

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD C. TAWSE and DEPARTMENT OF THE INTERIOR,
SEQUOIA NATIONAL PARK, Three Rivers, Calif.

*Docket No. 96-279; Submitted on the Record;
Issued April 28, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to his federal employment.

On December 19, 1991 appellant, then a 31-year-old firefighter, filed a notice of occupational disease and claim for compensation alleging that he developed fulminating gangrenous disease of his genitalia, affecting the penis and scrotum from puncture wounds suffered on November 24, 1991 in the course of his federal employment. On August 13, 1993 the Office of Workers' Compensation Programs accepted the claim for Fournier's gangrene of the genitalia.

Appellant underwent a debridement of the penis and scrotum on December 1, 1991, a secondary debridement of Scapia's fascia and connective tissue on December 7, 1991 and a split thickness skin graft to the penis and scrotum on December 14, 1991. In a December 19, 1991 progress note, a physical therapist indicated that appellant's mother stated that appellant was very concerned about his future sexual functioning and that appellant stated his chief concern was getting better.

In a letter received by the Office on March 13, 1992, appellant asserted that he experienced mental and physical trauma due to the injury he received in November 1991.

On January 31, 1994 appellant filed a claim for continuing compensation on account of disability alleging from December 24, 1991 to ongoing.

On March 30, 1994 Dr. Robert L. Campbell, a doctor of osteopathy, stated that appellant had serious psychological problems and alcoholism. He diagnosed acute bipolar psychiatric disorder with episodes of alcoholism. He checked "yes" to indicate that appellant's present condition was related to the November 24, 1991 injury.

On April 13, 1994 Dr. Anthony M. Ricci, a doctor of psychology, opined that appellant manifested serious post-traumatic stress disorder arising from his work as a firefighter.

In a decision dated May 2, 1994, the Office rejected appellant's claim because the medical evidence failed to establish that appellant was entitled to compensation benefits from December 24, 1991 and ongoing, based on continuing residuals of the accepted work injury. In an accompanying memorandum, the Office noted that neither Dr. Campbell nor Dr. Ricci provided a reasoned medical opinion addressing how appellant's current psychiatric condition was related to his accepted work injury. The Office further indicated that these doctors failed to address appellant's prior history of drug and alcohol abuse.

Subsequently, appellant submitted an April 21, 1994 report from Dr. Ricci in which he diagnosed "serious psychological displacement with affect and mood changes." Dr. Ricci reviewed the history of appellant's genital injury and noted that appellant was hospitalized for 26 days and underwent 6 months of rehabilitation. He stated that during treatment for the injury he developed a substance abuse problem with the Morphine prescribed. He indicated that appellant continued with an alcohol problem during his rehabilitation and that he became suicidal. Dr. Ricci indicated that appellant told him that he was falsely written up for a substance abuse problem in 1989. Dr. Ricci stated that appellant was having significant difficulty adjusting and that he was isolated and fatigued. He noted appellant's feelings of failure. Dr. Ricci's testing revealed extreme psychological displacement and was suggestive of chronic and acute psychological factors. He noted serious alcohol-related problems during the course of his evaluation. He noted that appellant's parents stated that since his discharge from treatment for his accepted injury, appellant displayed increased depression, social withdrawal and variable degrees of anxiety, agitation, rage response and feelings of worthlessness. Appellant's parents also noted that he had trouble sleeping, that he lost weight and was fatigued and that he increasingly used alcohol and drugs. Dr. Ricci opined that appellant manifested a serious post-traumatic stress disorder, which was both chronic and acute.

On May 6, 1994 Dr. Ricci noted that the services he provided were directly related to appellant's work-related injuries.

Dr. Ricci clarified his opinion on June 10, 1994. He stated that appellant "experienced a very serious sense of loss and rage response attendant the amputation of the gangrenous portion of his penis following his work-related injury as a firefighter." He stated that appellant perceived that a large portion of his penis was amputated and that this caused him to question his manhood including his ability to sustain sexual function and have children. Dr. Ricci stated that these concerns related directly to his injury and that appellant was extremely vulnerable to these concerns due to his prior work problems and his alcohol and substance abuse problems. Dr. Ricci indicated that these problems were exacerbated by the lack of treatment for emotional conditions following surgery and the difficulty appellant had in securing payment for the doctors who treated his accepted injury. Dr. Ricci stated that appellant had a sensitivity to the perception of others and a probable learning disability with affective considerations. He stated that he interpreted the systems response as rejection and developed social withdrawal with increased depression, anxiety, agitation, rage response and feelings of worthlessness. Dr. Ricci concluded that the accumulative psychological displacement and response presented as post-traumatic

stress disorder, chronic and delayed and that appellant required very focused treatment to prevent more significant deterioration.

On July 26, 1994 Dr. Ricci reported that appellant was admitted to the hospital on or about July 9 through 12, 1994 for an acute flashback relating to the death of firefighters he worked with. He indicated that this caused extensive alcohol consumption and suicidal ideation.

On April 25, 1995 appellant requested reconsideration through his representative.

On June 15, 1995 the Office stated that appellant had not submitted any evidence of the treatment he received between December 1991 and March 1995. It further noted that Dr. Ricci indicated that during the six months of rehabilitation of his accepted injury appellant developed a substance abuse problem due to the medication used in his treatment. The Office stated that appellant needed to supply records of his 6-month rehabilitation and of all treatment between December 1991 and March 1995 within 30 days.

In response, appellant's representative stated, "[P]ursuant to your request of June 19, 1995, enclosed please find all medical records contained in my file covering the periods of November 29, 1991 through July 26, 1994." The records consisted of previously submitted reports from Drs. Campbell and Ricci and the previously submitted reports relating to appellant's November 1991 surgeries and immediate recovery through December 23, 1991. The only new evidence submitted was a report from Dr. Campbell dated November 30, 1993, which documented a long history of depression and drug problems. Dr. Campbell noted that appellant smoked marijuana and that he had low self-esteem. He diagnosed depression and anxiety.

On August 16, 1995 the Office reviewed the merits of the case and found that there was insufficient evidence to warrant modification of its prior decision. In an accompanying memorandum, the Office indicated that Dr. Ricci attributed appellant's emotional condition to both his work injury and factors unrelated to that injury. He noted that Dr. Ricci based his opinion in part on a history provided by appellant indicating that he was treated and hospitalized for psychiatric problems caused by the work injury. The Office indicated that it requested information regarding the history and reasons for the six-month rehabilitation, but that appellant failed to supply the documentation. The Office noted that this was important because appellant admitted a history of drug and alcohol abuse during his hospitalization for his accepted injury. The Office noted that because it did not receive this documentation, it could not evaluate Dr. Ricci's opinion regarding whether it was well reasoned and whether it supported causal relationship. It then indicated that further development could not be initiated to resolve the issue.

The Board finds that this case is not in posture for a decision.

Workers' compensation is not applicable to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,¹ the Board discussed at length the principles applicable to alleged employment-related emotional conditions

¹ 28 ECAB 125 (1976).

and the distinctions as to the type of employment situation giving rise to an emotional condition which will be covered by the Federal Employees' Compensation Act.² When an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by the employment or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within coverage of the Act.³ On the other hand where the disability results from an employee's emotional reaction to employment matters but such matters are not related to the employee's regular or specially assigned work duties or to requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within coverage of the Act.⁴

In the present case, appellant alleged that he sustained an emotional condition consequential to injuries received to his genital area while performing his regularly assigned duties as a firefighter. Inasmuch as the emotional condition appellant alleged arose from his regular duties as a firefighter, he has alleged a compensable factor of employment.

The fact that appellant has alleged a compensable factor of employment does not establish entitlement to compensation. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by his federal employment.⁵ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence establishing 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 factor is causally related to his emotional condition.⁶

In the instant case, Dr. Ricci opined that appellant had a serious post-traumatic stress disorder arising from his work as a firefighter and that his treatment of appellant's emotional problems were directly related to appellant's work injury. In his June 10, 1994 letter, Dr. Ricci elaborated that appellant "experienced a very serious sense of loss and rage response attendant to the amputation of the gangrenous portion of his penis following his work-related injury as a firefighter." Dr. Ricci stated that appellant questioned his "manhood" and that these concerns combined with prior alcohol, drug, work and other emotional problems resulted in appellant's post-traumatic stress disorder. In his July 26, 1994 report, Dr. Ricci reported that subsequent to the death of firefighters in the Glenwood Springs area, appellant developed acute flashbacks when he discovered one of the firefighters and a co-worker had perished. Dr. Ricci reported that

² 5 U.S.C. §§ 8101-8193.

³ *Lillian Cutler*, *supra* note 2.

⁴ *Id.*

⁵ *James W. Griffin*, 45 ECAB 774 (1994).

⁶ *Id.*

this event intensified appellant's agitation and resulted in extensive alcohol consumption and created suicidal ideation.

The Board finds that the reports of Dr. Ricci coupled with the reports of appellant's treating physician, Dr. Campbell, linking appellant's traumatic stress disorder to his duties as a firefighter and past accepted employment injury, constituted sufficient evidence to require the Office to further develop the case record.⁷ This is particularly true in view of the fact that many of appellant's alcohol and drug abuse problems surfaced during his treatment for his employment-related injury in 1991. Although appellant failed to submit records of medical treatments in December 1991 pertaining to psychological problems associated with the accepted work injury, this may not be the sole basis for denial of appellant's current claim and should not preclude further development of the record on remand.⁸

In this connection, the Office should prepare a statement of accepted facts and refer appellant together with the statement of accepted facts to a Board-certified psychiatrist for an evaluation and opinion as to whether appellant has an emotional or psychiatric condition causally related to his 1991 employment injury or past duties as a firefighter. If so, the physician should be requested to provide an opinion as to whether appellant is partially or totally disabled and specify the diagnosed condition and the type of treatment that is warranted.

⁷ Dr. Campbell, a doctor of osteopathy, diagnosed psychological problems and alcoholism and checked "yes" to indicate that appellant's condition was related to his accepted injury.

⁸ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978). The Board notes that the record contains no contrary medical evidence and that the Office did not seek advice from an Office medical adviser to refer the case to an Office physician for a second opinion.

The decision of the Office of Workers' Compensation Programs dated August 16, 1995 is set aside and the case is remanded for further action not inconsistent with this decision.

Dated, Washington, D.C.
April 28, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member