U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE KOUTRAKOS, widow of NICHOLAS KOUTRAKOS and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Brooklyn, NY

Docket No. 99-1095; Submitted on the Record;
Issued May 29, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the employee sustained an emotional condition in the performance of duty.

On December 10, 1994 the employee (appellant's deceased exhusband),[1] filed a claim for bipolar mania that he attributed to a stressful two-month training program in Georgia. In a statement accompanying his claim form, the employee noted that he had been hired by the employing establishment on September 23, 1991 as a criminal investigator and that he was required to complete an intensive two-month training program in Georgia from October 10 to December 10, 1991. The employee stated that this training program consisted of eight hours of daily classes and two to three sessions per week of rigorous calisthenics and weight lifting for 90 minutes after regular classroom hours. He also stated that the training program involved pressure to pass all tests with discharge upon failure of any test twice and a requirement to run two miles. The employee stated that his condition was also aggravated by the absence of his social support system of family and friends and that no communication with supervisors and family members made early medical intervention impossible.

The employee stopped work on December 10, 1991, returned on December 16, 1991 and was admitted to the psychiatric unit of a hospital on December 17, 1991, where he remained until January 14, 1992. The employing establishment terminated the employee's employment on May 29, 1992 on the basis that he was not capable of performing his duties due to his bipolar illness.

In a report dated June 24, 1994, Dr. Serafettin Tombuloglu, a Board-certified psychiatrist, who was the employee's attending physician during his psychiatric hospitalizations from

[1] Appellant and the employee were divorced August 29, 1994. The employee committed suicide on January 19, 1995.

December 17, 1991 to January 14, 1992 and from August 9 to 25, 1992, diagnosed manic bipolar disorder, schizoaffective disorder and paranoid personality disorder. Dr. Tombuloglu stated: "It is more than likely that his condition was precipitated and definitely aggravated by his employment activity." In a report dated November 14, 1994, Dr. Anthony J. Angelo, the employee's attending Board-certified psychiatrist since, his discharge from his first hospitalization, stated:

> "In reviewing this case, it seems clear in retrospect that [the employee] suffered a psychotic episode in early December 1991, while in training with the [employing establishment]. The stressful nature of the training contributed to the onset of the psychosis in this vulnerable individual, which resulted in his first psychiatric hospitalization. The brief improvement and subsequent decompensation indicates that he was continuously psychotic in a muted form until his second hospitalization. Following that event there have been continual residual psychotic signs such as inappropriate smiling and laughing, talking to self, bizarre head movements and gestures, almost total social withdrawal and irritability.…
>
> "It is my opinion that [the employee] has been continuously and completely disabled by his mental illness since December 1, 1991. It is further my opinion that his illness arose as a result of the stress of his employment at the time of his first psychotic episode. Finally it is my opinion that [the employee] is permanently and totally disabled by his persistent mental illness. [The employee's] prognosis is grave and I see no reasonable chance of recovery. (My initial impression was more hopeful but the persistent nature of the psychotic symptoms, the inability to resume social or work function and the recurrence of violent behavior are poor indicators for recovery.)"

By decision dated January 26, 1995, the Office of Workers' Compensation Programs found that the employee's injury did not occur in the performance of duty, as training was an administrative matter not related to his employment duties. By letter dated January 23, 1996, appellant requested reconsideration, contending that the Office erred in finding that the required training was not a compensable factor of employment. Appellant submitted a report from Dr. Angelo dated January 19, 1996, in which he stated that the employee was well with no indication of mental illness until his training with the employing establishment. Dr. Angelo noted that the employee was married, a college graduate, continuously employed prior to his illness and described as pleasant and outgoing by himself and by family members, with whom he maintained good relationships. He then described the "emotionally and physically stressful experience" the employee underwent in his training assignment:

> "The training experience consisted of a rigorous program of approximately eight hours a day of classroom work, study time, rigorous exam[ination]s and increasingly rigorous physical exercise. These are all powerful stressors, individually. In combination and in addition to social and physical isolation, these factors are sufficient to provoke a manic episode in a vulnerable individual. [The employee] had a clear-cut family history of affective disorder and was, therefore, at risk for an episode of affective illness himself.)"

Dr. Angelo then noted that during his training the employee developed obvious symptoms that he was decompensating, including losing a large amount of weight, avoiding returning home to his family at Thanksgiving, expressing paranoid ideas to his wife about her faithfulness and the paternity of their son and expressing delusions to his wife that he was being given lie detector tests, surreptitiously observed and given special treatment. Dr. Angelo then stated:

> "[Appellant] graduated and returned home on December 10, 1991, clearly mentally ill upon arrival. There was not sufficient time for him to become so ill unless it had developed during the course of his job-related training. His parents relate that he was bizarre, not making sense and [they] were shocked at his weight loss. [He] was suspicious of his wife and wanted her to leave his parents' house; he denied that his child was related to him. On the next day [the employee] called the police to have them remove his wife from his parents' house. [He] also purchased a rifle and a large amount of ammunition. [The employee] called his supervisor at the [employing establishment] and requested leave time. [He] was informed he must return to work on Monday December 16, 1991.…
>
> "[The employee] returned to work on December 16, 1991; on December 17, 1991 [appellant] called [his supervisor], who stated that [he] needed medical attention, needed to see a psychiatrist. Dr. Angelo stated that [the employee] had attended the Christmas party and had stood in a corner talking to himself and spitting. [The supervisor] stated that [the employee] had had a physical confrontation on the job with another employee ([he] had actually struck this person.) At this time, [the employee] should have been immediately hospitalized for the safety of himself and others. He was clearly psychotic and was dangerous as a result of the psychosis. [The employing establishment] instead chose to simply release him to himself in such a condition.
>
> "[The employee] returned home on December 17, 1991 and was so obviously psychotic and threatening that his family called the county psychiatric mobile crisis team. [He] was hospitalized immediately, with police assistance."

Dr. Angelo stated that on January 27, 1992 he sent a report to the employing establishment indicating that he believed the employee "was ready to return to work and that with continued medication treatment to stabilize his mood disorder his ability to tolerate stress and his prognosis was good." Dr. Angelo stated that, the employing establishment's decision to terminate the employee's employment was "extremely demoralizing" and that his compliance with his treatment regime "slowly eroded after this," with the second hospitalization on August 9, 1992 after the employee had discontinued his medication. Dr. Angelo then stated:

> "The psychotic elements of his disorder slowly worsened. These factors combined with his demoralization about the loss of career and with the natural tendency to deny mental illness, resulted in a downward spiral in function and wellness."

* * *

> "It is my considered opinion, with a reasonable degree of medical certainty, that the mental illness suffered by the [the employee] was the direct result of the failure to monitor the effect of the inordinate stress placed upon him by the Federal Law Enforcement Training Center. This, despite recognition by his supervisor that something was wrong with [the employee]. Further, the failure of the [employing establishment] to allow [him] to return to work after medical stabilization was the major factor in his demoralization and his inability to recover from his illness. In my professional opinion this illness is a work-related illness and his ultimate suicide is directly related to his improper evaluation, failed supervision and subsequent termination from employment."

In a statement dated February 27, 1996, the employing establishment stated that the employee's training consisted of class work and physical training, that the training was "very structured" and that "each student must not only pass academic tests, but must pass physical training test as well (*i.e.*, use of firearms, self-defense tactics and general physical conditioning)." The employing establishment also stated that trainees were free after class to pursue any activity they wished, that trainees had access to free telephone service during duty hours to call their office and speak to their supervisor, that the training course "might seem stressful to some" and that the employee was treated no differently than the other tens of thousands of agents from the employing establishment, who had attended the training. In a telephone conference on March 20, 1996 the employing establishment stated that a break of 10 minutes was provided each hour, that there was no homework, that the required two-mile run was at the end of the eight-week course and that the pressure to pass tests was part of being a student. In a statement dated March 21, 1996, the employing establishment stated that the physical training occurred during, not after class hours.

By decision dated April 17, 1996, the Office vacated its January 26, 1996 decision and found that the conditions of the employee's training assignment were compensable. The Office then found that the employee's statements on these conditions were inaccurate and exaggerated and that Dr. Angelo's reports were insufficient to establish causal relation because they relied upon the employee's account.

On April 2, 1997 appellant requested reconsideration and submitted additional evidence including the medical records from his hospitalization from December 17, 1991 to January 14, 1992. By letter dated May 5, 1997, the Office advised appellant that it needed additional information: A description of the jobs he held between college and his employment at the employing establishment, statements from former employers, if possible, on the employee's performance and a report from the employee's family physician describing whether he had any emotional problems or mental illness before October 1991 and describing how physically fit or unfit he was prior to October 1991. Appellant submitted the application for employment with the employing establishment, which contained a list of the employee's work experience, which was as an accountant. Appellant also submitted a report dated May 17, 1997 from Dr. Michael J. Lemonedes, who stated that he had been his patient since infancy and that "[a]t no time did he evidence any severe emotional problems." Dr. Lemonedes also stated that appellant was last seen on June 11, 1991 for a preemployment physical examination and that he was overweight at 229 pounds and had borderline hypertension.

By letter dated June 23, 1997, the Office advised appellant that it needed another report from Dr. Lemonedes describing any emotional or mental illness problems, even if not severe and containing the doctor's opinion of whether the employee was physically unfit at his last evaluation. The Office also advised appellant that it needed a description of the employee's involvement in sports prior to October 1991. Appellant submitted the employee's preemployment medical questionnaire and a report dated August 3, 1998 from Dr. Lemonedes stating that the employee did not manifest any symptoms of emotional or mental illness and that the employee was considered overweight but not physically unfit. Also submitted were a statement from a prior employer stating that the employee's duties as a junior accountant were performed satisfactorily with no problems regarding his employment and a January 27, 1992 report from Dr. Angelo to the employing establishment stating that the employee's recovery was complete on medication, that the doctor expected that the employee would be successful in avoiding future manic episodes and that the employee was ready to return to work.

By decision dated August 14, 1997, the Office found that there were sufficient gaps in the medical and factual information to prevent the preparation of an accurate statement of accepted facts for referral for a necessary medical evaluation.

By letter dated August 4, 1998, appellant requested reconsideration and stated that the employee left college from 1982 to 1984 to earn money, which he used to complete his college education and that his hobbies were weight lifting, karate and occasionally jogging. By decision dated November 2, 1998, the Office found that the medical evidence was insufficient to establish an employment-related emotional condition, as it did not contain a complete history of the claimed condition and did not explain why the employee's condition was considered causally related to his employment.

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

As found by the Office in its April 17, 1996 decision, the employee's reaction to conditions encountered during his mandatory training with the employing establishment can be covered under the Federal Employees' Compensation Act.[2] The employing establishment disputed some of the employee's allegations of the conditions of his training, mainly the allegation that physical training was done outside of class hours. The employing establishment, however, acknowledged that the employee's training involved very structured class work, a requirement to pass tests and physical training including calisthenics and weight training, culminating in a physical training test that included a two-mile run. However, appellant's burden of proof is not discharged by establishing an employment factor, which may give rise to a compensable disability under the Act. Appellant also has the burden of establishing by the weight of the reliable, probative and substantial evidence that her exhusband's condition was caused or adversely affected by his employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief

[2] *See Brenda Getz*, 39 ECAB 245 (1987).

of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[3]

The conditions of the employee's training described by the employing establishment are consistent with the description contained in Dr. Angelo's January 16, 1996 report. He attributed the employee's condition, which was diagnosed as a manic bipolar disorder, in part, to the program of classroom work, rigorous examinations and increasingly rigorous physical exercise. Dr. Angelo explained that these were all powerful stressors and when combined with the social and physical isolation from his friends and family, were "sufficient to provoke a manic episode in a vulnerable individual." He also explained why he considered the employee to be at risk for an episode of affective illness, noting a family history of such illness. Dr. Angelo explained why he considered the employee "clearly mentally ill" upon his return from training and stated, "[t]here was not sufficient time for him to become so ill unless it had developed during the course of his job-related training."

Dr. Angelo, however, also attributed the employee's emotional condition to factors that are not covered under the Act. In a report dated January 27, 1992, Dr. Angelo stated that the employing establishment's decision to terminate the employee's employment was "extremely demoralizing" to him and that the employing establishment's failure to allow the employee to return to work "was the major factor in his demoralization and his inability to recover from his illness." Actual termination of employment or failure to reinstate an employee is not covered under the Act in the absence of a showing of error or abuse.[4] Appellant has not established such error or abuse. Dr. Angelo also discussed the social and physical isolation from the employee's friends and family during his training, but this is not a compensable factor of employment.[5]

Because Dr. Angelo cited both compensable and noncompensable factors as the cause the employee's emotional condition, the case will be remanded to the Office for preparation of a statement of accepted facts delineating the compensable and noncompensable factors of employment. This statement of accepted facts should be provided to Dr. Angelo, who should be requested to submit a rationalized medical opinion whether the employee's emotional condition was causally related to compensable factors of his employment.

[3] *Bruce E. Martin*, 35 ECAB 1090 (1984).

[4] *Mary L. Brooks*, 46 ECAB 266 (1994); *Sharon K. Watkins*, 45 ECAB 290 (1994); *Walter Asberry, Jr.*, 36 ECAB 686 (1985).

[5] *See Alfred Vanter*, 34 ECAB 1590 (1983) (the Board found that appellant's desire to be close to his invalid wife did not constitute a compensable factor of employment).

The decision of the Office of Workers' Compensation Programs dated November 2, 1998 is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision.

Dated, Washington, DC
May 29, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member