U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD H. RUTH and FEDERAL DEPOSIT INSURANCE CORPORATION, OKLAHOMA CITY CONSOLIDATED OFFICE, Oklahoma City, Okla.

Docket No. 96-1099; Submitted on the Record;
Issued May 4, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in justifying the rescission of acceptance of appellant's claim.

On September 10, 1993 appellant, then a 49-year-old attorney filed a claim for compensation alleging that he developed severe depression as a result of stress in his federal employment. Appellant began his employment with the employing establishment in May 1988, as a litigation attorney. Appellant was terminated from his position on October 31, 1993

Appellant described the events that led up to his depression as follows:

> "I first experienced anxiety in 1988, due to the impossibility of keeping up with the work load I had been assigned. I developed a sleeping disorder where I would have difficulty falling asleep, would wake up far too early or both. I felt I was caught between the demands of the employer to do a high volume of work and the ethical demands of the legal profession that each matter receive proper attention. By 1989, I began to develop periodic stomach disorders and was treated for 'nervous stomach' by my regular physician. By early 1990, I began to lose my ability to concentrate and do my customary work. This slowed my work on my cases, making the demands even more difficult. I began to have outbreaks of anger and frustration at work and I lost the ability to concentrate on my hobbies and recreational activities. These problems generally continue to the present and have been recognized by family members and coworkers. While my regular physician, who treats me through an HMO, treated my condition with various kinds of medication, he never diagnosed my condition. My condition was first diagnosed by Dr. Joe Savage of August 23, 1993."

Appellant additionally stated that he left his private practice to join the employing establishment based in large part on the agency's representation to him that his caseload would

average 70 cases and be routine and nonstressful, but that shortly after he began work, his caseload increased dramatically to over 200 cases. He asserted that most of his coworkers carried a significantly smaller caseload, that he received disparate treatment with respect to his pay grade and that he was passed over for promotion on the grounds that he could not handle the added stress of the position opening.

Appellant also stated that in 1991, his Section Chief was promoted out of the office and that although his new Section Chief, Mr. Al Bowman, took steps to reduce his unmanageable case load, the system was slow and it took a considerable amount of time for the caseload, to be reduced. He added that in October 1991, he had an uncontrollable and somewhat violent outburst at work precipitated by the continuing and conflicting demands of his work. He described the incident as one, where he became so upset that he shouted obscene and derogatory statements about a supervising attorney from Washington, who was to visit the office the next day. Appellant recounted that his supervisor, Mr. Bowman, asked him to take a few days off and seek medical attention, which he did. Appellant stated that over the course of the next year, with continued medication and assistance from his supervisor, he was able to maintain better control, but that by late 1992, it became obvious that any level of litigation work would cause a return of his confusion, sleep disorder, stomach problems and emotional outbursts. Appellant added that on April 30, 1993, the employing establishment announced that it would close his office on November 1, 1993 and that other jobs would be available at other locations. He explained that when he investigated the openings, they all involved the same level of stressful litigation work and he felt he would physically and mentally collapse under those circumstances. Appellant stated that although his regular physician, doubled his prescription of Prozac, he still made no specific diagnosis and, therefore, appellant sought medical assistance from Dr. Joe Savage, who specializes in vocational psychiatry. Appellant recounted that in July 1993, Mr. Bowman informed him that some of his coworkers were fearful and concerned because of his volatile moods and asked him to seek medical help if necessary. In August 23, 1993, Dr. Savage diagnosed his condition as having been caused by his employment and having resulted in his disability for the performance of such work in the future. Appellant concluded that this was the first time any health care provider had communicated any diagnosis or prognosis of his condition.

In support of his claim, appellant submitted numerous medical reports, from both his personal physician, Dr. Davis, and Dr. Savage, from whom he sought specialized treatment. The medical records document that appellant complained to Dr. Davis about job-related stress as early as February 1989 and further documents that in May 1990 appellant complained to his physician, that he was incapable of doing his job, because of the strains and the quantity of material placed upon him, after which Dr. Davis prescribed Prozac.

The Office prepared a statement of accepted facts, on which were delineated two "Factors of Federal Employment" and six "Nonemployment Factors." The two "Factors of Federal Employment" were: (1) "Being assigned a much larger caseload, with only part time secretarial and legal help. The claimant's count of cases grew over 200. The claimant complained about the caseload to [Stockwell], Litigation Section Chief and about the lesser amount being assigned to other attorneys in the office. He was told that the FDIC had a big 'push' on the high case counts for its attorneys, but there was no explanation for the difference in

his caseload; (2) The claimant had an uncontrollable and somewhat violent outburst in the office due to stress."

On February 16, 1994 the Office accepted appellant's claim for major depression, severe, without psychosis.

By letter dated September 13, 1994, the Office advised appellant that he would be paid compensation for the period October 31 through November 30, 1993, but that further compensation depended on the submission of Form CA-8's and additional medical and factual evidence explaining how his work-related disability continued when he had not been exposed to the stress factors for over a year.

Appellant continued to submit Forms CA-8, as well as medical and factual evidence in support of his claim.

In a memorandum to the file also dated September 13, 1994, the Office claims examiner noted that the statement of accepted facts would have to be revised, because appellant had several factors, which were not work related and were not adequately addressed by the medical evidence.

On September 21, 1994 the Office revised the statement of accepted facts, to reflect that appellant had not established any compensable factors of employment.[1] Several factors were accepted as factual, but not compensable, while other factors were not accepted as factual.

On October 14, 1994 the Office issued a notice of proposed termination of compensation, finding that the original acceptance should be rescinded on the basis that the evidence established that appellant's emotional condition did not occur in the performance of duty and therefore, the acceptance of appellant's claim was a clear error in the application of the law.

By decision dated November 30, 1994, the Office determined that appellant's injury was not sustained in the performance of duty.

On November 8, 1995 appellant requested reconsideration of the Office's decision and submitted additional evidence is support of his claim.

In a merit decision dated November 24, 1995, the Office found the evidence submitted insufficient to warrant modification of the prior decision.

[1] Factors accepted as factual, but not compensable were: (1) appellant was a Vietnam veteran; (2) appellant's second wife committed suicide in the early 1980's; (3) appellant closed his private law practice to accept the position at the FDIC in 1988; (4) appellant was not selected for career status promotion in 1990; (5) in 1991 appellant was not selected for a lateral reassignment out of the litigation section; (6) in October 1991 appellant had a uncontrolled and violent outburst at work; (7) on April 30, 1993 appellant was advised that his office would be closed on November 1, 1993; and (8) in July 1993 appellant's supervisor advised him that his volatile behavior caused concern and fear among his coworkers. Factors not accepted as factual were: (1) Appellant's allegation that he was told he would have a case load of only 70 cases; (2) appellant's pay was unfairly and improperly determined; (3) appellant's case load was greater than that of other attorneys and consisted of over 200 cases; and (4) appellant worked 10 to 12 hours of overtime each pay period.

The Board finds that the Office has failed to meet its burden of proof in establishing that appellant's disability was not sustained in the performance of duty; and therefore, was not justified in rescinding appellant's compensation benefits.

Once the Office accepts a claim and pays compensation, it has the burden of justifying the termination or modification of compensation. This holds true where, as here, the Office later decides that it has erroneously accepted a claim.[2] To justify rescission of a claim, the Office must establish that its prior acceptance was erroneous based on new or different evidence or through new legal argument or rationale.

In the present case, the Office accepted appellant's claim for an emotional condition on the grounds that he sustained his disability in the performance of duty. Subsequently, after further reviewing appellant's allegations and the evidence of record, the Office rescinded appellant's compensation benefits on the grounds that appellant's emotional condition was not sustained in the performance of duty. The Office's rescission, however, is not supported by the evidence of record.

Contained in the record is an affidavit from Marolyn Wynn, appellant's legal technician from May 1988 until October 1993, in which she stated that the original purpose of the litigation section, was to handle routine foreclosure cases, but that by late 1988 more cases were being handled in-house and the litigation grew more complex. She acknowledged that until sometime in 1990, the attorneys in the section had only one paralegal to assist them with these claims. She stated that when appellant began his employment with the agency in 1988, he exhibited a positive and energetic manner, but that sometime in early 1989 his conduct began to change and he complained of stomach pains, exhibited angry outbursts and had serious difficulty in handling his work load and deadlines in a calm manner. She added that this behavior continued periodically during 1990 and 1991 and at one point she expressed her concern about appellant to her supervisor. Ms. Wynn acknowledged that by late 1990, the work load of the litigation section began to gradually ease and that although appellant's work load also eased, it remained above average. She explained, however, that while the attorneys' caseload diminished, during this period significant additional internal reporting requirements were imposed on the attorneys by the employing establishment. She concluded that she observed appellant's frustration, outbursts and stomach problems continue until the office closed in 1993.

Also contained in the record are several performance appraisals submitted by appellant covering the period from May 23, 1988 through May 22, 1989 and May 23, 1989 to May 22, 1990, in which appellant's supervisor documented appellant's concerns about the quantity of his caseload adversely affecting the quality of his work and further documented that appellant's caseload was large and demanding. Appellant also submitted a May 9, 1990 memorandum from himself to his section chief, in which he requested that additional cases not be assigned to him without an equal number of cases being removed from him and further expressed concern about the employing establishment's plans to train him to handle bank closings, stating "my current case load simply will not allow the assignment of any additional duties to me (bank closings or otherwise) if I am to continue to handle my case load in anything approaching a competent and ethical manner."

[2] *Curtis Hall,* 45 ECAB 316 (1994).

The Board has held that emotional reactions to situations, in which an employee is trying to meet his or her position requirements, when supported by sufficient evidence, are compensable.[3] While the Office was correct in noting that the evidence submitted by appellant did not establish that he had 200 cases, that his work load was significantly greater than that of other attorneys or that he was otherwise subjected to disparate case assignments, there is substantive evidence of record to support appellant's allegations that his increasing anxiety beginning with his employment in 1988 and continuing thorough 1993, was directly related to his regular and specially assigned work load. In this case, the evidence of record reveals that appellant's disabling emotional condition, was directly related to the specific job requirements of the attorney position he was hired to perform. His stress, as related to his regularly assigned duties, constitutes a compensable factor of employment under *Cutler*. It is not necessary for purposes of compensability for appellant to establish that he had a greater work load than others, only that the evidence establishes that his disability arises from his inability to perform the job requirements of his position as an attorney.

The Office has not met its burden of proof in showing that appellant's disability was not sustained in the performance of duty, *i.e.*, that there are no compensable factors of employment. Since the evidence of record is sufficient to establish that appellant's regular and specially assigned work load was a compensable factor of employment, the Office has failed to meet its burden of proof and the rescission of appellant's claim was not justified.

The decision of the Office of Workers' Compensation Programs dated November 24, 1995 is reversed.

Dated, Washington, D.C.
May 4, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[3] *Frank A. McDowell*, 44 ECAB 522 (1993);*Georgia F. Kennedy*, 35 ECAB 1151 (1984); *Joseph A. Antal*, 34 ECAB 608 (1983); *Lillian Cutler*, 28 ECAB 125 (1976).