

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS J. DRAGONAS and DEPARTMENT OF THE ARMY,
RECRUITING COMMAND, Fort Knox, Ky.

*Docket No. 96-717; Submitted on the Record;
Issued February 9, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an intracerebral hemorrhage in the performance of his federal employment.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

Appellant, an Army recruiter, filed a claim alleging that he had sustained an intracerebral hemorrhage on February 13, 1992 due to factors of his federal employment. The Office of Workers' Compensation Programs denied appellant's claim on December 14, 1992 on the grounds that the evidence of record did not establish that appellant's claimed injury occurred in the performance of duty. Appellant thereafter requested a hearing before an Office hearing representative. A hearing was held on August 16, 1993 at which appellant appeared and testified. Appellant described the factors of employment which he believed were stressful and to which he attributed his condition. Appellant testified that he had been a top recruiter in his company, battalion and command, however, over the years of his employment it became more difficult to meet the monthly quota. Appellant also testified that he was required to work overtime, yet was not paid for overtime or given appropriate compensatory time; that he was threatened with loss of his job if he did not complete a mission, that he was given a low performance evaluation; that his employing establishment was under investigation for signing up individuals as recruits, without their knowledge. Appellant testified that his primary frustration was that it took longer and longer to meet the same quota due to the quality of recruits that were required and that there was not enough time in a workday to complete the work that was required. Appellant had also alleged that after January 24, 1992 he was ordered not to work more than 40 hours a week. Finally, appellant alleged that he was ignored by a Sergeant and a Sergeant Major on February 13, 1992 during an inspection of the employing establishment.

By decision dated September 24, 1993, the Office hearing representative remanded the case to the Office. The hearing representative found that while appellant had not factually

established a number of allegations, appellant had established one compensable factor of employment, that he was required to meet recruiting objectives on a monthly and quarterly basis from November 1979 to February 1992. The hearing representative found that as this was a requirement of appellant's employment any reaction thereto would constitute an injury in the performance of duty. The hearing representative stated that the medical evidence from appellant's treating physician, Dr. John Clapp, a cardiologist, however, was not based upon a proper factual background and was not sufficiently well rationalized to establish that this factor of employment caused appellant's condition. The hearing representative remanded the case to the Office for preparation of a statement of accepted facts and referral to a second opinion physician.

The Office did prepare a statement of accepted facts and thereafter referred appellant to Dr. Brian S. Mercer, a Board-certified neurologist. In a report dated November 24, 1993 Dr. Mercer opined that appellant had sustained a left parietal hemorrhage on February 13, 1992 with a residual moderate right hemiplegia and that hemorrhages of this type were ascribed to hypertension in approximately one half of all cases. Based upon the absence of any avascular malformation identified by angiography, the previous history of documented elevated blood pressure in the setting of stress and the significant elevated blood pressure recorded by emergency medical technicians, Dr. Mercer stated that appellant's left parietal hemorrhage was caused by a rise in blood pressure to abnormal levels. Dr. Mercer concluded, "Based upon the history provided by appellant, it is judged that this rise in blood pressure was due to stress perceived by appellant caused by his perception of having worked extra hours, the pending investigation, his perceived lack of acknowledgment by his superior during the visit of the Sergeant Major on the date of the hemorrhage and appellant's fear of losing his job." Dr. Mercer stated that based upon the statement of accepted facts submitted with the medical records, these factors which resulted in the high stress level on the day of the hemorrhage "would not be considered employment factors", therefore his cerebral hemorrhage was not causally related to his employment. The Office again denied appellant's claim by decision dated December 22, 1993. An Office hearing representative affirmed the denial of the claim by decision dated November 3, 1995.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out her employment duties or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity *per se* is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Federal Employee's Compensation Act.¹

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to the Act.² Thus, if an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable.³ In the present case, the hearing representative in the decision dated September 24, 1993, properly found that appellant had not factually established the compensability of many of his allegations, however, that appellant's monthly and quarterly recruiting objectives from November 1979 to February 1992 was a requirement of his employment and any reaction thereto would constitute an injury in the performance of duty.⁴ The Board finds that the case is not in posture for decision, however, as Dr. Mercer in his November 24, 1993 report did not address whether this accepted factor of employment contributed to appellant's rise in blood pressure on February 13, 1992 and his left parietal hemorrhage. In this regard, the Board notes that Dr. Mercer noted in describing the history of employment provided by appellant that appellant had alleged that he was required to work under strict quotas and sustained derogatory treatment to encourage attainment of the quota. In his final analysis of the cause of appellant's condition, however, Dr. Mercer concluded that a number of the noncompensable factors of appellant's employment contributed to his condition, but did not state whether the accepted factor of employment was or was not causally related to appellant's medical condition. The Board notes that the Office's October 20, 1993 statement of accepted facts describes appellant's general employment duties on page one, and on page three states that "the event or circumstance that *would* be considered a factor of employment is any reaction by the claimant to the pressures of performing his duties as described in the paragraphs of the first page of this statement." A description of appellant's quota requirements is not found on page one, but does appear on page two. The statement of accepted facts does not clearly indicate that the Office had accepted this factor of employment and Dr. Mercer therefore did not address this factor in his analysis. The Office on remand shall clarify the statement of accepted facts and shall thereafter request that Dr. Mercer address whether this accepted factor of employment contributed to appellant's cerebral hemorrhage. After such further development as necessary, the Office shall issue a *de novo* decision.

² *Clara T. Norga*, 46 ECAB 473 (1995).

³ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

⁴ *See generally, John T. Porterfield*, 33 ECAB 207 (1981).

The decision of the Office of Workers' Compensation Programs dated November 3, 1995 is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
February 9, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member