 p.m. and tries to go to sleep. Invariably he is awakened by his first phone call about 45 minutes to 60 minutes later and subsequently has significant problems going back to sleep. Appellant's day time and weekend habits were also described. An examination was performed with the following impressions: shift change worker with disorders of initiating and maintaining sleep and significant excessive daytime somnolence, obesity; hypertension and diabetes. Suggestions pertaining to sleep hygiene measures and adapting to the shift change of working five nights and slipping back to the daytime activities during the weekend were discussed. No opinion regarding the causal relation of appellant's conditions and his work at the employing establishment was rendered.

In a December 14, 1995 report, Dr. Dharam Raj, Board-certified in hematology and internal medicine, stated that appellant has diabetes with diabetic neuropathy. Dr. Raj stated that appellant was not getting enough sleep due to working every night and the lack of sleep was causing irritability and stress. He recommended the reduction of night working hours and to get enough sleep.

In a November 17, 1995 report, Dr. Leonard I. Mastbaum, a Board-certified endocrinologist specializing in diabetes and metabolism, advised appellant not to work more than 40 hours per week including no more than three night shifts per week.

Also submitted was an Equal Employment Opportunity Commission (EEO) complaint of discrimination on the basis of age, disability and reprisal of prior EEO activity. Formal findings were not rendered.

In a July 1, 1996 statement, appellant's supervisor, Dr. V.N. Vitalpur, disputed appellant's statement that he had said the following to him: "If you bring any more SL (sick leave) slips, then you will be terminated no matter from whom you bring. Or if I have to put you on 40 hours per week, I will see that you work like a dog. Understand? This is the only job, 60 hours per week, that you are going to work, or else you will be terminated." Dr. Vitalpur stated that all meetings related to appellant were held with his immediate supervisor or his administrative assistant present. At those meetings, appellant asked to have sick leave 2 days every week on an indefinite basis or change his assignment to 40 hours per week and he was informed that we could not do this and that no other positions were available.

The employing establishment controverted the claim. On July 1, 1991 appellant accepted the position of Staff Physician Medical Officer of the Day (MOD). The MOD position is 12 hours a day (8:00 p.m. to 8:00 a.m.), 5 nights a week. The MOD schedule is one in which rest time is built into the schedule and is accommodated by a room with a bed where the MOD can sleep. As the medical center does not have a great deal of admissions or medical/surgical emergencies during the off hours, the MOD frequently rests through most of the tour. It was noted that, on January 30, 1996, appellant requested to change the work schedule for MOD, which was considered and denied on February 9, 1996 as the proposed schedule did not meet the needs of the medical center. It was further asserted that appellant's supervisor made reasonable efforts to accommodate appellant's request for sick leave.

By decision dated November 25, 1996, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that the claimed injury occurred in the performance of duty. In an accompanying memorandum, the Office found that appellant did not allege that the actual work was aggravating his conditions, only the shift that he was assigned. Since that dealt with an administrative matter, the Office found that appellant failed to identify any compensable employment factor.

In a letter dated December 15, 1996, appellant requested an oral hearing.

By decision dated March 18, 1998 and finalized March 19, 1998, an Office hearing representative found that appellant's working the night shift at the employing establishment constituted a compensable employment factor, but denied appellant's claim on the grounds that

he did not submit sufficient medical evidence to establish that his physical conditions were either caused or aggravated by his assignment to the night shift.

The Board finds that appellant has not established that his condition causally related to factors of his federal employment.

Under the Federal Employees' Compensation Act,[1] appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by factors of her federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[2] Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.[3] There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.[4] However, an employee's emotional reaction to an administrative or personnel matter is generally not covered[5] and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases the employee's feelings are self-generated in that they are not related to assigned duties.[6]

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.[7] However, a claimant must support her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.[8] The initial question is whether appellant has alleged compensable employment factors as contributing to her condition.[9] Thus, part of appellant's burden of proof includes the submission of a detailed

[1] 5 U.S.C. §§ 8101-8193.

[2] *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

[3] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[4] *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

[5] *Sharon J. McIntosh*, 47 ECAB 754 (1996).

[6] *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

[7] *Margreate Lublin*, 44 ECAB 945, 956 (1993).

[8] *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

[9] *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which she claims compensation.[10] If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.[11]

Many of appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,[12] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.[13] Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include: allegations concerning sick leave requests and sick leave usuage, the failure of the employing establishment to assign him to surgery or to change his work schedule. Regarding appellant's allegation pertaining to sarcastic or threatening remarks he ascribes to his supervisors, appellant has failed to submit any corroborating evidence to support this allegation. Thus, appellant has presented no evidence of administrative error or abuse in the performance of these actions and, therefore, they are not compensable under the Act.

The Board finds that appellant's regular and specially assigned duties as the MOD required that he be on call at night attending emergencies in the wards, making rounds to attend to patients and dealing with the medication of patients. These constitute compensable factors under *Cutler*. The medical evidence of record, however, is not sufficient to establish that appellant's work duties caused or aggravated his claimed physical conditions. Appellant's burden of proof includes the submission of rationalized medical evidence based upon a complete factual and medical background showing causal relationship between the claimed injury and employment factors.[14] Although the January 5, 1996 report from Dr. Sekar and the numerous prescription slips and treatment notes document appellant's conditions and provide recommendations for taking time off work or limiting the number of hours worked, there is no discussion concerning how or why these conditions or recommendations relate to appellant's work on the night shift. Likewise, although Dr. Raj indicated that appellant's insomnia was due to working every night, he does not provide an opinion supported by medical rationale as to how appellant's night shift work of over four years caused appellant's condition. Accordingly,

[10] *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

[11] *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

[12] 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[13] *See Richard J. Dube*, 42 ECAB 916 (1991).

[14] *See Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

appellant has not met his burden of proof in establishing that his claimed conditions are causally related to his federal employment.

The decision of the Office of Workers' Compensation Programs dated March 19, 1998 is hereby affirmed.

Dated, Washington, DC
October 10, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member