

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALOME A. CABOTAJE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, Calif.

*Docket No. 96-989; Submitted on the Record;
Issued June 22, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has a psychiatric or right knee condition causally related to factors of federal employment.

The Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of spondylosis at L5-S1. Appellant received continuation of pay from January 24 through March 9, 1990, total disability benefits commencing March 10, 1990 and was placed on the periodic roll effective May 5, 1991. On May 6, 1994 appellant underwent surgery on her right knee for a bilateral meniscal tear and moderate chondral tear of the bilateral femoral condyle right knee. Dr. Benjamin Song, a Board-certified orthopedic surgeon, who performed the surgery, noted that appellant stated that she sustained a severe twisting right knee injury a couple years ago while helping a patient to move from a wheelchair to a bed when she slipped and fell.

The Board has duly reviewed the case record and finds that appellant has not established that she has a psychiatric or right knee condition causally related to factors of federal employment. An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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.³

By decision dated August 24, 1993, the Office terminated benefits, stating that the evidence of record established that appellant no longer suffered medical residuals from her January 19, 1990 employment injury. By letter dated September 22, 1993, appellant requested an oral argument before a hearing representative. The hearing was held on July 15, 1994. Appellant testified that she was in great pain which was "killing" her. She described pain in her right foot and back. Appellant testified that on January 19, 1990, she twisted her right knee while moving a patient because the patient was so heavy. Appellant was somewhat evasive or unclear when asked why she had waited so long to relate that she injured her knee. She also stated she was "so depressed" and wished she were not as helpless from the pain.

By decision dated October 21, 1994, the Office hearing representative affirmed the Office's August 25, 1993 decision terminating benefits but remanded for the Office to obtain a second opinion on whether appellant had a work-related psychiatric condition from the January 19, 1990 employment injury. In its decision, the Office considered the November 8, 1993 report of Dr. Don E. Miller, a clinical psychologist, who, based on appellant's history of injury, a physical examination, and tests including the Minnesota Multiphasic Personality Inventory (MMPI) and Rorschach, diagnosed, *inter alia*, paranoid schizophrenia and recurrent major depression with psychotic features. He stated that appellant did not have any psychiatric problems in the past. Dr. Miller opined that appellant's January 19, 1990 employment injury resulted in her psychiatric condition and that she was totally disabled. The Office found that while Dr. Miller's November 8, 1993 opinion was not sufficiently well rationalized to establish the requisite causation, further development on the issue was necessary and remanded the case.

The Office subsequently obtained second opinion reports from Dr. William G. Hughson, a Board-certified internist, Dr. Barry A. Friedman, a Board-certified orthopedic surgeon Dr. Jody Corey-Bloom, a Board-certified neurologist and Stephen M. Stahl, a Board-certified psychiatrist and neurologist.

In his March 5, 1995 report, Dr. Corey-Bloom, considered appellant's history of injury, performed a physical examination, reviewed diagnostic tests and diagnosed, *inter alia*, mild degenerative arthritis of the lumbar spine, psychiatric problems and obesity which were non-industrial. He stated that appellant had no objective neurologic findings to support her subjective complaints and he believed that it was "highly possible" that her non-work-related conditions contributed significantly to her complaints. Dr. Corey-Bloom believed that appellant could perform a full-time sedentary job.

³ Gary L. Fowler, 45 ECAB 365, 371; Ern Reynolds, 45 ECAB 690, 695 (1994).

In his March 23, 1995 report, Dr. Friedman considered appellant's history of injury, performed a physical examination, reviewed diagnostic tests and diagnosed, *inter alia*, mild cervical osteoarthritis and degenerative disc at C5-6, lumbar osteoarthritis, and status post arthroscopic surgery right knee with partial excision of medial and lateral menisci which were not work related. He stated that appellant's main non-industrial problem was psychiatric. Dr. Friedman stated that in spite of the multiplicity of complaints, there was a remarkable paucity of objective findings and the objective findings related to the arthroscopic surgery of her knee.

In his May 22, 1995 report, Dr. Hughson considered appellant's history of injury, performed a physical examination and diagnosed obesity, hypertension, mild hyperglycemia and clotting factor deficiency. He stated that appellant's hypertension was probably not causing any subjective complaints and her obesity probably contributed to some of her musculoskeletal complaints. Dr. Hughson stated that appellant's clotting factor deficiency was not employment related. He believed that appellant could return to work.

In his June 1, 1995 report, Dr. Stahl considered appellant's history of injury, interviewed appellant, and reviewed Dr. Hughson's, Dr. Friedman's, and Dr. Corey-Bloom's 1995 reports, and diagnosed somatoform pain disorder associated with psychological factors and severe single episode of major depression. Dr. Stahl stated that a somatoform disorder is one in which prominent physical symptoms are the manifestation of an emotional distress rather than of a physical illness although the individual believes a physical illness is accounting for the symptoms. He stated that the extensive multi-specialty medical evaluations failed to show why appellant had the degree of occupational and social dysfunction that she manifested and that the psychiatric evaluation showed appellant had a great deal of emotional distress and was attempting to fit into the role of a patient with a real medical illness in order to allow her to escape work and responsibility which she was not emotionally capable of handling. Dr. Stahl stated that somatoform disorders are not caused by events at work but by the emotional makeup of the patient which long preexists entering into the work force, and that in this case appellant's pain disorder was complicated with depression but there was no evidence her depression was related to any industrial event. He concluded that appellant's psychiatric conditions were not caused by factors of employment and there was no evidence that there were work-related psychiatric residuals as a consequence of her soft tissue injury. He opined that appellant did not have schizophrenia. Dr. Stahl stated that it was distinctly unusual to have an onset after the age of 45, particularly so in a person who did not have hallucinations or signs of a thought disorder.

Appellant also submitted additional documents. An April 8, 1994 magnetic resonance imaging (MRI) scan showed degenerative changes of the menisci and anterior cruciate ligament tear.

In a report dated May 24, 1994, Dr. Shawn M. Omrani, a psychiatrist, stated that appellant was very depressed. In a report dated March 6, 1995, Dr. Omrani stated that appellant was psychiatrically totally disabled.

In a report dated June 9, 1994, Dr. Santiago T. Cadag, an internist, stated that appellant has persistent pain in her lumbosacral region, both knees and her legs since the January 19, 1990

employment injury. His diagnoses included lumbosacral sprain, severe depression, and tear of cruciate ligament of the left knee.

In a report dated March 16, 1995, Dr. Cadag considered appellant's history of injury and noted that appellant was under his medical care and undergoing physiotherapy due to lumbosacral pain and weakness of both legs.

By decision dated August 2, 1995, the Office denied appellant's claim, stating that the evidence of record did not establish that appellant suffered a work-related psychiatric or right knee condition.

By letter dated October 5, 1995, appellant requested reconsideration of the Office's decision. Appellant submitted a letter from Dr. Cadag dated September 7, 1995 in which Dr. Cadag stated that appellant was unable emotionally or physically to work.

By decision dated November 8, 1995, the Office denied the reconsideration request.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

Regarding appellant's claim at the hearing that the condition of her right knee or her foot resulted from the January 19, 1990 employment injury, appellant has not submitted sufficient evidence to establish that she injured her knee as alleged. Appellant did not file a claim for a knee injury. In May 1994, more than four years after the alleged knee injury occurred, Dr. Song stated in his report of that date that appellant reported that she injured her knee when she twisted it at work while lifting a patient. In his June 9, 1994 report, Dr. Cadag related appellant's knee as well as her back and mental conditions to the January 19, 1990 employment injury. Due to the time lapse between appellant's report of her knee injury to her doctors and alleged time of occurrence in January 1990, appellant's credibility is diminished that the right knee injury occurred in the performance of duty, as alleged.⁶ Moreover, neither Dr. Song nor Dr. Cadag provide any rationalized opinion explaining how appellant's knee condition is work related and therefore their reports are of diminished probative value.⁷ In his March 23, 1995 report, Dr. Friedman, as second opinion physician, opined that appellant's arthroscopic surgery right knee with partial excision of medial and lateral menisci was not work related. Appellant has

⁴ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁵ *Id.*

⁶ In her claim for a traumatic injury filed on January 23, 1990, appellant stated that she had a backache down to the lower back which went down her right leg to her foot when she injured herself. She did not specifically state that she injured her knee.

⁷ See *Ern Reynolds*, *supra* n. 3 at 695.

therefore not established that she sustained a right knee injury in the performance of duty, as alleged.

Appellant has also not established that she suffered a work-related psychiatric disability. An alleged employment-related emotional condition is compensable when an employee experiences an emotional reaction to his or her regular or special 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.⁸ Perceptions and feelings alone are not compensable.⁹ If the allegations are unrelated to the employee's regular- or specially-assigned work duties, they do not fall with the coverage of the Act unless the evidence discloses error or abuse on the part of the employing establishment.¹⁰

Appellant has not alleged any factors of employment caused her psychiatric condition and failed to establish medically that her psychiatric condition was work-related. Based on appellant's history of injury, an interview, and his review of the reports from Drs. Hughson, Friedman, and Corey-Bloom, an internist, orthopedic surgeon, and neurologist, respectively, who were Board-certified, Dr. Stahl diagnosed a somatoform pain disorder associated with psychological factors and severe single episodes of depression. He stated that somatoform pain disorders are not caused by events at work but by the emotional makeup of the patient which long pre-exists entering into the work force, and that in this case, appellant's pain disorder was complicated with depression but there was no evidence appellant's pain was related to any industrial event. He believed that appellant had a great deal of emotional distress and was attempting to fit into the role of a patient with a real medical illness in order to allow her to escape work and responsibility which she was not emotionally capable of handling. Dr. Stahl stated there was no evidence that there were work-related psychiatric residuals as a consequent of her soft tissue injury. He also opined that appellant did not have schizophrenia because of her age and the fact her symptoms were consistent with somatoform pain disorder. Dr. Stahl's opinion is complete and well-rationalized and establishes that appellant does not have a work-related psychiatric condition.¹¹ His opinion constitutes the weight of the evidence in this case. The May 24, 1994 and March 6, 1995 reports from Dr. Omrani stating that appellant suffered from depression and is disabled due to it and Dr. Cadag's June 9, 1994, September 7 and March 16, 1995 reports stating that appellant was emotionally or physically unable to work or suffered from depression and persistent pain do not address causation and therefore are of diminished probative value.¹² Appellant has therefore failed to establish that she suffered a work-related psychiatric condition.

⁸ *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ *Dinna M. Ramirez*, 48 ECAB ____ (Docket No. 94-2062, issued January 17, 1997); see *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹¹ See *June A. Mesarick*, 41 ECAB 898, 907-08 (1990).

¹² *Id.*

The decisions of the Office of Workers' Compensation Programs dated November 8 and August 2, 1995 are hereby affirmed.

Dated, Washington, D.C.
June 22, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member