

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. McCLEESE and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 98-1963; Submitted on the Record;
Issued June 12, 2000*

DECISION and ORDER

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

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.

The Board has given careful consideration to the issues involved, the parties contentions on appeal and the entire case record. The Board finds that the January 16, 1998 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the law and the facts of this case, and hereby adopts the findings and conclusions of the hearing representative.¹

Following the issuance of the decision of the Office hearing representative, appellant's representative provided a copy of the hearing representative's decision identifying the compensable factors of appellant's employment, the administrative error and abuse of moving appellant to the work room floor and thereafter his difficulties in performing his assigned duties, to Dr. Albert Pondillo, a psychologist, who had treated appellant twice a month for more than

¹ The hearing representative modified a December 11, 1996 decision and found that administrative error or abuse had occurred and was compensable, based upon the findings of an administrative law judge in an Equal Employment Opportunity Commission (EEOC) complaint alleging that moving appellant from the front room to the work floor area, the resulting mobility issues, and the related difficulties performing his assigned duties, violated the mandated accommodations for his preexisting disabilities. Appellant was a "qualified individual with a disability" which included deformed feet, blindness in one eye, degenerative joint disease in both knees, asthma and obesity, and the modified clerk job in the front office he was given in 1993 was a reasonable accommodation for his disabilities, which the relocation in January 1996 effectively discontinued.

one and one-half years.² Dr. Pondillo subsequently provided a report that was different from all of his previous reports.³

By report dated March 11, 1998, Dr. Pondillo diagnosed appellant as having recurrent severe major depression disorder with psychotic features, noted that appellant “experienced significant emotional decompensation when he was moved from the reception area to the mail processing floor. In addition to the irritants/toxins to which he was exposed, he also experienced significant environmental stressors which had a negative impact on his emotional well being.” Dr. Pondillo noted:

“He was transferred from an orderly work environment to a space which was noisy, chaotic and not conducive to the performance of his job (*i.e.* answering the telephone, directing messages to supervisors, assessing postal customer complaints and concerns). In addition, his performance of his job duties was further hampered because specialized equipment (copy machine, computers) required for the performance of his job was no longer in a reasonable proximity. Relocation of his desk also caused [appellant] to walk extensively to use the restroom. [Appellant] takes medication for his blood pressure. This medication has a diuretic effect causing increased urgency and frequency of urination. Because of the distance from his work space to the restroom, [appellant] expressed the fear that he may be embarrassed should he be unable to reach the restroom in time.”

Dr. Pondillo opined that “these environmental stressors further exacerbate and contribute to [appellant’s] depression.”

By decision dated May 13, 1998, the Office denied appellant’s request for modification of the January 16, 1998 hearing representative decision, finding that the report submitted in support was insufficient to warrant modification. The Office found that Dr. Pondillo’s March 11, 1998 report was not sufficient to warrant modification because it was inconsistent, without explanation or rationale, on the identified issue of causal relation from all of his previous reports which had found that appellant’s emotional condition was due to inhalation poisoning and financial difficulties and hence of diminished probative value.

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

To establish appellant’s occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence

² Dr. Pondillo provided reports dated November 11, 1996 and February 4, October 27, November 5 and 20, 1997 to document his treatment and the basis for such treatment.

³ Dr. Pondillo had previously related appellant’s emotional condition to physical limitations and loss of pulmonary functioning resulting from his inhalation poisoning (a separate claim for which compensation was paid only through July 11, 1996), to the financial hardship because of his inability to work, to the stressors of litigation and financial concerns, to his difficulty accepting his physical limitations, to his inability to provide for himself and his family and to worry and doubt.

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.⁴ Rationalized medical opinion evidence is medical evidence that 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 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 appellant.⁵

In the instant case, appellant has established that his relocation to the work floor was an administrative error or abuse as it violated his mandated work accommodations.⁶ However, appellant's burden of proof is not discharged by the fact that he has established employment factors which may give rise to a compensable disability under the Federal Employees' Compensation Act. Appellant must also submit rationalized medical evidence establishing that his claimed emotional condition is causally related to an accepted compensable factor of employment.⁷

In this case, the medical evidence dated March 11, 1998 submitted following the hearing by Dr. Pondillo contained the opinion that appellant "experienced significant emotional decompensation when he was moved from the reception area to the mail processing floor. [H]e also experienced significant environmental stressors which had a negative impact on his emotional well being." Dr. Pondillo noted as explanation that the transfer was to an area which was not conducive to the performance of appellant's job, the equipment he needed was no longer in a "reasonable proximity," appellant was forced to walk more and he was taking a diuretic causing frequency of urination which caused fear of embarrassment. While this opinion contains rationale supporting Dr. Pondillo's causal relationship opinion, it does not contain sufficient rationale to completely discharge appellant's burden of proof to establish his claim.

However, proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁸ This holds true in emotional illness claims as well as in initial traumatic and occupational claims. In the instant case, although none of appellant's treating physician's reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he developed an emotional condition

⁴ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Id.*

⁶ See decision of the Office hearing representative dated January 16, 1998.

⁷ *Brian E. Flescher*, 40 ECAB 532 (1989); *Ronald K. White*, 37 ECAB 176 (1983).

⁸ *William J. Cantrell*, 34 ECAB 1223 (1983).

causally related to the accepted identified factor of his federal employment, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between his being physically moved out of his accommodated job environment and the development of his emotionally disabling complaints, that is sufficient to require further development of the case record by the Office.⁹ Additionally, there is no opposing medical evidence in the record.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated May 13 and January 16, 1998 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
June 12, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987) (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).