

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT W. EDGAR and DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE, Chicago, Ill.

*Docket No. 95-1944; Submitted on the Record;
Issued January 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant had any periods of compensable disability, causally related to his accepted condition of temporary aggravation of a preexisting bipolar disorder.

On October 11, 1992 appellant, then a 48-year-old auditor, filed a claim alleging that his being placed on a performance improvement plan caused stress beginning in August 1991. In support of his claim, appellant submitted unfavorable employee performance appraisals for the periods June 1, 1991 through May 31, 1992, and June 1, 1992 and continuing, and an August 17, 1992 memorandum requiring improvement within 60 days or threatening the prospect of reassignment, reduction in grade, or removal. Appellant also submitted an October 11, 1992 statement of disability indicating that the higher the stress level, the harder it was for him to perform.

Appellant additionally submitted an undated statement indicating that his bipolar disorder was first diagnosed in May 1980, that he was given medication to suppress it, that it was in remission until August 1991 when a new manager was assigned who was critical of his work, and that due to this stress his bipolar disorder had become more difficult to control and required more medication and physician's visits. He further submitted a January 12, 1993 notice of a proposed five-day suspension for his failure or delay in carrying out orders, work assignments, instructions, policies and procedures, or loafing, accompanied by factual specifications of particular instances.

In response to an Office request for supporting medical evidence, appellant submitted medical records of a 1980 hospitalization for a major affective disorder, bipolar, manic, and an undated physician's statement from Dr. Enio A. Rigolin, a Board-certified psychiatrist. Dr. Rigolin noted that appellant was hospitalized in 1980 for a manic depressive disorder, that he had begun treating appellant in 1986, that appellant began work with the employing establishment in 1988, and that in August 1991 appellant began receiving less than favorable performance reports which led to symptomatic regressive disorganization which further impaired

his ability to function. Dr. Rigolin noted that subsequently appellant became overtly delusional, believing that the CIA was plotting against him or Dr. Rigolin, that Dr. Rigolin was a CIA agent, and that there was collusion between the CIA, Dr. Rigolin and appellant's bosses. Dr. Rigolin opined that appellant's capacity to work was seriously damaged, that appellant functioned on an obsessive compulsive organization which crumbled when pushed by his superiors, that appellant processed information with a persecutory internal program which alienated him from the outside world, and that appellant could not work adaptively in a situation where independence, initiative and efficiency was emphasized. Dr. Rigolin opined that due to appellant's tendency to feel persecuted in a businesslike, demanding atmosphere, he did not think that appellant had the proper psychological framework to operate in the position he then held. Dr. Rigolin recommended reassignment or disability.

On May 18, 1993 the Office of Workers' Compensation Programs accepted that appellant sustained a temporary aggravation of preexisting bipolar disorder.

On May 25, 1993 appellant submitted a Form CA-7, claim for compensation, for the period March 22 to 26, 1993 and medical bills dating from August 10, 1991 through June 25, 1993 covering at least 43 individual psychotherapy sessions. However, no medical notes or reports from the 43 psychotherapy sessions were provided, and it was unclear as to whether these sessions were for treatment of the accepted temporary aggravation or for regular treatment of the underlying preexisting bipolar condition.. Appellant included a note stating that he had been billed \$4,300.00, that Blue Cross reimbursed him \$1,800.00, and that he was owed \$2,500.00.

On July 28, 1993 the employing establishment provided a March 2, 1993 memorandum advising appellant that a decision regarding his proposed five-day suspension had been reached and that he would be suspended effective March 22, 1993 and would be expected to return to work March 29, 1993.

On August 10, 1993 the employing establishment notified appellant of his proposed removal due to his inability to perform the duties of his position. The employing establishment cited to Dr. Rigolin's comments regarding appellant's inability to adaptively work in a situation emphasizing independence, initiative and efficiency, and his lack of a proper psychological framework. The employing establishment did not cite to appellant's accepted condition of temporary aggravation of preexisting underlying bipolar disorder as the reason for his proposed removal. By letter dated September 7, 1993, the employing establishment removed appellant effective September 10, 1993 for the good of the agency because of his inability to perform his duties. The employing establishment identified the reason for the action as being because of appellant's "psychological condition," but it did not clarify whether this referred to appellant's underlying preexisting psychological condition or was meant to implicate appellant's accepted "temporary aggravation" of the underlying psychological condition.

On September 7, 1993 appellant filed a Form CA-7, claim for compensation, from September 9, 1993 and continuing.

In a January 11, 1994 statement of accepted facts, the Office noted that incidents concerning personnel matters, performance assessments, disciplinary actions, transfers and terminations were not considered to be within the performance of duty for compensation

purposes. It noted that therefore appellant's PIP, his 1991 three-day suspension for falsification of information, his inability to be reassigned, his 1993 five-day suspension for failure to carry out orders, and his September 10, 1993 termination due to his psychological condition, were not compensable factors of employment. Accompanying the statement of accepted facts was a January 11, 1994 letter to Dr. Rigolin requesting that he specify what particular employment factors aggravated appellant's condition, and when such aggravation ceased.

In a January 30, 1994 reply, Dr. Rigolin stated that in May 1991 appellant began to experience paralyzing anxiety which appellant correlated with a change in customs directives. Dr. Rigolin, however, did not relate the onset of this anxiety to any specific factor of appellant's employment. Dr. Rigolin stated that appellant received no supervision despite his requests for assistance, but Dr. Rigolin did not cite the source of this information or identify specific supporting examples for this conclusion. Dr. Rigolin referred to appellant's working environment as having an "adversarial ambiance" but he did not support this conclusion with specific facts. Dr. Rigolin stated that appellant was demoralized by being put on probationary status, and that he felt unable to cope with the changes, but he did not identify what changes he was referring to. Dr. Rigolin concluded that, once away from his position through an involuntary leave of absence, appellant experienced relief. No further explanation or discussion was provided.

By decision dated June 14, 1994, the Office rejected appellant's claim for compensation finding that the evidence of record failed to establish any compensable time lost from work due to occupational illness, and failed to establish that appellant had any continuing work-related disability after September 10, 1993. The Office noted that appellant's five-day suspension from March 22 to 26, 1993 was due to his failure to perform his duties, and that his removal effective September 10, 1993 was due to his preexisting psychological condition which prevented him from performing the duties of an auditor. The Office also noted that Dr. Rigolin had indicated that appellant's work-related aggravation of his psychological disorder ceased once he was removed from his work duties.

By letter to his Congressional representative dated July 26, 1994, appellant requested reconsideration of the June 14, 1994 decision, and asked that he either be paid compensation or be allowed to return to work in the federal service. In support appellant submitted duplicates of letters previously of record, a facsimile of a settlement agreement, an approval of appellant's requested disability retirement benefits, and a July 8, 1994 statement from Dr. Rigolin noting that at that point appellant's psychiatric condition was stable, and that appellant could return to work in a less stressful situation than before.

By decision dated November 8, 1994, the Office denied modification of the prior decision finding that the evidence submitted was insufficient to warrant modification. The Office noted that none of the new evidence submitted supported that appellant was temporarily totally disabled from his employment during his March 1993 suspension. It further noted that the evidence of record continued to support that appellant's temporary aggravation ceased when he left his employment effective September 10, 1993.

The Board finds that appellant had no periods of compensable disability, causally related to his accepted condition of temporary aggravation of a preexisting bipolar disorder.

It is a well-established principle of compensation law that when employment factors aggravate a preexisting emotional condition and cause disability, the disability is compensable.¹ As used in the Federal Employees' Compensation Act, the term "disability" means incapacity because of an injury or condition in employment to earn the wages the employee was receiving at the time of the injury; *i.e.*, a physical impairment resulting in loss of wage-earning capacity.² However, every injury does not necessarily cause disability for employment. Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.³ In the instant case, appellant has presented no medical evidence supporting that he was disabled from his employment during the period March 22 to 26, 1993, due to any particular medical condition. In fact, the evidence of record supports that appellant was suspended from employment during that period for cause, namely his failure to perform his duties as directed. Therefore, the period of March 22 to 26, 1993 was not a period of compensable disability.

Further, the evidence of record supports that appellant was terminated from his employment effective September 10, 1993 not due to his accepted condition of employment-related temporary aggravation of an underlying bipolar disorder, but due to his underlying psychological condition itself, as the medical evidence from Dr. Rigolin clearly states that once away from his position through the involuntary leave of absence, appellant experienced relief of his symptoms. This medical evidence, therefore, does not support disability beginning September 10, 1993 due to appellant's temporary aggravation of his preexisting bipolar disorder, but instead indicates that due to the underlying bipolar disorder condition, appellant lacked the psychological framework to operate in the position he then held. Consequently, appellant's removal from employment effective September 10, 1993 and continuing is not compensable as he was not at that time or thereafter disabled as a result of his accepted employment-related condition. Therefore, appellant has not established that he had periods of compensable disability, causally related to his accepted temporary aggravation of his preexisting bipolar disorder.

Further, as the Office has not rendered a formal final decision on the issue of reimbursement for medical care received from 1991 to 1993, that issue is not now before the Board on this appeal.⁴

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 8 and June 14, 1994 are hereby affirmed.

Dated, Washington, D.C.
January 12, 1998

¹ *Anthony A. Zarcone*, 44 ECAB 751 (1993).

² *Pedro Beltran*, 44 ECAB 222 (1992).

³ *Donald Johnson*, 44 ECAB 540 (1993).

⁴ *See* 20 C.F.R. § 501.2(c).

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member