

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. BLANKENSHIP and DEPARTMENT OF LABOR,
WAGE & HOUR DIVISION, Fort Smith, AR

*Docket No. 97-1071; Submitted on the Record;
Issued January 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden 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 by refusing to reopen appellant's claim for a merit review on January 17, 1997.

On January 20, 1994 appellant, then a 50-year-old wage-hour investigator, filed a notice of occupational disease alleging that he suffered anxiety, stress, depression, panic attacks and aggravated high blood pressure due to the general demands of his federal employment. He stated that the demands of his job increased his blood pressure, which severely affected his mental and physical abilities.

In an undated statement, appellant indicated that he had a 10 percent military service disability due to hypertension since July 15, 1962. He stated that the condition progressively worsened and that beginning two years prior the condition was compounded by anxiety. He stated that on August 19, 1993 he became totally dysfunctional on the job. Appellant noted that on January 27, 1994 he was treated in an emergency room following a final conference with his employer. Appellant indicated that on several occasions he had to leave work early due to anxiety and high blood pressure and that he eventually quit work due to these problems. He stated that Dr. Robert W. Huweiler, a clinical psychologist, informed him that he needed to remain off work due to dangerously elevated blood pressure caused by intense stress and conflict on the job, which caused anxiety and depression.

On March 18, 1994 appellant told a nurse that his job covered five states and that he investigated cases for the Department of Labor in which employers cheated employees. Appellant told the nurse that he cringed every time the telephone rang and that he had no secretary to help him. On a separate questionnaire, also dated March 18, 1994, appellant told a nurse that returning and answering telephone cases, his work load and moving around caused his tenseness.

On April 1, 1994 Dr. Huweiler indicated that appellant attempted to go to work, but that he experienced extreme stress and conflict. He opined that appellant was unable to confront the stresses and conflict associated with his job without marked health risk secondary to high blood pressure.

On May 26, 1994 Dr. Huweiler indicated that appellant's symptom focused primarily on his inability to cope with his job and fear of job loss. Appellant indicated that onset of difficulties began two years prior when he was given added job responsibilities as a criminal enforcement coordinator which required a great deal of preparation. He indicated that appellant was diagnosed with psychological factors affecting his physical condition and with an adjustment disorder with mixed features (anxiety and depression). Dr. Huweiler noted that a return to work in March 1994 provoked another episode. On June 21 and July 11, 1994 Dr. Huweiler again stated that appellant continued to suffer extreme reactions to stress associated with work.

On August 31, 1994 appellant's supervisor, Carl H. Bass, described appellant's duties as a wage-hour investigator. He indicated that appellant conducted a wide range of investigative functions, that he made decisions on complex compliance issues, negotiated settlements and worked with uncooperative employers and their representatives. Mr. Bass indicated that these tasks were inherently stressful.

On October 13, 1994 Dr. Huweiler indicated that vocational stress was a predominant source of appellant's problems. On October 27, 1994 he stated that appellant's hypertensive crisis was typically associated with stress and conflict at work. Dr. Huweiler stated that appellant's technical diagnosis was psychological factors affecting his physical condition.

On December 8, 1994 Dr. Warren M. Douglas, a Board-certified psychiatrist and neurologist, recorded the things to which appellant attributed his condition. These included: making talks and speeches, testifying in court, producing the criminal enforcement manual, teaching criminal enforcement in a multi-state area, assuming the duties of the other criminal enforcement coordinator upon his resignation, assisting other states in investigations, expanding the enforcement program to migratory workers and being made team leader of a low wage team for Arkansas. Dr. Douglas also noted, however, that appellant felt intense pressure to succeed in order to receive a promised promotion and that he felt anger at not receiving a proper reward for his hard work.¹ He diagnosed major depression, severe anxiety, panic symptoms, severe hypertension and obsessive compulsive disorder. Dr. Douglas opined that appellant's symptoms, including hypertension, were caused by job pressures.

By decision dated January 27, 1995, the Office denied appellant's claim because the evidence failed to establish that the claimed disability or condition occurred in the performance of duty.

Appellant subsequently requested reconsideration. In an undated statement, he indicated that he felt intense pressure in creating a criminal enforcement program, which involved creating a manual and in providing assistance to the district Director for difficult investigations. He noted

¹ Dr. Douglas repeated this list of factors in his December 21, 1994 letter.

that the other criminal enforcement coordinator resigned from the criminal enforcement program and that he became in charge of the entire program. Appellant stated that he had to create a new department, perform a new job and report to three supervisors, while continuing his regular job as a wage-hour investigator. He stated that his promotions and performance ratings were now impacted to the point where he could not possibly satisfy his job requirements. He indicated that his heavy responsibilities destined him to failure. He stated that with failure right on his heels, he broke. Appellant stated that, despite his hard work, his compensation remained the same as everybody else. Appellant indicated that he did his usual job and created a criminal enforcement program yet, he got the shaft. He noted that he felt himself coming apart and that he could not fail because his career was on the line. He stated that he had to please the district Director to get an outstanding performance rating, cash awards and promotions. He stated that he was angry because he needed to do an exceptional job or his career was over. He indicated that he was angry because he got no relief from his regular job, while working as a criminal enforcement coordinator. He stated that he had no control over the abuse. He stated that he felt used and, that his body and mind locked up. Appellant expressed anger at being given so much responsibility and receiving no reward for his efforts. Appellant stated that his disability stemmed from the work he was directed to do.

On February 20, 1995 Dr. Douglas noted that appellant stated that his dedication and compulsive work caused his illness. He indicated that appellant told him that overwork created his anger. Appellant stated that he was responsible to two bosses, including his immediate supervisor, who had power to nominate him for a promotion. Appellant indicated that, in addition to his regular duties, he had to create a manual and act as a team leader. Appellant indicated that this upset him tremendously. Dr. Douglas opined that appellant's hypertension was aggravated and exacerbated by his job pressures. He opined that other factors such as "obesity and nonwork stressors" and marital difficulties were not causative, but were incidental to and consequences of job pressures. He concluded that the preexisting hypertension was aggravated by his job pressures.

On February 24, 1995 appellant requested an oral hearing.

On May 12, 1995 Dr. Huweiler indicated that virtually any source of frustration evoked a catastrophic emotional response triggering hypertension.

On September 11, 1995 Dr. Douglas indicated that appellant's symptoms, including exacerbated hypertension, were caused by the pressures of his job. He diagnosed major depression, severe anxiety, obsessive-compulsive disorder, panic symptoms and hypertension.

In a hearing held on September 14, 1995, appellant stated that his underlying blood pressure problems were controlled until his duties were increased when he became a criminal enforcement program coordinator. Appellant indicated that his supervisor volunteered him for this job and that he did not want to take it because of the responsibilities of his regular job. He stated that he was told it would be good for his career to take the additional job and he indicated that he felt pressured to do it. Appellant stated that he knew he needed to please his district Director or he would not get ahead. Appellant indicated that, as a criminal enforcement program coordinator, he was responsible to many bosses. Appellant stated that the burden was on him to develop the program and that a coworker assigned to share the responsibilities lacked the experience to assist him. Appellant said that he was to develop a training manual and teach its

contents, while at the same time fulfilling his regular duties as a wage-hour investigator. Appellant indicated that he was also required to learn computer skills to complete his new duties. Consequently, appellant stated that he began to feel ill, but that he was afraid to tell his supervisors because it would damage his career. Appellant further stated that he was given the added responsibility of testifying first in a criminal trial. He stated that subsequently the other enforcement coordinator resigned and that he acquired total responsibility over the program. He indicated that simultaneously he picked up additional regions and laws to cover in his regular job as a wage-hour investigator. Appellant stated that even his regular work load upset him at this point. He stated that he began receiving telephone calls from all over the country asking him questions. He indicated that he maintained a heavy case load and that he did not decline any work assigned to him. Appellant stated that he was used as a consultant on additional cases because of his expertise from the criminal enforcement program. Appellant stated his was subsequently given a job to develop a low wage-earner proposal for Arkansas. Appellant stated that he was always worried about time constraints and evaluations. Appellant denied that his problems resulted from his not getting a promotion.

By decision dated June 4, 1996, the Office hearing representative found that the evidence was insufficient to establish that appellant sustained an emotional condition in the performance of duty. The hearing representative found that appellant's allegations that his emotional condition stemmed from inadequate rewards he received for doing extra work and from his denial of a promotion failed to constitute compensable factors of employment.

On July 8, 1996 Dr. Huweiler indicated that appellant retired in May 1995 due to the increasingly malignant effects of hypertension. He indicated that appellant's labile hypertension was impacted by any thought concerning his job. Dr. Huweiler stated that appellant suffered intermittent depression over the past two years due to feelings of powerless from his hypertension and due to losses to his career, leisure life and marriage.

On August 20, 1996 Dr. Douglas noted that appellant was assigned the formidable task of preparing an important training manual without the help of another criminal enforcement coordinator. He stated that appellant was later appointed a job as a team leader responsible for developing an investigative report for low wage earners in Arkansas. Dr. Douglas noted that appellant was unable to present his findings and report. He opined that these back breaking tasks contributed to appellant's diagnosed conditions.

On August 26, 1996 appellant's representative requested reconsideration.

In an accompanying statement, appellant indicated that he received nothing for his killing work. He indicated that the criminal enforcement program did not support its employees.

By decision dated November 22, 1996, the Office denied modification of the June 4, 1996 prior decision.

On January 10, 1997 appellant requested reconsideration. In support of his request, appellant submitted a December 15, 1997 statement from R.L. Gray, a coworker, who stated that appellant informed him that he was relieved not to get a promotion to an assistant district Director's job and that he applied only to help out the district Director. Mr. Gray opined that he felt appellant had a solid marriage. Appellant also submitted a January 2, 1997 from Mr. Bass,

his supervisor, who stated that appellant told him he would apply for the position of assistant district Director because he sincerely wished to help him and the district office staff. He stated that appellant expressed disappointment when he did not receive the job. Mr. Bass further indicated that he was not aware that appellant had marriage problems and that he always thought appellant had the full support from his wife. Finally, appellant submitted a January 7, 1997 report from Dr. Douglas. He indicated that appellant's marital problems played a minor role in his emotional state. Dr. Douglas stated that in 1993 appellant was assigned extra duties such as developing a manual on criminal investigations and serving as a criminal enforcement program coordinator. He indicated that these extra duties lead an emotional condition. Dr. Douglas indicated that appellant was naturally disappointed when he did not receive a promotion to assistant director. He diagnosed major depression, anxiety, psychologically affected hypertension and obsessive-compulsive disorder. Dr. Douglas opined that these conditions resulted from work-related stress stemming from appellant's extra assignments.

By decision dated January 17, 1997, the Office denied reconsideration finding the evidence submitted in support of the request for review was cumulative and insufficient to warrant review of the prior decision.

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

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. Where the disability results from an employee's emotional reaction to his/her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his/her frustration from not being permitted to work in a particular environment or to hold a particular position.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 If a claimant does implicate a factor of 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

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁵

In the present case, appellant indicated in undated statements that he sustained an emotional condition as a result of receiving inadequate rewards for his hard work and from the denial of a promised promotion. In his reports dated December 8, 1994 and February 20, 1995, Dr. Douglas, a Board-certified psychiatrist and neurologist, recorded appellant's complaints that the employing establishment's failure to reward him with a promotion contributed to the pressure and anger he felt. The Board finds that appellant has not established the employing establishment's decision not to promote or otherwise reward him fails to constitute a compensable factor as there is no evidence of administrative error or abuse in these personnel matters.⁶

Appellant, however, also alleged that his condition stemmed from a heavy work load. In this regard, appellant indicated that he felt intense pressure when his supervisor assigned him to create a criminal enforcement program, to create a manual for the program and to provide assistance on complicated investigations. Appellant stated that because a coworker resigned from the criminal enforcement program, he undertook sole responsibility for its completion. Appellant indicated that despite these additional duties he was also required to perform his regular duties as a wage-hour investigator. He stated that he was responsible to several supervisors and that he was required to learn new computer skills. Appellant noted that his responsibilities further increased when he was given more regions to cover and additional laws to enforce. He also noted that he had to serve as a consultant to fellow employees and to complete additional cases due to his expertise. Finally, he indicated that he was assigned to be a team leader on a low wage-earner team for Arkansas. These matters pertain to appellant's regular and specially assigned job duties and constitute compensable factors of employment.⁷

The Board has held that an emotional reaction to regular or specially assigned duties can constitute a compensable factor of employment.⁸ In the present case, the evidence establishes that appellant had an increased work load and that he attributed his emotional condition to his attempts to fulfill his regular or specially assigned job duties. Accordingly, appellant has related his emotional reaction to his regular or specially assigned duties which constitute a compensable factor of employment.

Appellant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. Appellant must also submit rationalized medical evidence establishing that his claimed condition is causally related to an accepted compensable employment factor.⁹

⁵ *Id.*

⁶ See *Donna J. DiBernardo*, 47 ECAB 700 (1996); *Gary M. Carlo*, 47 ECAB 299 (1996).

⁷ See *Lillian Cutler*, *supra* note 3.

⁸ *Robert W. Wisenberger*, 47 ECAB 406 (1996); *Erza D. Long*, 46 ECAB 791 (1995).

⁹ See *Erza D. Long*, *supra* note 8.

In this case, Dr. Huweiler issued reports on April 11, May 26, June 21, July 11, October 13 and 27 and December 22, 1994 in which he attributed appellant's condition to the added responsibilities incurred on the job. Dr. Huweiler, however, failed to provide sufficient medical rationale to support his conclusion on causal relationship. Similarly, Dr. Douglas also attributed appellant's condition to a heavy work load in his reports dated December 8, 1994, February 20 and September 11, 1995 and August 20, 1996, but he too failed to explain how appellant's heavy work load caused or contributed to the diagnosed emotional condition. However, these reports are not contradicted by any substantial medical evidence of record. Therefore, while the reports of Drs. Huweiler and Douglas are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed emotional condition and the employment factors and are sufficient to require the Office to further develop the claim.¹⁰

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an emotional condition in the performance of duty. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated January 17, 1997, November 22 and June 4, 1996 are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
January 7, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *Id.*