

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEDRO POMALES and SOCIAL SECURITY ADMINISTRATION,
ORIENTAL FEDERAL CENTER, Humacao, PR

*Docket No. 98-1289; Submitted on the Record;
Issued August 4, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's application for review on September 12, 1997.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.

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 employment factors.¹ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.²

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.³ If a claimant does implicate a factor of

¹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

² *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

³ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

In the present case, appellant alleged that he sustained an emotional condition, characterized by generalized anxiety disorder and major depression, recurrent and severe, with psychosis and panic attacks, as a consequence of his recurring throat condition and associated medications. In a narrative statement submitted in support of his claim, appellant asserted that in the daily course of his employment he was exposed to dust, chemicals and air conditioning and was further required to interview people eight hours a day, all of which contributed to the development and exacerbation of chest congestion, difficulty breathing, dizziness, sore throat, nasal dripping, lack of concentration, fever and headache, which stressed his whole life. Appellant explained that the strain of living with these conditions combined with the side effects of the medications required to treat these constantly recurring severe symptoms, contributed to his development of anxiety and depression. By decision dated June 9, 1997, the Office denied appellant's emotional condition claim on the grounds that the medical evidence did not establish that he sustained an employment-related emotional condition. The Board must, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Federal Employees' Compensation Act.

The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.⁵ In the present case, appellant filed two prior claims with the Office. In claim number A2-657807, the Office denied appellant's claim that his allergic reactions, vertigo and inner ear problems were causally related to his employment. In claim number A2-686194, however, the Office accepted that appellant sustained employment-related cervical myositis. Therefore, appellant has identified a compensable factor of employment.

Appellant's burden of proof, however, is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁶ To meet this burden appellant must submit rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁷ 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. The

⁴ *Id.*

⁵ See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

⁶ See *William P. George*, 43 ECAB 1159, 1168 (1992).

⁷ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant.⁸

In support of his claim, appellant submitted a January 22, 1993 medical report from Dr. Arnaldo Perezvega, an otolaryngologist and treating physician since 1985, who opined that appellant's diagnosed upper respiratory tract problems, including acute allergic rhinopharyngitis, "were caused and worsened by [appellant's] occupation and site of work" and noted that, in addition to these problems, appellant suffers from recurrent episodes of vertigo and sinusitis. He concluded that "the frequency and severity of these conditions have affected [appellant] emotionally" and rendered appellant incapacitated for employment. While Dr. Perezvega opined that appellant's emotional condition is causally related to his diagnosed upper respiratory and inner ear conditions, as these conditions have not been accepted by the Office as employment related and as he did not relate appellant's emotional condition to any additional factors of appellant's employment, his opinion is insufficient to establish a causal link between appellant's emotional condition and compensable factors of his employment.⁹

In a report dated March 13, 1993, Dr. Lionel Fernandez Lopez, an otolaryngologist, stated that he had treated appellant since 1990 for nasal congestion, rhinorhea, nasal itching, vertigo, hoarseness and recurrent pharyngolaryngitis, aggravated by exposure to dust in the workplace, but did not discuss appellant's emotional health.

In a report dated August 2, 1994, Dr. Jose Alvarez Villa, an otolaryngologist, listed his diagnoses as Meniere's syndrome, chronic reactive laryngopharyngitis and allergy, carpal tunnel syndrome, upper limbs and cervical neuromuscular spasm and pinched nerves and severe anxiety disorder. While Dr. Villa stated that he definitely agreed that appellant's diagnosed conditions are aggravated by his current employment and, as noted above, listed anxiety disorder as a diagnosed condition, in his explanation of the cause and effect relationship between many of the diagnosed conditions and various factors of appellant's employment, however, Dr. Villa did not offer any further discussion of appellant's anxiety disorder.

In a report dated July 7, 1994, Dr. Hector M. Tejeda Sanchez, a psychiatrist, stated that he had treated appellant since 1982 for anxiety, uneasiness, problems concentrating, inability to stay calm, insomnia and tension. While Dr. Sanchez further opined that these conditions were affected and worsened by appellant's allergies and his severe pharyngitis, which were in turn worsened by dust in appellant's office, as the Office has not accepted appellant's respiratory or vertiginous conditions as employment related, Dr. Sanchez's opinion is insufficient to establish

⁸ *Id.*

⁹ A subsequent injury is compensable if it is the direct and natural result of a compensable primary injury, however, as appellant's claim for employment-related respiratory and vertiginous conditions was rejected by the Office, appellant's later claim for an emotional condition due in part to the respiratory and vertiginous conditions cannot be considered a consequential injury of a compensable primary injury. *Artice Dotson*, 41 ECAB 754 (1990).

the requisite causal relationship between appellant's emotional condition and compensable factors of his employment.¹⁰

In reports dated November 13, 1996 and January 9, 1997, Dr. Carlos O. Perez Cortes, a psychiatrist and treating physician since 1994, diagnosed appellant as suffering from generalized anxiety disorder, severe, major depression, recurrent type, moderate to severe, with psychosis and panic attacks. While Dr. Cortes further stated that appellant's emotional symptoms were exacerbated by his recurrent pharyngolaryngitis and allergies, and that appellant's pharyngolaryngitis and allergies were in turn aggravated by his workplace, as the Office has not accepted appellant's respiratory or vertiginous conditions as employment related, Dr. Cortes' opinion is insufficient to establish a causal relationship between appellant's emotional condition and any compensable factors of his employment.¹¹

Finally, appellant submitted two reports from Dr. Julio Ortiz McWilliams, an otolaryngologist who has treated appellant since 1994. In his reports dated November 22, 1996 and January 21, 1997, Dr. McWilliams diagnosed appellant as suffering from vertigo, or Meniere's disease, cervical spasm which exacerbates his vertigo and persistent tinnitus, dysphagia which is the result of appellant's constant medication, hearing loss, psychiatric problems including anxiety and depression with episodes of psychosis and panic attacks, allergic rhinitis with vasomotor components which exacerbates his vertigo and tinnitus, which is exacerbated by his allergic rhinitis and cervical spasm. He further stated that appellant's cervical spine problems and his allergic rhinitis both aggravate his Meniere's disease and associated vertigo and that as a result appellant has severe psychiatric problems. By way of explanation, Dr. McWilliams stated that appellant has a marginal functional life with numerous permanent conditions that are irreversible and appellant's depression was "most likely" due to his state of incapacitation and his panic attacks were "most likely" due to his incapacitating vertigo. Dr. McWilliams' opinion, however, that appellant's emotional condition is "most likely" due to his state of incapacitation, which is in part due to his accepted cervical spine condition, is too speculative to constitute the type of rationalized medical evidence necessary to establish the requisite causal relationship between the employment factors accepted by the Office and appellant's diagnosed emotional condition.¹²

As appellant has not submitted a medical report noting with specificity the accepted employment factors, diagnosing a condition attributable to these factors and explaining how and why the physician believed that the factors caused the condition, he has failed to meet his burden of proof and the Office properly denied his claim for an employment-related emotional condition.

¹⁰ *Id.*

¹¹ *Id.*

¹² A 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 medical certainty, but neither can the opinion be speculative or equivocal. *Roger Dingess*, 47 ECAB 123 (1995).

The Board also finds that the Office did not abuse its discretion by denying appellant's application for review on September 12, 1997.

Following the decision dated June 9, 1997, appellant requested that the Office reconsider his case. In his letter requesting reconsideration, appellant stated that he is sure that his recurrent pharyngolaryngitis and nervous illnesses are job related and added that he would be submitting a new medical report from his treating physician. However, no additional medical evidence was submitted to the Office for review.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision, which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹³ Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.¹⁴

The Office, in denying appellant's application for review properly noted that appellant had not submitted any new evidence medical evidence and, therefore, appellant's letter did not constitute a basis for reopening a case.¹⁵ As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

¹³ 20 C.F.R. § 10.138(b)(1).

¹⁴ 20 C.F.R. § 10.138(b)(2).

¹⁵ See *James A. England*, 47 ECAB 115 (1995); *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The decisions of the Office of Workers' Compensation Programs dated September 12 and June 9, 1997 are hereby affirmed.

Dated, Washington, D.C.
August 4, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member