

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOMER W. DELOVICH and DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, FAIRMONT FIELD OFFICE, Fairmont, W.Va.

*Docket No. 96-81; Submitted on the Record;
Issued May 8, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an emotional condition in the performance of duty on or before January 1, 1982 as alleged.

After a thorough review of the entire case record and consideration of the issues presented, the Board finds that appellant has not established that he sustained an emotional condition in the performance of duty on or before January 1, 1982 as alleged.

In an emotional condition claim, when working conditions are alleged as factors in causing disability, the Office of Workers' Compensation Programs, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.¹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.

On September 10, 1992 appellant, then a 62-year-old coal mine inspector, filed a claim for an emotional condition sustained on or before January 1, 1982, caused in part by a March 1981 argument with a coal company official during appellant's investigation of alleged safety violations which caused an explosion, and was then removed from the investigation.² Following an initial denial by February 11, 1993 decision, by decision dated June 30 and finalized July 1, 1994, an Office hearing representative remanded the case for further development, finding that

¹ See *Barbara Bush*, 38 ECAB 710 (1987).

² Appellant also alleged a pattern of harassment and discrimination, and submitted numerous documents relating to disciplinary matters, a tax dispute, and equal employment opportunity (EEO) complaints. These were not found to be covered employment factors.

the March 1981 argument was established as factual and constituted a covered factor of employment.

Thus, in this case, the Office accepted the March 1981 argument as factual and that such argument occurred in the performance of duty, therefore, constituting a covered employment factor.³ The next step in establishing entitlement to benefits involves the submission of sufficient rationalized medical evidence supporting a causal relationship between the established employment factor and the claimed emotional condition. In order for appellant to prevail, he must present sufficient rationalized medical evidence supporting a causal relationship between the March 1981 argument and the alleged emotional condition. The Board finds that appellant did not submit such evidence.

In accordance with the hearing representative's instructions, the Office referred appellant, the record and a statement of accepted facts to Dr. Ralph S. Smith, Jr., a Board-certified psychiatrist, who submitted September 19 and November 16, 1994 reports. Dr. Smith reviewed the record and statement of accepted facts, and performed a detailed psychiatric evaluation including psychological testing. Dr. Smith diagnosed a psychotic disorder and paranoid personality disorder which he opined were not caused by events at work. He noted that the events appellant alleged would have produced post-traumatic stress disorder, depression or anxiety, but not psychosis. Dr. Smith's reports are of significant probative value as they are based on a complete and accurate factual and medical history, and contain sufficient medical rationale explaining why appellant's psychotic and personality disorders would not be caused by the alleged employment factors, including the March 1981 argument.

In support of his claim, appellant submitted a December 1, 1992 evaluation by Dr. John Dunn, a psychologist, a December 14, 1992 report by Dr. John Vanin, a psychiatrist, July 19 and August 18, 1993 reports by Dr. John Manchin, an attending osteopath, and a June 10, 1994 report by Dr. David J. Withersty, Board-certified psychiatrist. While these reports mention appellant's allegations of harassment at work, they do not specifically mention the March 1981 argument, the only accepted compensable employment factor in this case.⁴ The Board has held that medical opinions premised on an inadequate factual or medical history are of diminished probative medical value.⁵ These reports are also of greatly diminished probative value in establishing causal relationship in this case, as they do not mention the only relevant cause of the claimed emotional condition.⁶

By November 16, 1994 decision, the Office denied appellant's claim based on Dr. Smith's opinion as the weight of the medical evidence. Appellant disagreed with this

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ Appellant also submitted February 25 and March 29, 1993, and February 7 and December 7, 1994 reports from Robin Straight, a social worker. These reports do not constitute medical evidence as social workers are not considered physicians under the Federal Employees' Compensation Act. 5 U.S.C. § 8101(2).

⁵ See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

⁶ See *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

decision and requested an oral hearing, held June 29, 1995. By decision dated and finalized August 15, 1995, the Office hearing representative affirmed the Office's November 16, 1994 decision, finding that appellant submitted insufficient medical evidence to establish that his claimed emotional condition was causally related to the March 1981 argument, the only compensable employment factor accepted as factual. The Office found that Dr. Smith's opinion represented the weight of the medical evidence, and that appellant had failed to submit relevant rationalized evidence relating the March 1981 argument to any medical condition.

The Board finds that Dr. Smith's reports represent the weight of the medical evidence, as they contain sufficient medical rationale based on an accurate history explaining why causal relationship was not established. The reports submitted by appellant are of little relevance on the critical issue of causal relationship as they do not specifically mention the March 1981 argument. Therefore, appellant has submitted insufficient medical evidence to meet his burden of proof.

The decision of the Office of Workers' Compensation Programs dated and finalized August 15, 1995 is hereby affirmed.

Dated, Washington, D.C.
May 8, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member