

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY A. STOVER and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Key West, FL

*Docket No. 99-1671; Submitted on the Record;
Issued November 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the diagnosed conditions of chronic fatigue syndrome or Epstein-Barr virus were aggravated by factors of appellant's federal employment.

On July 19, 1995 appellant, then a 34-year-old welder, filed a notice of occupational disease and claim for compensation for total disability. Appellant alleged that he was treated for stress and depression due to factors of his federal employment and that his diagnosed conditions of chronic fatigue syndrome (CFS) and Epstein-Barr virus were aggravated by conditions of his federal employment. Appellant contended that he was under stress to perform various jobs he was not physically capable of performing, that he was exposed to heat, dust, smoke and toxic substances and that his supervisor and fellow coworkers were either hostile or insensitive to his medical problems. He was under a great deal of stress to try and work at a job as a welder when he was physically incapable of performing that job and often feared injury to himself or others.

Appellant further alleged that he was subjected to harassment by two of his supervisors, Charles Stanley and A. Peter Lazzari. On the reverse side of appellant's CA-2 claim form, the employing establishment indicated that appellant had not stopped working, but was temporarily reassigned from his position as a welder to an unclassified position effective July 10, 1995.

The record reveals that appellant was employed as a welder from February 1983 to May 1995. A copy of the job description indicates that appellant was required to perform heavy manual labor with lifting of machinery up to 150 pounds. Appellant worked 50 percent of his time outdoors and was exposed to inclement weather conditions, extremes of temperature, smoke, dust and dirt. He was also required to work around sewage and toxic materials. Appellant received a temporary transfer from his welding position due to his medical condition on or about May 24, 1995. He was given the job as a receptionist in the Public Works Contracts Division where he could sit and perform essentially sedentary work. Appellant, however, contends that, during his employment as a receptionist, he was under undue stress caused by

having to deal with irate telephone calls and complaints by customers. He was employed as a receptionist from May 30 to July 10, 1995.¹

In support of his claim, appellant submitted various medical records dating from June 8, 1983 to May 30, 1995 indicating that he was treated for several medical problems including dizziness, low back pain, an inguinal hernia and mitral valve insufficiency with a resultant heart murmur.

In a memorandum dated April 12, 1991, an employing establishment official noted that appellant had been observed working around asbestos on a job site without wearing protective equipment.

In a May 22, 1995 report, Dr. Kimberley J. Ellis, an osteopath, advised that appellant was being tested for heavy metal poisoning and possible bacterial contamination. She noted that appellant suffered from Epstein-Barr virus and had been referred to a neurologist for evaluation of possible neurological problems associated with that infection and for possible multiple sclerosis. Dr. Ellis stated that appellant displayed overwhelming symptoms of stress and fatigue, which were aggravated by his working conditions. She further stated that, if appellant's occupational stress continued at the same rate, it would worsen appellant's fatigue associated with the Epstein-Barr virus and ultimately prevent appellant from performing any physical work.

In report dated June 23, 1995, Dr. Ellis noted that appellant was initially seen complaining of severe chronic, almost debilitating fatigue, insomnia and difficulty with short-term memory. She noted that appellant had a prior history of a car accident in 1986 that caused injury to appellant's his and resulted in a post-traumatic stress disorder. Dr. Ellis further reported appellant had tested positive for Epstein-Barr virus exposure. She suspected that appellant may have experienced metal poisoning given his position as a welder. According to Dr. Ellis, appellant's condition had deteriorated over the past year and he was no longer able to work in a normal job requiring physical labor due to debilitating fatigue. She opined that appellant diagnosed conditions were all aggravated by current stressful working conditions and by physical exertion in the job.

In a report dated July 5, 1995, Dr. Casey Tiggelman, a clinical psychologist, noted that appellant was referred for family and individual counseling by Dr. Ellis due to complaints of stress and anxiety. Dr. Tiggelman discussed appellant's medical history and noted that the findings of a multiphase personality inventory test demonstrated that appellant suffered from anxiety, fatigue and depression. She noted that appellant's wife also suffered from CFS and had tested positive for the Epstein-Barr virus. Dr. Tiggelman indicated that appellant was under great stress because his wife was pregnant and he did not know how he would be able to provide for his family given his medical problems. She indicated that appellant was unable to work as a welder given his chronic symptoms of pain and fatigue. Dr. Tiggelman also stated that the

¹ Appellant began a clerical position in the Public Works Engineering Division on July 10, 1995. He has not identified any specific duties of that position as being contributing factors to his chronic fatigue syndrome, Epstein-Barr virus or his depression. In a March 2, 1996 letter, appellant noted that he was able to work at his own pace in the clerical position and that no one was concerned with keeping tabs on him. He indicated that everyone on the job had been understanding and accommodating to his medical condition.

physical demands and environmental conditions of appellant's employment aggravated his medical symptoms.

In a report dated February 6, 1996, Dr. Nancy G. Klimas, a Board-certified physician in the field of immunology, advised that appellant had undergone extensive medical, immunology and physical examinations and that he had characteristic symptoms of chronic fatigue syndrome including severe fatigue, malaise, lethargy, weakness, nausea, dizziness, low grade fever, joint pain, sore throats, swollen glands, headaches, mental confusion and inability to concentrate. She stated: "He continues to be under considerable psychological distress that is greatly exacerbated by his tenuous financial situation. Secondary depression that is the result of his long term illness is also worrisome." At present, restricting activity is the only way to prevent exacerbation of his symptoms. [Appellant] is 100 [percent] disabled. He is capable of only mild intermittent activity."

In a decision dated February 26, 1996, the Office of Workers' Compensation Programs determined that appellant failed to establish that he sustained an emotional condition or chronic fatigue syndrome in the performance of duty.

Appellant subsequently requested a review of the written record.

In a decision dated December 5, 1997, an Office hearing representative affirmed the Office's denial of benefits.

Appellant next filed a request for reconsideration on November 24, 1998.

In support of his reconsideration request, appellant submitted a November 19, 1998 report by Dr. Patricia Major, a Board-certified internist specializing in diagnostic immunology and allergies, who advised that she was appellant's attending physician for chronic fatigue syndrome. She noted that appellant's duties as a welder, including physical labor and his exposure to raw sewage, extremes of heat and humidity, toxins, chemical solvents and asbestos had aggravated, accelerated and exacerbated his medical condition and symptoms of extreme fatigue, muscle aches weakness and intermittent arthralgias and general malaise. She opined that appellant could not continue his employment at any level.

In a decision dated February 13, 1999 and finalized on February 16, 1999, the Office denied modification following a merit review.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty.

In order to establish that he sustained an emotional condition in the performance of duty, appellant was required to submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.² Rationalized medical opinion evidence is medical evidence,

² *Donna Faye Cardwell*, 41 ECAB 730 (1990)

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 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.³

The Board has carefully reviewed the December 5, 1997 decision of the Office hearing representative and agrees that the injuries, physical activities and environmental exposure that appellant sustained in the performance of his assigned duties as a welder are compensable factors of employment. Likewise, appellant's job requirement of answering the telephone and dealing with irate callers as a receptionist is a compensable factor of employment. The medical evidence of record, however, is insufficient to establish a causal relationship between the compensable factors of appellant's employment and his emotional condition. There is no rationalized medical evidence of record to suggest that appellant's emotional condition is causally related to factors of his federal employment. The Board specifically notes that, while appellant's treating physician, Dr. Ellis, indicated that appellant had overwhelming symptoms of stress related to his employment, she did not identify with any specificity the alleged work factors that were deemed stressful. Her opinion in this respect is generalized and not sufficiently reasoned to support appellant's claim. Thus, the Board concludes that appellant has not carried his burden of proof to establish that he sustained an emotional condition in the performance of duty.⁴

Notwithstanding, with respect to whether appellant's employment aggravated his diagnosed conditions of chronic fatigue syndrome and the Epstein-Barr virus, the Board finds that this case is not in posture for a decision.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.⁵

The medical evidence required to establish causation, generally, is rationalized medical opinion evidence. 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 opinion of the physician must be based on a complete factual and medical background of the claimant, must be

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ The Board adopts the findings of the Office hearing representative that appellant also alleged noncompensable factors of employment as attributing to his emotional condition.

⁵ *Woodhams*, *supra* note 3.

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 claimant.⁶

In support of his claim, appellant has submitted numerous medical reports from Dr. Ellis, who concluded that appellant's conditions of chronic fatigue syndrome and Epstein-Barr virus have been aggravated by appellant's job duties as a welder and general stress in his employment. On reconsideration, appellant also submitted a report by Dr. Klimas that appellant's job as a welder aggravated, accelerated, or exacerbated his preexisting condition of chronic fatigue syndrome. Although the reports by Drs. Ellis and Klimas are not sufficiently reasoned to establish appellant's claim for compensation, they raise an uncontroverted inference of a causal relationship between appellant's diagnosed medical conditions and factors of his federal employment and are sufficient to require the Office to further develop the evidence.⁷

The decision of the Office of Workers' Compensation Programs dated February 13, 1999 and finalized on February 16, 1999 is hereby affirmed in part and vacated in part and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
November 28, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ *Id.*

⁷ See *Richard E. Konnen*, 47 ECAB 388 (1996); *Katherine J. Friday*, 47 ECAB 591 (1996).