

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SILVERIO J. TRUJILLO and DEPARTMENT OF THE AIR FORCE,
ENVIRONMENTAL CONTROL & MANAGEMENT, Fort Carson, CO

*Docket No. 99-593; Submitted on the Record;
Issued December 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on September 16, 1997 causally related to his November 11, 1985 employment injury.

On November 11, 1985 appellant, then a 40-year-old food handler,¹ sustained an employment-related lumbar muscle spasm. The accepted condition was later expanded to include adjustment disorder with depression. By decision dated March 25, 1987, the Office of Workers' Compensation Programs found that appellant had no residuals from the back condition but continued to suffer from the psychiatric condition. Appellant appealed to the Board and by decision dated October 14, 1988, the Board affirmed the March 25, 1987 decision.²

After undergoing appropriate rehabilitation and retraining, appellant began work as an energy conservation assistant at the employing establishment on July 27, 1992. On March 12, 1997 he filed a claim for recurrence of disability, alleging that his chronic anxiety, depression, back, neck and shoulder pain were caused by an increased workload and trying to deal with pain while doing his job. On September 25, 1997 he filed for wage-loss compensation for the period September 16 through 18, 1997. On November 12, 1997 he filed a second recurrence of disability claim. He returned to work on September 22, 1997.

By decision dated December 8, 1997, the Office denied the claim. In the attached memorandum, the Office stated that the evidence of record indicated that appellant's condition was exacerbated by increased work demands "which clearly indicate a new work injury has

¹ At the time of the initial injury, appellant was employed at the Air Force Academy in Colorado Springs, CO.

² Docket No. 88-1038.

occurred.” On January 6, 1998 appellant requested a hearing, which was held on July 20, 1998. In a September 28, 1998 decision, an Office hearing representative affirmed the prior decision.³

The Board finds that this case is not in posture for decision.

Proceedings under the Federal Employees’ Compensation Act⁴ are not adversarial in nature and, while appellant has the burden of proof in establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.⁵ In addition, as indicated in the Office’s procedure manual, it is the duty of the claims examiner to develop a claim based on the facts at hand and not on the basis of the type of claim filed.⁶ For example, if a Form CA-1, claim for traumatic injury, is received by the Office and a Form CA-2, claim for occupational disease, is actually required, the claims examiner should not deny the claim on the basis that fact of injury is not established.⁷

The record in this case contains an Office memorandum dated April 15, 1997 that indicates the “CA-2a will be removed from this case to create a new occupational disease claim for a psychiatric condition.” By letter that same date, the Office informed appellant that the file had been reopened for payment of psychiatric treatment and related medications, that his recurrence claim had been removed and that a new case file had been created for development of a new psychiatric injury.

In its December 8, 1997 decision denying the recurrence of disability claim, the Office stated that the record indicated that appellant’s condition was exacerbated by increased work demands “which clearly indicate a new work injury has occurred.” There is no further indication in the record that appellant’s claim was reopened for payment of psychiatric treatment and related medications.

The medical evidence in this case contains a number of reports from appellant’s treating clinical psychologist, Dr. Lia Billington, which date from April 14, 1995 to October 31, 1998. In a report dated July 8, 1996, she diagnosed, *inter alia*, major depression, recurrent, in partial remission and pain disorder associated with a general medical condition. She noted that appellant had mild-to-moderate restrictions due to back injuries and needed ongoing psychotherapy and medication. In a March 8, 1997 report, she noted that new duties had gradually been added to appellant’s job responsibilities, stating:

“Overall, [he] is experiencing increased back pain, anxiety, anger and depression. It is especially difficult for him to keep dealing with peers and supervisors who

³ The hearing representative noted that medical expenses for appellant’s back condition were to be paid through March 25, 1987.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *John J. Carlone*, 41 ECAB 354, 359-60 (1989).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.4 (April 1993).

⁷ See FECA Bulletin No. 96-10 (issued May 9, 1996).

make fun of his taking psychotropic medication or his need for ongoing psychiatric services. [His] report of fairly continuous jibes about this raise a significant concern and should be addressed, if possible. [He] has lost several days of work for which he wants to be compensated by workers' compensation. Physical pain, overwork from too many duties that are not part of his job description and interpersonal confrontations contribute."

In reports dated September 18 and October 31, 1997, Dr. Billington stated that appellant had suffered an exacerbation of acute anxiety which made him unable to work. She advised that he could return to work on September 19, 1997. In the latter report, she opined that a structural reorganization at work, after which appellant received conflicting directives from various supervisors and the lack of training for his new position caused significant increases of anxiety and insomnia.

In reports dated March 3 and September 9, 1997 respectively, Drs. Michael G. Herriott, an osteopathic psychiatrist and James R. Spadoni, a Board-certified psychiatrist, diagnosed chronic depression and anxiety disorder and advised that appellant could work as long as he took his medication.

By report dated January 14, 1998, Dr. Kenneth Gamblin, a Board-certified psychiatrist, described appellant's medical history and diagnosed major depression, recurrent in remission and status post low back injury with a residual intermittent low back pain radiating into the right leg.

In reports dated April 22 and May 15, 1998, Dr. Wiley J. Jinkins, a Board-certified orthopedic surgeon, diagnosed chronic lumbosacral strain with myofascial pain pattern and chronic supraspinatus tendinitis with subacromial impingement. He advised that appellant could work with restrictions. By report dated August 26, 1998, Dr. Terry Struck, a Board-certified physiatrist, advised that appellant had "evidence of fibromyalgia" and was "concerned" that he had myofascial left thoracic outlet syndrome in addition to a left shoulder impingement syndrome.

The Board finds that the medical evidence in this case constitutes a sufficient basis to require further development of the evidence to determine whether appellant sustained an employment-related condition. Dr. Billington consistently advised that appellant had suffered an exacerbation of acute anxiety which made him unable to work. She provided specific work-related factors that caused this condition. Her opinion thus raises an uncontroverted inference of causal relationship between appellant's condition and his federal employment.⁸

On remand the Office should further develop the medical evidence by referring appellant and a statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue whether he developed an occupational disease or sustained an employment-related aggravation of a preexisting condition and, if so, the extent and duration of any such aggravation.

⁸ See *John J. Carlone, supra* note 5.

The decision of the Office of Workers' Compensation Programs dated September 28, 1998 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
December 5, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member