

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH R. MAYZEL and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, El Segundo, CA

*Docket No. 00-2260; Submitted on the Record;
Issued December 3, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition or heart condition in the performance of duty causally related to factors of his employment.

On September 2, 1999 appellant, then a 55-year-old general engineer, filed an occupational disease claim alleging that he sustained an emotional condition and aggravation of a coronary condition¹ due to the following employment factors: supporting four major programs with a heavy workload,² having too much stress from a project he worked on from September to November 1998, working on five special projects and eight evaluations on program proposals from 1997 to October 16, 1999, having to go to different buildings on a daily basis, having tight production schedules, having to make 30 to 40 trips a year from 1989 to 1995, having a heavy workload from 1997 to 1999 when a coworker was on a special assignment, having insufficient assistance with his job, having to climb seven flights of stairs at work on days when the elevator was broken, starting work early and working through lunch on some days, having the program office's manager and staff out almost every week, being restricted to working in one area during an investigation into his actions, being on a special project on August 9, 1999. Appellant stopped work on August 9, 1999 and resigned from his position effective October 8, 1999.

In a report dated August 9, 1999, Dr. Sarah L. Sandell, appellant's attending Board-certified internist, stated that appellant had chest pain and reported being under stress at work because he had to walk up seven flights of stairs at work when the elevator was out, was restricted in his ability to leave his office, and was scrutinized for loss of time at his office.

¹ Appellant had a history of coronary artery disease and had a heart attack in 1996.

² Appellant indicated that he worked on four programs at different dates between January 1997 to 1999. He did not work on more than two projects at the same time except for a two-month period, September to October 1998, when he worked on three projects.

In a report dated August 17, 1999, Dr. Sandell stated that appellant was hospitalized on August 9, 1999³ and reported having been under a significant amount of stress at work, having to walk up stairs at work and having restrictions on his activity.

In a report dated August 23, 1999, Dr. Sandell diagnosed coronary artery disease associated with work stress and noted that appellant wished to go on disability and spend more time with his children. She noted that he had consulted a psychologist for an anxiety disorder appellant associated with work stress.

In a report dated September 27, 1999, Dr. Sandell stated that appellant denied any additional chest pain and noted that he felt better away from work. He reported that he was not interested in returning to his job.

In statements dated September 9 and November 9, 1999, Captain James Schlumpberger, appellant's supervisor, noted that appellant was assigned to support two programs, not four⁴ and was not working on a special project. He stated that time and attendance records showed that appellant worked only six hours beyond his regular schedule between February 9 and August 9, 1999 when he stayed late to attend contractor/government meetings. Appellant was told that he was not required to stay beyond his normal work hours but he was authorized to earn credit hours if he wanted to attend the meetings. Captain Schlumpberger stated that appellant was never required or directed to work beyond his normal workday and, between February and August 1999, he took 164 hours of annual leave, 48 hours of sick leave and 9 hours of credit time. He stated that appellant did not need to walk up seven flights of stairs because the building had two separate banks of elevators for employee use with six elevators at each location. Captain Schlumpberger stated that appellant had been required to go to different buildings in performing his job but a government vehicle was provided for use if needed and appellant had never mentioned any difficulty in going to the buildings. He noted that appellant was restricted to his office area as a result of an employing establishment investigation between June 9 and July 30, 1999⁵ for his being absent without leave and falsifying official documents. Captain Schlumpberger noted that the investigation revealed that appellant took sick leave between August 9 and 25, 1999 but was working at a job in private industry between August 13 and 25, 1999. He stated that appellant's job was very low stress with deadlines that could, and were, adjusted when necessary and no job quotas. Appellant was not given any intense assignments, there was no staffing shortage and no extra demands were placed on him.

By letter dated March 14, 2000, the Office of Workers' Compensation Programs referred appellant, together with a statement of accepted facts and copies of medical reports, to Dr. Robert Schatz, a Board-certified internist specializing in cardiovascular disease. The statement of accepted facts noted that two employment factors had been found to be in the

³ Appellant submitted reports from Drs. Stuart Fischer and Richard M. Rucker regarding his hospitalization on August 9, 1999. The physicians noted that appellant had a family history of cardiac risk factors and a history of coronary artery disease.

⁴ He noted that current engineers averaged 5.2 programs per engineer.

⁵ On August 3, 1999 appellant was given written notice that he was to remain in his work area on the seventh floor of building R1 for his workday except for lunch and breaks.

performance of duty, that appellant was assigned to support two programs in his job while the average engineer had five programs to support and that he was required to go to different buildings prior to August 3, 1999 which were two blocks to one and one-half miles from his office.

In a report dated April 13, 2000, Dr. Schatz provided a history of appellant's coronary disease and findings on examination and noted that he had a heart attack in 1996. He related that appellant told him that he received insufficient support in his job but seemed vague about this; that he did not state that he supported four programs as alleged in his claim; that he indicated he climbed two to three flights of stairs a day, not the seven alleged in his claim; and that he drove very little in his job, only two miles a day. Dr. Schatz noted that appellant had a preexisting cardiac condition and a myocardial infarction prior to beginning his job at the employing establishment and a family history of heart disease. He stated that there was no indication that appellant's cardiac condition was aggravated or accelerated by the two accepted employment factors, that appellant was assigned to support two programs in his job and that he was required to go to different buildings.

By decision dated June 7, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained a medical condition causally related to compensable factors of employment.⁶

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

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 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.⁷ 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 frustration from not being permitted to work in a particular environment or to hold a particular position.⁸

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.⁹ This burden includes the submission of a detailed

⁶ Appellant submitted additional evidence on appeal. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *See Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁹ *See Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.¹⁰

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.¹¹ 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 record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹²

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Regarding appellant's allegations of having too much stress from a project he worked on from September to November 1998, having to make 30 to 40 trips per year between 1989 and 1995, and having the program office's managers and staff out almost every week, appellant has provided insufficient detail for a determination of whether the allegations are factual. Therefore, these allegations cannot be deemed compensable factors of employment.

Appellant alleged that other work factors which caused or aggravated his condition included supporting four major programs with a heavy workload, working on five special projects and eight evaluations on program proposals from 1997 to October 16, 1999, having tight production schedules, having a heavy workload from 1997 to 1999 when a coworker was on a special assignment, having insufficient assistance with his job, having to climb seven flights of stairs at work on days when the elevator was broken, starting work early and working through lunch on some days, being restricted to working in one area during an investigation into his actions, and being on a special project on August 9, 1999. The employing establishment has denied these allegations. In statements dated September 9 and November 9, 1999, Captain Schlumpberger, appellant's supervisor, stated that appellant was assigned to support two programs, not four and was not working on a special project. He denied that appellant worked long hours and noted that time and attendance records showed that that appellant worked only six hours beyond his regular schedule between February 9 and August 9, 1999 when he chose to stay late to attend contractor/government meetings. Captain Schlumpberger stated that appellant was never required or directed to work beyond his normal workday. He stated that appellant did not need to walk up seven flights of stairs because the building had several elevators for

¹⁰ See *Effie O. Morris*, 44 ECAB 470, 473 (1993).

¹¹ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389 (1992).

¹² *Id.*

employee use. Captain Schlumpberger stated that appellant had been required to go to different buildings in performing his job but a government vehicle was provided and appellant had never mentioned any difficulty in going to the buildings. He noted that appellant was restricted to his office area as a result of an employing establishment investigation between June 9 and July 30, 1999 for being absent without leave and falsifying official documents. Captain Schlumpberger stated that appellant's job was very low stress with deadlines that could, and were, adjusted when necessary and that he had no job quotas. Appellant was not given any intense assignments, there was no staffing shortage, and no extra demands were placed on him. As the employing establishment has denied that these allegations are factual and appellant has submitted insufficient evidence to establish that these situations occurred as alleged, he has not established any compensable factors of employment with regard to these particular allegations.

Regarding the employing establishment's investigation of appellant for being absent without leave and falsifying official documents, the Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regularly or specially assigned employment duties are not considered to be employment factors.¹³ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of him were abusive or conducted in error. Thus, appellant has not established a compensable employment factor under the Act in this respect.

The Office accepted two factors of employment as being within appellant's performance of duty, that he was assigned to support two programs and was required to go to different buildings which ranged from two blocks to one and one-half miles from his office. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor that 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.¹⁴

In a report dated April 13, 2000, Dr. Schatz, a Board-certified internist specializing in cardiovascular disease and an Office referral physician, provided a history of appellant's coronary disease and findings on examination and noted that appellant had a preexisting cardiac condition and a myocardial infarction, prior to beginning his job at the employing establishment, and a family history of heart disease. He stated that there was no indication that appellant's cardiac condition was aggravated or accelerated by the two accepted employment factors, being assigned to support two programs and being required to go to different buildings.

In a report dated August 9, 1999, Dr. Sandell, appellant's attending Board-certified internist, stated that he had chest pain and reported being under stress at work because he had to walk up seven flights of stairs at work when the elevator was out, was restricted in his ability to

¹³ See *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

¹⁴ See *William P. George*, 43 ECAB 1159, 1168 (1992).

leave his office, and was scrutinized for loss of time at his office. In a report dated August 17, 1999, she stated that appellant was hospitalized on August 9, 1999 and reported having been under a significant amount of stress at work, having to walk up stairs at work and having restrictions on his activity. In a report dated August 23, 1999, Dr. Sandell diagnosed coronary artery disease associated with work stress and noted that appellant wished to go on disability and spend more time with his children. She noted that he had consulted a psychologist for an anxiety disorder appellant associated with work stress. In a report dated September 27, 1999, Dr. Sandell stated that appellant denied any additional chest pain and noted that he felt better away from work. Appellant reported that he was not interested in returning to his job. Dr. Sandell's reports are not sufficient to establish that appellant sustained an emotional condition or heart condition in the performance of duty because she did not attribute his medical problems to either of the two accepted factors of employment, being assigned to support two programs and being required to go to different buildings.

The June 7, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 3, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member