

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS J. McEACHERN and DEPARTMENT OF THE AIR FORCE,
TACTICAL AIR COMMAND, K.I. SAWYER AIR FORCE BASE, Mich.

*Docket No. 97-784; Submitted on the Record;
Issued January 8, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he developed an emotional condition in the performance of duty, causally related to compensable factors of his federal employment.

On May 1, 1995 appellant, then a 48-year-old laborer, filed a claim alleging that he developed major depression in July 1993. Appellant described the cause as "the fact that the base is closing and that I will be without employment is the major problem. This area has very high unemployment and my job outlook is very poor for future employment. All of this bears on how I feel." On May 2, 1995 appellant's supervisor noted that appellant continued to work in the same job and did not stop work due to his alleged condition. The supervisor indicated that he was first notified of appellant's condition on April 29, 1995 by the personnel office.

In answer to the Office of Workers' Compensation Programs questions, appellant clarified that the base closure was announced in March 1993, that his last day of work was expected to be September 1, 1995, and that the base would close on September 30, 1995. Appellant stated that the base closure meant to him no job and no financial security. He claimed that as it drew closer to his last day of work he felt more and more depressed, and that he had never previously suffered a similar condition. In an attached statement, appellant claimed that shortly after the base closure announcement, he began to experience multiple adverse physical, mental and emotional symptoms related to the stress caused from this news. He noted that his symptoms included severe dizzy spells, bouts of depression, mood swings and nervousness, all of which required medication. Appellant noted that the onset of these physical and mental problems came with the stress caused by the unexpected loss of his job security with the closing of K.I. Sawyer Air Force Base (AFB). He claimed that this amounted to loss of his only source of income and presented him with the added pressure of unpaid debts, as well as an unstable job future due to his decreased physical and mental ability to function in a job atmosphere. Appellant alleged that he now had difficulty with concentration in performing job skills, as well as a high degree of irritability and nervousness around work personnel. He claimed that he now had difficulty being around people and was unable to sleep without medication, which he did not

experience before the base closing upset his life. Appellant stated: “Because my ability to make a living and perform on a job has been severely damaged, and the base closing and subsequent loss of my job and living security has severely jeopardized my present and my future, I am applying for workers’ disability compensation.”

In support of his claim, appellant submitted medical treatment progress notes about physical problems dating from 1987, physician assistant notes, and laboratory testing results. He also submitted a January 10, 1994 report from Dr. Karen L. Eldevick, a general practitioner, which gave as history that appellant was looking through bills and thinking about losing his job when he began to feel off balance. She stated that appellant claimed there were a lot of bills, a lot of credit card bills, that they were trying to refinance the house, and that his wife had medical bills for a herniated disc. Dr. Eldevick noted that appellant claimed to sleep poorly, awakened thinking of bills, and had a low energy level. She diagnosed depression with anxiety and a possible panic attack. Causation of these conditions was not discussed. A March 2, 1994 note reported improvement in appellant’s depression. A May 16, 1994 note reported that appellant felt good while on Prozac but as bad as ever when he goes off the drug. Dr. Eldevick noted that they had no money, borrowed money for the house payment, and did not have enough money to get to the Veterans Administration for an appointment. In a September 29, 1994 report, Dr. Eldevick noted that appellant was experiencing episodes of feeling like he was concentrating really hard on something to the point of almost excluding his surroundings, and that he was worried that he might hurt someone or himself at work while working on heavy equipment. She indicated that appellant felt things had gotten worse since notification of base closure, that he was worried about bills, and that he was worried about the future. Dr. Eldevick diagnosed depression but did not discuss causal relation. A November 8, 1994 progress note contained essentially the same information as the September 1994 report.

A November 30, 1994 report from Dr. Pratap C. Gupta, a Board-certified neurologist, noted that appellant’s depression started at the time talk began about base closure, that appellant improved on Prozac, but had spells and vertigo, nausea and vomiting. Dr. Gupta did not address causation except to suggest some type of intermittent vestibulopathy.

A psychiatric evaluation conducted by Dr. Elodie Imonen, a psychiatric osteopath, on October 10, 1994 noted that appellant’s depressive symptoms began soon after learning of the future closing of K.I. Sawyer AFB, that he manifested depression and panic attacks, and that Prozac helped. Major depression was diagnosed, but causation was not discussed.

By decision dated June 5, 1995, the Office rejected appellant’s claim finding that the evidence of record failed to establish that an injury was sustained in the performance of duty. Specifically, the Office found that fear of losing his job due to a future scheduled base closure was not a compensable factor of employment.

By letter dated June 3, 1996, appellant requested reconsideration, alleging that his job responsibility assigned to him was beyond his level of ability which resulted in stress that required ongoing treatment. In support of this new allegation, appellant submitted a May 22, 1996 letter from MSgt. Larry A. Slack which stated:

“[Appellant] worked under my direct supervision at [the employing establishment] from approximately October 7, 1994 through March 30, 1995. During this period, due to the base closure and manning draw down, assigned personnel were often required to perform tasks not normally associated with their job description. [Appellant], while assigned as a laborer in our snow removal maintenance facility, was often assigned additional duties such as tool room monitor and snow desk controller/dispatcher, both of these duties required keeping an accurate and legible log book. [Appellant] expressed his concern to me early on about his ability to perform these tasks due to the fact that he was partially illiterate. I instructed him to make the best notes he could and I would help him fill out the log books in my spare time. I might also add that the controller/dispatcher job required manning two telephone lines and a radio control center linked with up to 20 other radios and the radio traffic associated with such a system. The bottom line is I considered [appellant] an excellent employee during this period who could be counted upon to complete all jobs to the best of his ability often under stressful conditions even if it caused harm to himself as in this case, extreme stress.”

By decision dated August 19, 1996, the Office denied appellant’s request for modification of the prior decision finding that the evidence submitted was not sufficient to warrant modification. The Office found that MSgt. Slack’s statement was vague and contradictory, and it rediscussed evidence previously considered by the Office for its preceding decision.

By letter dated October 10, 1996, appellant requested reconsideration of the August 19, 1996 decision.

In support of his reconsideration request, appellant submitted an October 7, 1996 report from Dr. Eldevick which noted that appellant’s diagnosed conditions of depression and anxiety certainly can contribute to stress in the workplace, and in her opinion did indeed contribute to stress in the workplace on the part of appellant.

By decision dated November 15, 1996, the Office denied appellant’s request to reopen his case for further review on its merits finding that the evidence submitted was immaterial and irrelevant.

The Board finds that appellant has failed to establish that he developed an emotional condition in the performance of duty, causally related to compensable factors of his employment.

To establish appellant’s claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his

condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician 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 appellant.²

Workers' compensation law is not applicable 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 concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁴ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁵

When working conditions are alleged as factors in causing 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

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 1.

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

⁴ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

factors of employment and may not be considered.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸

In the instant case, appellant initially alleged that the projected closing of the air base caused his condition. He claimed job insecurity, financial insecurity, fear of future unemployment, and poor job prospects all bore on his condition. The Board notes that these fears of future injury and reduction in force, like his feelings of job insecurity, are not compensable factors of employment.⁹

Appellant, however, also subsequently alleged that being required to perform additional duties which were beyond his capabilities due to his illiteracy caused his stress. His supervisor acknowledge the job stress and documented that appellant had expressed his concern to him regarding his ability to perform these additional duties due to his partial illiteracy, and stated that he had made allowances for appellant's lack of capacity to fully perform all duties assigned. The Board finds that this fear of being unable to successfully complete all assigned tasks is certainly a compensable factor of employment.¹⁰ However, the Board further finds that none of the medical evidence of record mentions this alleged compensable factor of employment or implicates it in any way in causing or aggravating appellant's emotional condition.

The Board notes that the medical reports not mentioning appellant's emotional condition, the clinical laboratory result reports, and the physician assistant notes are of no probative value in supporting appellant's claim.¹¹ The Board further notes that Dr. Eldevick's multiple medical reports do not discuss causation of appellant's depression, and merely identify what appellant is dwelling on; including fear of losing his job, a lot of bills, and financial difficulties, and she noted that a seminal event was appellant's learning of the proposed base closure. These opinions do not mention his stress from having to perform writing at work while struggling from partial illiteracy, which is the only compensable factor of employment that appellant has implicated. As none of these opinions mention appellant's illiteracy and having to write at work, they do not

⁶ See *Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

⁹ See *supra* notes 3 and 4; see also *Joseph G. Cutrufello*, 46 ECAB 285 (1994) (fear of future injury is not a compensable factor of employment).

¹⁰ See *supra* note 3.

¹¹ See *Shiela Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992) (physician assistants are not competent to render a medical opinion).

support his claim of employment-related emotional illness. The Board also notes that Dr. Eldevick's most recent report reversed the causal relationship, claiming that appellant's diagnosed emotional conditions caused stress at work. This does not support that workplace stress caused appellant's emotional conditions, and therefore this report is irrelevant and immaterial and the Office was quite correct in denying merit review based solely upon this report.

The Board notes that Dr. Gupta also noted that appellant's depression started around the time base closure was mentioned, but that he did not provide a rationalized discussion on causal relation. Dr. Gupta definitely did not mention that additional writing duties caused stress due to appellant's illiteracy which resulted in his depression. Therefore, this report also does not support appellant's contentions.

Dr. Imonen additionally failed to provide a rationalized discussion addressing causation of appellant's condition but it related its onset in time with the notification of base closure. This report does not support that appellant's writing duties at work caused his stress due to his illiteracy which resulted in his depression, and therefore does not support his claim. No other rationalized medical evidence was provided to support appellant's contention that additional duties involving writing at work caused his stress due to his partial illiteracy which resulted in the development of his depressive condition. Consequently, appellant has failed to establish his claim.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 15 and August 19, 1996 and June 5, 1995 are hereby affirmed.

Dated, Washington, D.C.
January 8, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member