

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID E. DENTON and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 99-2099; Submitted on the Record;
Issued February 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he developed an emotional condition, or an aggravation of a preexisting emotional condition, in the performance of duty, causally related to compensable factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

On August 6, 1998 appellant, then a 53-year-old senior injury compensation specialist, filed a claim alleging that he developed major depression, anxiety and aggravation of his post-traumatic stress disorder, causally related to pressure to meet employing establishment performance goals. He stopped work on February 12, 1998 and did not return.

In an accompanying statement, appellant claimed that in his job he was responsible for meeting several employing establishment goals, such as reducing and preventing lost workdays, chargeback reduction and continuation of pay minimization. He stated that there was particularly a great deal of pressure to reduce the number of lost workdays because it impacted on what type of bonus upper management received and that the pressure to make this goal was great and caused him an extreme amount of stress. Appellant claimed that each time pressure was on to make a goal or to have a report prepared that was impossible to prepare, his post-traumatic stress disorder worsened. He stated that he was expected to prevent each and every lost workday, and that if he did not, he had to write a detailed analysis as to why he did not and that this included not only the bulk mail center but also the Dayton office. Appellant claimed that during 1996 and 1997 one of his five employees was off with a stress claim and another was off for reasons unknown, which caused him to pressure the remaining three employees to pick up the slack, which was stressful. He claimed that when he was on a 15-month detail his condition improved, but when he returned to his senior injury compensation specialist duties, the symptoms returned and worsened.

Appellant listed as factors of his employment that he implicated in the development of his condition:

“Pressure by upper management to obtain lost workday goals; pressure by upper management to ‘save’ lost workdays by any means necessary; pressure by upper management to appease those employees that complain to their Congressman; pressure by upper management to ensure that s[atellite] offices in Dayton and Cincinnati perform their duties in the area of bill payment and job offers.”

In subsequently submitted statements, appellant claimed that his exacerbated post-traumatic stress disorder was due to his employment duties. He stated that he had to controvert a large portion of claims submitted, especially stress claims, which was extremely stressful. Appellant explained that with his service-related post-traumatic stress disorder, he had extreme feelings of hostility and a repressed tendency for violence, but that he was able to control himself by withdrawing. He claimed that the type of cases he dealt with was stressful as the majority of the claims, specifically stress claims, were submitted by veterans who were also suffering from post-traumatic stress disorder and he indicated that they usually alleged that the employing establishment harassed them and aggravated their post-traumatic stress disorder, that while attempting to disprove the claim, he was privy to records containing all of the veterans’ problems related to the post-traumatic stress disorder, that he empathized deeply with many of these employees as often while reading their history he felt as if he was reading his own.

Appellant further noted that if an injured employee was placed off work by his private physician or by the employing establishment physician, it was up to him to get the doctor to put the employee on limited duty. He claimed that this was true regardless of the injury and that if the employee had a severe back strain with spasms and was in obvious pain, his instructions were to keep the employee working and on the clock. Appellant stated that this forced him to go to the attending physician and attempt to change their minds and that if they sent an employee to one doctor who said “off work,” then he would have to send the employee to another doctor for a favorable report. He claimed that the stress of all of this was overwhelming. Appellant indicated that he was also the one who had to tell the supervisor to “make work” for the injured employee, which was stressful for him and very difficult for them to do and that the injured employee usually wound up in a “make work” position sorting tags.

Appellant stated that he also had to visit multiple employing establishment locations for the personal touch and yet still had to be available for Mr. Thomas J. Lang, that he had to visit control doctors, and yet that he had to see that Mr. Lang got all of the reports he wanted when he wanted them. He alleged that another very upsetting and aggravating factor of his employment was the chargeback goal and the reports it required. Appellant explained that the employing establishment required a report each month detailing who received compensation benefits and how much, that consequently each postal district is given a monetary goal for the chargeback, and that, as with the lost workdays goal, threats were made by upper management regarding what would happen if the goal was not met, which was very stressful. Appellant claimed that Mr. Lang made the chargeback reporting extremely frustrating and stressful with his demands for justification for not making the monthly goal, because Mr. Lang was unable to understand

that the employing establishment had no control over the decisions of the Department of Labor as to whether to place someone on the periodic rolls or to grant a schedule award.

In an additional statement appellant alleged that another stress-producing goal was that of termination of Federal Employees' Compensation Act benefits, as every fiscal year the Cincinnati district was assigned a numerical goal for removals from the periodic rolls of the Office. Appellant alleged that he was expected to achieve a goal over which he had little if any control, and that the stress of knowing that he was responsible for something over which he had no control was overwhelming. He stated that over the years his ability to ignore this stress weakened considerably, and resulted in Veterans Administration (VA) medical visits.

By letter dated August 6, 1998, Dr. William Beatty, a Board-certified psychiatrist, and Dr. Linda Rhyne, a clinical psychologist, both with the Department of Veterans Affairs medical center, noted that appellant had been treated by them since 1989 for post-traumatic stress disorder and major depression, that appellant had a 30 percent service-connected disability for post-traumatic stress disorder and a 40 percent disability for paralysis of the external popliteal nerve secondary to a combat-related gunshot wound, and that his current exacerbation of major depression was "strongly and probably permanently linked in his mind to his job at the [employing establishment]."¹

By letter dated September 9, 1998, Mr. Lang, the human resources manager, stated that "at no time was [appellant] pressured to obtain lost workday targets. [Appellant] was only advised during his tenure with me to be sure his staff treated our customers with respect and to make sure that they were provided with the service necessary to properly process their claims."² The employing establishment controverted appellant's claim.

In an October 7, 1998 statement, Mr. Lang noted that appellant's job was to prevent lost workdays if possible, and that he was responsible for insuring procedures were being followed to find work for employees within their medical restrictions, to timely submit claims, and to supervise his staff.

In an October 13, 1998 statement, David W. Lofland commented on appellant's claim regarding pressure to prevent lost workdays, noting that during the selection process for the injury compensation position, it was made known to appellant that one of the primary functions of the position was to reduce lost time due to injuries. Mr. Lofland commented that it was up to appellant to get the doctor to put injured employees on limited duty, that it was the division's policy to ensure all injured employees' doctors knew that limited duty would be provided for most restrictions and that it was appellant's duty to interface with physicians in order to convey this message. Mr. Lofland commented, regarding appellant's allegations regarding instructions

¹ In a July 29, 1998 Form CA-20 attending physician's report, Dr. Rhyne checked "yes" to the question of whether the condition found was caused or aggravated by employment, and noted "aggravated -- continued job-related stress, conflict [with] supervisor."

² By memorandum dated July 8, 1998, before appellant's claim was filed, Mr. Lang stated that he was not aware of stressful aspects of appellant's job, that there were no intense assignments or pressures, and that there were no staffing issues, little travel and no additional demands.

to keep employees working and on the clock, that it was division policy to follow up total disability statements from personal physicians or contract physicians with a review by a postal medical officer to ensure that the employee was not able to perform some type of restricted duty. Mr. Lofland also noted that it was one of appellant's functions to interface with supervisors to find work within the employee's medical restrictions.

By letter dated October 14, 1998, the employing establishment again controverted appellant's claim stating that the bonus program for managers did not begin until 1996 and that prior to that time, management bonuses were not based on lost workdays, that appellant's duty was to notify doctors that limited-duty work was available, not to "change their mind," and that appellant failed to identify specific individuals or incidents where he was pressured or instructed or threatened. The employing establishment noted that when appellant returned to work in February 1998 following his 15-month detail, the lost workday frequency was only .70 while the frequency goal was 1.21, which did not indicate pressure to improve the frequency rate. The employing establishment claimed that appellant's stress was self-induced.

Appellant submitted multiple VA medical reports in support of his claim, including a May 19, 1998 report from Dr. Rhyne who noted that appellant used "distancing" to take himself mentally out of the situation. Another medical note from Dr. Rhyne indicated that appellant was sympathetic with people but that his job was to "gather information against the job relatedness of the claim, lot of post-traumatic stress disorder veterans."

On October 16, 1998 the Office received an undated report from Dr. Rhyne which reviewed previously submitted medical progress notes; she noted that upon interview appellant stated that he sympathized with people but his job was to gather information against the job relatedness of the claim, that he had a lot of post-traumatic stress disorder veterans, and that he felt a lot of pressure from two levels of management above him. Dr. Rhyne noted that appellant's job was stressful because he could identify with the claimants, but that his job was to find reasons to deny the claim. She indicated that appellant claimed that when his numbers were bad, his job was on the line and he had chest pains all day.

In a November 18, 1998 medical report, Dr. Rhyne noted that appellant spoke of feeling much pressure to meet management goals over which he felt he had little control, such as the lost workdays goal and the chargeback reduction goal. Post-traumatic stress disorder and recurrent major depression were diagnosed.

The Office created a statement of accepted facts indicating that it accepted that appellant was responsible for meeting set goals related to lost workdays, chargebacks, periodic rolls cases, and continuation of pay with submission of reports documenting why goals were not met. It accepted that appellant was responsible for overseeing a staff of five employees, for timely filing compensation claims, for notifying physicians of the availability of limited-duty work, for contacting supervisors to locate limited-duty work, and for responding to Congressional inquiries.

The Office did not find as compensable factor that appellant was upset with the system and found it unfair, that there were bad feelings towards him as the messenger, and that appellant

had a hard time dealing with stress claims as many of the claimants were Viet Nam veterans with experiences similar to his own.

The Office found that the following incidents/factors did not occur: that appellant had to pressure remaining employees to take up the slack when one employee was off for a stress claim and another was off for reasons unknown; that appellant was pressured to ensure satellite offices performed their duties, that appellant was pressured to meet goals for lost workdays, continuation of pay, chargeback and periodic rolls cases; that appellant was threatened that if he did not meet the set goals he would be transferred, not receive a bonus, or be replaced; that appellant was told to keep workers in pain on the clock and working; that he was forced to get attending physicians to change their minds; that he would have to send disabled employees to another doctor for a favorable report; and that appellant had to visit satellite offices yet be available for Mr. Lang. The Office also found as not occurring that Mr. Lang was obsessed with Congressional inquiries and wanted them resolved immediately.

On January 5, 1999 the Office referred appellant, together with the statement of accepted facts and questions to be addressed, to Dr. Michael A. Gureasko, a Board-certified psychiatrist, for a second opinion evaluation. The Office requested that Dr. Gureasko provide a well-rationalized opinion as to whether and how the compensable factors of employment only, either caused, aggravated or exacerbated appellant's diagnosed condition.

By report dated January 19, 1999, Dr. Gureasko reviewed appellant's history in Viet Nam, his personal life, and at work, and noted that appellant stated that he had had good control but was afraid of losing control, that there were two problems at work which were that he had to save lost workdays and he had to get people back to work who were on disability. Dr. Gureasko reported appellant's complaints about Mr. Lang, reported mental status examination results, and diagnosed major depressive disorder -- in partial remission and chronic post-traumatic stress disorder as Axis I diagnoses, a personality disorder as an Axis II diagnosis; Raynaud's syndrome and the disability due to gunshot wound as the Axis III diagnoses, and as the Axis IV diagnosis addressing additional environmental stressors, Dr. Gureasko provided a lengthy narrative discussing appellant's unmet dependency needs from childhood which translated into Mr. Lang becoming his uncaring father-equivalent, but noted that this was not due to his preexisting post-traumatic stress disorder. Dr. Gureasko opined that it was clear to him that "[appellant's] employment aggravated his posttraumatic stress disorder because it resulted in his over-identifying with veterans such as himself," resulting in guilt and shame. Dr. Gureasko opined that appellant again became a front line combat "grunt" and his supervisors at the employing establishment became his superior officers from Viet Nam who had no understanding of the experience of enlisted men and were sending them into combat to fight and die. Dr. Gureasko opined that appellant "equated his combat experiences with sending disabled veterans back to work where they would be traumatized again," and that "he could not resolve this situation without becoming violent" or leaving work, and that "this also accounts for the fact that he was promoted, received satisfactory performance ratings, and failed to seek any substantial treatment between 1992 and 1998." Dr. Gureasko opined that "[t]he precipitating event for his leaving work was his return to his permanent position at the [employing establishment] following a year in a temporary position."

Dr. Gureasko discussed appellant's prognosis and opined that it would become much worse if he had to return to the employing establishment. On an attached work restriction evaluation Dr. Gureasko opined that appellant was totally disabled.

By decision dated February 4, 1999, the Office rejected appellant's claim finding that the evidence of record failed to establish a causal relationship between the diagnosed conditions and the accepted factors of employment. The Office found that, although appellant felt he was pressured to meet the set performance goals of his job, no factual evidence of pressure was submitted, such that his perception of pressure was not corroborated. The Office found that, although Dr. Gureasko opined that appellant's work aggravated appellant's post-traumatic stress disorder because he overidentified with other veterans, this was clearly self-generated and not deemed to be in the performance of duty.

On March 29, 1999 appellant requested an oral hearing on the rejection of his claim.

By decision dated May 6, 1999, the Branch of Hearings and Review noted that appellant's oral hearing request was untimely filed and it denied his claim on the basis that the issue could be equally well addressed by requesting reconsideration and by submission of further evidence to the Office.

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, or an aggravation of a preexisting emotional condition, in the performance of duty, appellant must submit the following: (1) factual evidence 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, or an aggravation of a preexisting disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition or aggravation.³ 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.⁴

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 illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Id.*

covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.⁵ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment, and does not come within the coverage of the Act.⁶

When working conditions are alleged as factors in causing 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.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹

In the instant case, appellant has implicated multiple compensable factors of his employment in the development of his emotional disability. As noted above, when an employee experiences an emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his ability to carry out assigned duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.¹⁰ In this case, appellant has alleged that he developed major depression, anxiety and aggravation of his preexisting post-traumatic stress disorder causally related to his ability to meet employing establishment performance goals and perform other required duties of his position.

The factual evidence of record, as documented by the statement of Mr. Lofland, supports that one of the primary functions of appellant's job was "to reduce lost time due to injuries," or

⁵ *Donna Faye Cardwell*, *supra* note 3, *see also Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Id.*

⁷ *See Barbara Bush*, 38 ECAB 710 (1987).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁰ *Donna Faye Cardwell*, *supra* note 3, *see also Lillian Cutler*, *supra* note 5.

to reduce “lost workdays.” The record supports that the employing establishment established numerical quotas or frequency goals, as it admitted in its October 14, 1998 controversion letter, which it expected to be met by appellant. Appellant alleged that the requirement or “pressure” to meet the lost workday goals, to reduce and to prevent lost workdays, caused him an extreme amount of stress and worsened his post-traumatic stress disorder. The record supports that under *Lillian Cutler*, this would be a compensable factor of appellant’s employment.

This same principle would also apply to appellant’s anxiety regarding his ability to meet employing establishment chargeback reduction performance goals, continuation of pay reduction performance goals and the Act’s benefits termination performance goals.

The Board notes that appellant alleged that each time that “pressure” was on or the requirement arose, to have a report prepared that was impossible to prepare (due to the situation, as articulated by appellant, that he had no control over the data generation or actions of the Office involving compensation awards, terminations or the granting of schedule awards, despite employing establishment preset goals regarding these actions), his post-traumatic stress disorder worsened. This was a requirement of his job and is a compensable factor.

Mr. Loflen further documented that, as part of appellant’s job, it was up to appellant to get the doctor to put injured employees on limited duty. As this was part of appellant’s job requirements, it is a compensable factor of his employment.

Mr. Loflen also corroborated that it was the division policy to follow up total disability statements from personal physicians with a review by a postal medical officer to ensure that the employee was not able to perform some type of restricted duty. A requirement of appellant’s employment and an admitted division policy, was to refer employees found to be disabled by one physician to a “postal medical officer” to ensure that the employee was not able to perform some type of restricted duty, it is a compensable factor of his employment.

Mr. Loflen further corroborated that it was one of appellant’s functions to interface with supervisors to find work within the employee’s medical restrictions. As a requirement of appellant’s position was to tell supervisors to find work and/or modify jobs to employ the injured worker, this is a compensable factor of his employment under *Cutler*.

As compensable factors have been established, the medical evidence of record must be evaluated to determine whether it supports that appellant developed any emotional disability causally related to any or all of these factors.

The medical evidence from the VA medical center generated in the course of appellant’s ongoing treatment for his service-related post-traumatic stress disorder, consisting of multiple notes and reports from Drs. Beatty, Rhyne and the VA psychiatric intern, opined that appellant’s major depression and preexisting post-traumatic stress disorder was caused and/or aggravated by his employment, due to job-related stress. Dr. Rhyne noted that he felt a lot of pressure from two levels of management above him, and that his job was stressful because he could identify with the claimants, but that his job was to find reasons to deny the claim. Dr. Rhyne indicated that appellant claimed that when his numbers were bad, his job was on the line and he had chest pains all day. She noted that appellant felt much pressure and stress over having to meet

management goals over which he felt he had little control, such as the lost workdays goal and the chargeback reduction goal, that he implicated specific tasks such as talking with clients and, regardless of their treatment of him, having to maintain complete control and that he did not feel supported when clients were displeased and went to his supervisor.

The medical records further noted that appellant's postal job doing workers' compensation evaluations was depressing when he refused claims for veterans he sympathized with. It was also noted that appellant experienced internal conflict with his role in denying claims, and that he felt stress and was troubled when he recommended rejection of some of the claims submitted. These medical reports, when considered all together tend to generally support appellant's allegations of causal relation.

However, the second opinion medical report from Dr. Gureasko, upon which the Office relied in denying appellant's claim, stated that appellant was afraid of losing control, and diagnosed major depressive disorder -- in partial remission and chronic post-traumatic stress disorder as Axis I diagnoses, a personality disorder as an Axis II diagnosis; Raynaud's syndrome and the disability due to gunshot wound as the Axis III diagnoses, and as the Axis IV diagnosis addressing additional environmental stressors, that appellant's unmet dependency needs from childhood translated into Mr. Lang becoming his uncaring father equivalent. Dr. Gureasko noted, however, that this was not due to his preexisting post-traumatic stress disorder. Dr. Gureasko opined that it was clear to him that "[appellant's] employment aggravated his post-traumatic stress disorder because it resulted in his over-identifying with veterans such as himself," resulting in guilt and shame. Dr. Gureasko opined that appellant again became a front line combat "grunt" and his supervisors at the employing establishment became his superior officers from Viet Nam who had no understanding of the experience of enlisted men and were sending them into combat to fight and die. Dr. Gureasko opined that appellant "equated his combat experiences with sending disabled veterans back to work where they would be traumatized again," and that "he could not resolve this situation without becoming violent" or leaving work, and that "this also accounts for the fact that he was promoted, received satisfactory performance ratings, and failed to seek any substantial treatment between 1992 and 1998." Dr. Gureasko opined that "[t]he precipitating event for his leaving work was his return to his permanent position at the [employing establishment] following a year in a temporary position."

The Board finds that Dr. Gureasko's report is not a sufficient basis upon which to deny appellant's claim, as it did not directly address the effect of any of the compensable factors of employment and creates a conflict with the other medical reports of record.

The Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Therefore, the case must be remanded to the Office for a referral to an appropriate specialist for a rationalized medical opinion as to whether any or all of the implicated compensable factors of employment are involved in the development of appellant's condition.

The issue of whether the Office abused its discretion by denying appellant's request for an oral hearing is rendered moot by the Board's decision in this case.

Consequently, the decision of the Office of Workers' Compensation Programs dated February 4, 1999 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board; the decision of the Office dated May 6, 1999 is rendered moot.

Dated, Washington, DC
February 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member