U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID R. GIBSON and DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, SOUTH PACIFIC DIVISION, Walnut Creek, CA

Docket No. 98-575; Submitted on the Record;
Issued September 27, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, MICHAEL E. GROOM

The issues are: (1) whether appellant met his burden of proof in establishing any disability causally related to a September 1, 1982 employment incident or factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs' denial of appellant's December 4, 1997 request for reconsideration constituted an abuse of discretion.

On July 1, 1983 appellant, then a 41-year-old construction inspector, filed a notice of traumatic injury and claim, alleging that on September 1, 1982 he injured his head, eye and neck when he hit an unmarked wire. On July 1, 1983 appellant also filed an occupational disease claim, alleging that he sustained blackouts, incoherence and disorientation which he first became aware of September 7, 1982 and which his doctor indicated was related to stress at the employing establishment. On August 29, 1983 the Office denied appellant's claim for continuation of pay on the grounds that it was not timely filed with respect to the September 1, 1982 incident. On August 29, 1983 the Office also requested additional information concerning appellant's occupational disease claim. In a decision dated August 12, 1994, the Office denied appellant's occupational disease claim on the grounds that it had not received any medical evidence and therefore fact of injury was not established. In a decision dated September 12, 1984, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between the claimed conditions and factors of appellant's federal employment.

On March 5, 1994 appellant filed an occupational disease claim, alleging that beginning September 7, 1982 he sustained injuries, including vertigo, mental impairment and a chronic form of hepatitis which conditions were causally related to exposure to underground water containing sludge from a main sewer line and from refineries that were less than one mile from his worksite. In a decision dated November 10, 1994, the Office denied appellant's claim on the grounds that appellant had not established that his claimed disability was causally related to his September 1982 employment incident and appellant also had not established that his claimed conditions were related to factors of his federal employment. In merit decisions dated

November 13, 1995 and December 17, 1996, the Office denied modification on the grounds that the evidence submitted was not sufficient to warrant modification of the November 10, 1994 decision. In a decision dated March 19, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to reopen the record.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that he sustained any disability causally related to the September 1982 employment incident or factors of his federal employment.[1]

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[2] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[3] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated his condition is sufficient to establish causal relationship.[4] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[5] neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such a relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[6]

In the present case, appellant has not submitted any rationalized medical opinion evidence which establishes that his claimed conditions of vertigo, mental impairment and chronic hepatitis were causally related to his claimed September 1982 employment incident. The only medical report of record which provides any opinion addressing a causal nexus between appellant's claimed conditions and the September 1982 employment incident is a report by Dr. David S. Seminer, a Board-certified neurologist. In his report dated April 14, 1994, he diagnosed chronic benign positional vertigo with a history of head trauma in 1983, anxiety, complaints of dizziness and memory loss. Dr. Seminer indicated that the latter two conditions were likely due to the head injury and were consistent with post-concussion syndrome. He

[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on December 9, 1997, the only decisions before the Board are the Office's December 17, 1996 and March 19, 1997 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

[3] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[4] *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[5] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

[6] *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

found no evidence of any other neurological disorder to explain the possible cause. However, the report by Dr. Seminer is not sufficient to discharge appellant's burden of proof as it was based on an inaccurate factual history since appellant's injury was sustained in 1982, he did not indicate that he knew the nature of appellant's original injury and Dr. Seminer was not aware of appellant's past injuries sustained in a severe bicycle accident that also occurred in the summer of 1982. In addition, he failed to adequately explain the basis of his conclusion that the diagnosed conditions were causally related to appellant's September 1982 employment incident and he has not supported his medical conclusion with sufficient rationale. Although appellant has also submitted other medical evidence which substantiates his contention that he suffers from vertigo and/or optical problems, none of the physicians who diagnosed these conditions related them to the September 1982 incident or any other factors of his federal employment.

Appellant also alleged that he sustained mental impairment and depression that were causally related to factors of his federal appointment and/or to his September 1982 employment incident. The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to his condition. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from factors such as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.[7] 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.[8] 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.[9]

In reviewing appellant's emotional condition claim the Office referred to appellant's original supplemental statement that was filed with his 1983 claim in which appellant identified the following as causative factors of his emotional condition: he was working seven days a week and for 10 to 14 hours a day with few breaks; he was shoved into the field and told to watch one operation but was later criticized when he did not report on the entire operation; his supervisor,

[7] *Lillian Cutler*, 28 ECAB 125 (1976).

[8] *Artice Dotson,* 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green,* 37 ECAB 374 (1985).

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

Leo Santa Cruz, criticized him unfairly on his daily reports and on his job performance; Mr. Cruz told others that appellant did not know what he was doing; he was improperly placed in an absent without leave status (AWOL) when he failed to report to work in September 1982 after being directly ordered to do so by the employing establishment. Appellant alleges that he failed to report to work because he was suffering from vertigo that was causally related to his September 1982 employment injury and that, consequently he was not capable of operating heavy equipment or driving a government vehicle.

Initially it is noted that appellant claims that he was exposed to contaminated water while at the worksite in 1982 and alleges that his claimed emotional impairment was due in part to this exposure. However, the employing establishment submitted evidence which refutes this allegation. Specifically, the employing establishment noted that appellant was working on the Walnut Creek project which had at least two sanitary sewer crossings. But the employing establishment reported that there were no live-sewer spills on this project and it also indicated that the refineries appellant said were within one mile of his worksite were actually seven to eight miles from his worksite.

Regarding the alleged causative factors which appellant related to his emotional condition, a review of the record indicates that appellant filed numerous grievances related to the employing establishment placing him in AWOL status. However, appellant was unable to establish that the employing establishment acted erroneously with respect to this administrative matter. Thus, this is not a compensable causative factor under the Act. It is further noted that none of the other factors alleged by appellant in relation to his claimed depression and/or mental impairment are compensable factors of federal employment. Specifically, appellant has not submitted any evidence to establish error or abuse by the employing establishment with respect to Mr. Cruz's supervision of appellant. Appellant's dislike of Mr. Cruz's supervisory style and his complaints concerning the manner in which his supervisor performed his duties as a supervisor or the manner in which he exercised his supervisory discretion fall, as a rule, outside of compensable factors of employment.[10] His complaints are analogous to frustration over not being allowed to work in a particular job environment and are therefore not compensable. In addition, appellant has not submitted any evidence to support his allegation that he was required to work excessive hours without a break and the evidence submitted by the employing establishment refutes this allegation. Consequently appellant has not established that his claimed emotional conditions were causally related to either the September 1982 employment incident, exposure to contaminated water or to compensable factors of his federal appointment.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements,

[10] *Donald E. Ewals*, 45 ECAB 111 (1993); *see also David W. Shirey*, 42 ECAB 783 (1991).

the Office will deny the application for review without reviewing the merits of the claim.[11] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[12] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[13]

In the present case, appellant requested reconsideration of the prior merit decisions by letters dated February 8, 1997. With his February 1997 request appellant submitted a report by Dr. David M. Presnall, a licensed psychologist. He diagnosed dementia related to specific head trauma and depressive disorder, however, his medical conclusions were based on an inaccurate factual history as he believed appellant sustained a head trauma in 1983 and did not know of appellant's other nonwork-related accident in July 1982. In addition, Dr. Presnall concluded that appellant's condition was "quite likely related to the head trauma" and therefore his opinion is speculative in nature.[14] Appellant also submitted a report by Dr. Dennett Hanssmann, a psychiatrist, who diagnosed possible histrionic personality disorder and anti-social traits. While Dr. Hanssmann thought it might be beneficial for appellant to pursue his workers' compensation claim, he also indicated that appellant should make constructive attempts to secure appropriate work and suggested that he needed to examine his responsibility for his condition especially with respect to his avoidance of responsibility and work. This ambiguous report by Dr. Hanssmann is not sufficient to provide a basis for reopening the record for merit review. Therefore, the Office properly found that appellant did not establish a basis for reopening the record.

[11] 20 C.F.R. § 10.138(b)(2).

[12] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[13] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

[14] *Charles A, Massenzo*, 30 ECAB 844 (1978).

The decisions of the Office of Workers' Compensation Programs dated March 19, 1997 and December 17, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 27, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member