

**United States Department of Labor
Employees' Compensation Appeals Board**

JOHN S. LAMBERT, Appellant

and

PEACE CORPS, Moscow, Russia, Employer

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Docket No. 05-46

Issued: April 1, 2005

Appearances:

John S. Lambert, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member

DAVID S. GERSON, Alternate Member

WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 18, 2004 merit decision denying his claim for disability compensation beginning October 1997. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he had disability due to his employment-related chronic fatigue syndrome on or after October 1997.

FACTUAL HISTORY

On June 22, 2001 appellant, then a 62-year-old former associate director, filed an occupational disease claim alleging that he sustained chronic fatigue syndrome in the performance of duty. Appellant claimed that after he was transferred from Saratov to Moscow, Russia, he developed a severe sinus infection which caused him to develop chronic fatigue

syndrome. He stopped work in October 1997 and claimed employment-related disability since that time. Appellant retired on disability retirement after stopping work.¹

In an accompanying statement, appellant argued that Moscow was significantly more polluted than Saratov and that this pollution led him to develop a severe sinus infection on April 1997 which later developed into chronic fatigue syndrome. He claimed that the employing establishment should have conducted a review of his medical condition before transferring him.

Appellant submitted a December 12, 1998 report in which Dr. H. de G. Laurie stated that he had treated appellant since 1989, at which time he was already suffering from asthma.² Dr. Laurie indicated that in April 1997, appellant developed a severe sinus infection and that his symptoms worsened to the point that he now had tiredness with an inability to work more than five hours per week, vague myalgia in his shoulders, typical nonrestorative sleeping pattern, repeated attacks of sore throat and cognitive impairment of short-term memory and concentration. He concluded that appellant met the criteria for chronic fatigue syndrome. Dr. Laurie stated that appellant also suffered from depression, sleep apnea, peripheral paresthesia and hypoglycemia. He indicated that appellant's main symptom was tiredness and indicated that he was only able to work one hour a day for four or five days per week.

In a report dated February 3, 1997, Dr. L.W. Magnuson, an employing establishment physician Board-certified in preventive medicine, stated that appellant's asthma had been aggravated by his environment. The record also contains a number of brief medical notes from 1997 detailing the treatment of appellant's asthma condition.³

In September 2001, the Office accepted that appellant sustained employment-related chronic fatigue syndrome. Appellant continued to claim that he had disability since October 1997 due to this condition.

In a report dated January 6, 2002, Dr. Matthew A. Parker, a Board-certified internist, who served as a consultant to the employing establishment, indicated that he had reviewed the medical record and had concluded that further evaluation was needed to determine whether appellant was disabled. Dr. Parker indicated that further study of appellant's depression, thyroid and sleep apnea problems was necessary as these conditions could contribute to fatigue.

By decision dated March 11, 2002, the Office denied appellant's claim that he had disability due to his employment-related chronic fatigue syndrome on or after October 1997. The Office found that appellant did not submit sufficient medical evidence in support of his claim.

¹ It appears that appellant moved to Windhoek, Namibia after retiring.

² Dr. Laurie's letterhead identifies him as a general practitioner, but he does not appear as Board-certified in the American medical directories.

³ The record contains a November 26, 1998 report of Dr. H.P. Meyer, who is identified as a family practitioner but is not listed as Board-certified in the American medical directories. The report is written in Afrikaans and the record does not contain an English translation.

In July 2002 appellant submitted a June 13, 2001 report in which Dr. R. Sieberhagen indicated that during consultations between 1999 and 2001 appellant exhibited episodes of severe fatigue (including slowness of movement and changes in speech), episodes of anxiety and depression, muscle and joint aches and mental slowness.⁴ Dr. Sieberhagen noted that magnetic resonance imaging scan testing showed early dementia of the subcortical type and diagnosed dementia due to a general medical condition (vascular type) and early cognitive and personality deterioration. He indicated that appellant had an irreversible chronic debilitating condition and noted that he was unable to continue with his occupation.

By decision dated August 5, 2002, the Office affirmed its March 11, 2002 decision.

Appellant submitted a December 9, 2002 report in which Dr. Laurie indicated that after returning to Namibia appellant had developed depression, hypertension, an underactive thyroid gland and a urethral stone. He indicated that appellant's main complaints were tiredness, numb feeling, dry throat and progressive memory loss and that these were typical symptoms of chronic fatigue syndrome. Dr. Laurie indicated that appellant was on low dose anti-depressant medication and had emotional lability when suffering from chronic fatigue syndrome. He concluded that appellant was incapacitated for work due to chronic fatigue syndrome.

Appellant requested reconsideration of his claim on September 15, 2002 and by decision dated October 4, 2002, the Office denied appellant's request for merit review.

Appellant sent numerous documents to the Office, including copies of letters to congressional representatives and letters to Office officials requesting an update on the status of his claim.

Appellant appealed his case to the Board and, by order remanding case dated March 22, 2004, the Board determined that the Office's October 4, 2002 decision should be reissued as it was sent to an improper address and hence was not properly issued.

In a decision dated August 18, 2004, the Office considered the merits of appellant's claim. It affirmed its prior decisions, which found that he had not established that he had disability due to his employment-related chronic fatigue syndrome on or after October 1997.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing 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.⁶ The medical

⁴ Dr. Sieberhagen's letterhead identifies him as a psychiatrist, but he does not appear as Board-certified in the American medical directories.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion 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 compensable 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.⁷

ANALYSIS

The Office accepted that appellant sustained employment-related chronic fatigue syndrome. Appellant claimed that he had disability since October 1997 due to this condition, but he did not submit sufficient medical evidence to support this claim.

Appellant submitted a December 12, 1998 report in which Dr. Laurie stated that he had various symptoms including tiredness with an inability to work more than five hours per week, shoulder myalgia, nonrestorative sleeping pattern, sore throat and cognitive impairment of short-term memory and concentration, which he felt were indicative of chronic fatigue syndrome.⁸ He indicated that appellant was only able to work one hour a day for four or five days per week, but his opinion has limited probative value regarding appellant's claim of employment-related disability after October 1997, because he did not provide a clear opinion that appellant's apparent disability was due to the accepted condition of chronic fatigue syndrome.⁹ Dr. Laurie noted that appellant had numerous conditions other than chronic fatigue syndrome including depression, asthma, sleep apnea, peripheral paresthesia and hypoglycemia, but he did not provide any discussion of what relation these conditions might have to appellant's apparent disability.

In a December 9, 2002 report, Dr. Laurie concluded that appellant was incapacitated for work due to chronic fatigue syndrome. This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Laurie did not provide adequate medical rationale in support of his conclusion on causal relationship.¹⁰ He again noted that appellant had numerous conditions other than chronic fatigue syndrome including depression, hypertension, an underactive thyroid gland and a urethral stone, but he did not explain why these conditions or some other nonwork-related condition would not be responsible for appellant's inability to work.

⁷ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁸ Dr. Laurie's letterhead identifies him as a general practitioner, but he does not appear as Board-certified in the American medical directories.

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

Appellant also submitted a June 13, 2001 report in which Dr. Sieberhagen indicated that during consultations between 1999 and 2001, he exhibited episodes of severe fatigue, episodes of anxiety and depression, muscle and joint aches and mental slowness.¹¹ Although Dr. Sieberhagen indicated that appellant was disabled, he did not provide a clear indication that this disability was due to chronic fatigue syndrome. Rather, he suggested that this disability was due to dementia of the subcortical type, which was shown by the results of diagnostic testing.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he had disability due to his employment-related chronic fatigue syndrome on or after October 1997.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 18, 2004 decision is affirmed.

Issued: April 1, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹¹ Dr. Sieberhagen's letterhead identifies him as a psychiatrist, but he does not appear as Board-certified in the American medical directories.