

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL WATSON and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Hazard, KY

*Docket No. 98-1629; Submitted on the Record;
Issued December 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue on appeal is whether appellant established that he sustained an emotional condition causally related to factors of his federal employment.

On August 28, 1997 appellant, then 50-year-old mine safety clerk, filed a notice of occupational disease and claim for compensation alleging that he suffered from “nerves and major depression” as a result of stress in the job, beginning with an incident on July 25, 1991 when a mine owner tried to run over him with a pickup truck. Appellant stopped work on August 28, 1997.¹

In a memorandum dated July 26, 1991, entitled “Request for Immediate Action Under Section 108 of the Federal Mine Safety and Health Act of 1977,” appellant and Larry York, a fellow MSHA inspector, related that on July 25, 1991 they went to perform a mine inspection at the Daves Branch Inc., No. 2 mine where they cited nine violations. They stated that the mine foreman on duty at the time of their inspection pulled the miners out of the mines after the discovery of the last violation. While appellant and Mr. York were discussing the mine closure with a second shift mine foreman at the back of their government vehicle, Mr. Larry Yonts, the president of the mine, came speeding toward them in a pickup truck, slammed on his brakes and came within inches of hitting both of them. Mr. Yonts then exited his truck, slammed his fist in his hand and started yelling about the mine being shut down. Mr. Yonts further threatened appellant and Mr. York with physical violence for their issuance of the citations, but finally retreated to his truck and drove off. Fearing that Mr. Yonts might have gone for a weapon, appellant and Mr. York immediately left the mine.

¹ Appellant was employed by the employing establishment as a mine inspector under the Mine Safety and Health Act (MSHA) until he sustained a work-related back injury. He was given a position as a clerk to accommodate his medical restrictions on June 9, 1997.

In an undated statement, appellant noted that, after the July 25, 1991 incident, he was required to appear in front of a federal grand jury to obtain an arrest warrant for Mr. Yonts, at which time he broke down and cried. He indicated that his nerves and depression got worse day after day. Appellant also stated that, after he got in a confrontation with Donna Green at the Office of Workers' Compensation Programs, his nerves got in such a state that he was hospitalized in 1995.

In a series of staff notes from the Mountain Comprehensive Care Center dating from May 1993 to November 1996, a veteran family counselor, noted that appellant received continuing outpatient treatment for a nervous condition and post-traumatic stress disorder since he returned from Vietnam. In a May 28, 1993 staff note, the counselor noted appellant had an incident about two years prior, which was life threatening and also involved another Vietnam veteran reacting in a survivor mode. It was also noted that appellant was an ordained minister and complained of intrusive thoughts of "getting even."

In a report dated September 13, 1994, Dr. George H. Caudill, a general practitioner, stated that appellant had post-traumatic stress disorder for years, but had gotten worse in the past year. Dr. Caudill indicated that appellant was on medication and was unable to work due to his symptoms.

In a discharge summary from Baptist Regional Medical Center, Dr. T. Joshua Goldbloom, a Board-certified psychiatrist, noted that appellant was treated from December 11 to 14, 1995 for depression related to problems in his church. Dr. Goldbloom also noted that appellant stated that somebody had tried to run over him in a truck while he was inspecting a mine.

In an April 1996 report, Dr. Rosa K. Riggs, a Board-certified psychiatrist, reviewed appellant's military service from March 1966 to June 1968 and his work history. She related that appellant told her that a guy tried to run him over with a truck and finish him off. Dr. Riggs reported physical and mental findings and diagnosed post-traumatic stress disorder with depression and anxiety. She opined that appellant was totally disabled from gainful employment.

The Office referred appellant along with a copy of the medical record and a statement of accepted facts for a second opinion evaluation on December 17, 1997 with Dr. Nat Sandler, a Board-certified psychologist. In a report dated January 6, 1998, Dr. Sandler, noted appellant's work and medical histories. According to the physician, appellant also related that a coal mine operator tried to run over him which left him with "bad nerves." Appellant further described that the incident reactivated nightmares and flashbacks of his tour in Vietnam. He noted physical findings of depression, but stated that a Minnesota-Multiphasic Personality Inventory test obtained was invalid as an indicator of appellant's personality and symptoms because appellant had responded in an exaggerated manner. Dr. Sandler opined that appellant suffered from post-traumatic stress disorder since his discharge from the military. He concluded, however, that appellant's emotional condition "did not seem to be a result of his employment as a mining inspector or a clerk" and attributed it to appellant's preexisting traumatic stress disorder. Dr. Sandler opined that appellant's ability to work was very limited, as he would have difficulty working under supervision and meeting deadlines.

In a decision dated February 9, 1998, the Office denied compensation on the grounds that appellant failed to establish that he sustained an emotional condition causally related to factors of his federal employment.

The Board finds that appellant failed to establish that he sustained an emotional condition causally related to factors of his federal employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish a claim that an emotional condition was sustained in the performance of duty, a claimant must submit: (1) factual evidence identifying and establishing employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.²

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office 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.⁴

To the extent that appellant alleged that he sustained an emotional condition as a result of being threatened with physical violence in connection with his assigned duty to conduct a

² *Mary Sisneros*, 46 ECAB 155 (1994); *Mary L. Brooks*, 46 ECAB 266 (1994).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

safety inspection at a mine, he has established a compensable factor of employment, as was accepted by the Office.⁵ Appellant's burden of proof, however, is not discharged by the fact that he established an employment factor, which may give rise to a compensable disability under the FECA.⁶ To establish his claim, appellant was required to submit rationalized medical evidence that his emotional condition was causally related to the incident described on July 25, 1991 or factors of his employment.⁷ Although appellant's medical records from the Mountain Comprehensive Care Center document appellant's treatment for post-traumatic stress disorder since his return from Vietnam and note the employment incident of July 25, 1991, none of the records specifically address the issue of causal relationship between appellant's emotional condition and his employment. Dr. Caudill did not mention appellant's 1991 work incident as a factor which aggravated or contributed to his post-traumatic stress disorder. Dr. Riggs likewise failed to address whether there was any relationship between the July 25, 1991 employment incident and appellant's increased symptoms of post-traumatic stress disorder. She also did not discuss whether or not the July 25, 1991 work incident aggravated appellant's preexisting emotional condition.

In contrast, the Office's second opinion physician, Dr. Sandler, prepared a well-rationalized opinion finding that the accepted factors of appellant's employment did not cause or contribute to appellant's emotional state or contribute to his disability for work. In the absence of rationalized evidence from which to conclude that appellant sustained an emotional condition causally related to factors of his employment, the Board finds that the Office properly denied appellant's claim for compensation.

⁵ Although appellant stated that he had a confrontation with an Office claims examiner, that alleged "confrontation" was not in the performance of duty and concerned administrative matters with respect to his back which is not a compensable factor of employment; *see generally Gregory N. Waite*, 46 ECAB 662 (1995); *Vaile F. Walders*, 46 ECAB 822 (1995).

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994); *Clara T. Norga*, 46 ECAB 473 (1995).

⁷ *Id.*

The decision of the Office of Workers' Compensation Programs dated February 9, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member