

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND S. MALLORY and DEPARTMENT OF THE NAVY,
MARINE CORPS LOGISTICS BASE, Barstow, CA

*Docket No. 00-2409; Submitted on the Record;
Issued April 19, 2002*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's temporary aggravation of rheumatoid arthritis had resolved by June 18, 1998; and (2) whether appellant has established an emotional condition causally related to compensable factors of his federal employment.

On March 12, 1998 appellant, a 45-year-old utilities system operator, filed a claim alleging that he sustained emotional stress as a result of actions by his supervisor. By decision dated June 2, 1998, the Office denied the claim.

In a decision dated July 22, 1999, the Office modified its June 2, 1998 decision. The Office accepted the claim for left lateral epicondylitis¹ and temporary aggravation of rheumatoid arthritis, resolved as of June 18, 1998. It was further determined that appellant did not establish an emotional condition causally related to his federal employment and that he was not entitled to compensation for wage loss after June 18, 1998.

By decision dated June 7, 2000, the Office denied modification of its prior decision.

The Board finds that the Office properly determined that residuals of the rheumatoid arthritis aggravation had ceased as of June 18, 1998.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.² To

¹ The Office indicated that appellant remained entitled to medical benefits for this condition.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.³

In the present case, the Office referred appellant for second opinion examinations with respect to both physical and emotional injuries. In a report dated May 14, 1999, Dr. Richard S. Gordon, a Board-certified rheumatologist, provided a history and results on examination. Dr. Gordon opined that appellant's work duties had temporarily aggravated his underlying rheumatoid arthritis. He noted that appellant had stopped working on June 18, 1998 and the temporary aggravation had ceased as of that date. Dr. Gordon explained that when appellant stopped working he was no longer performing physical labor that would aggravate the inflammation in his joints.

The Board finds no probative medical evidence establishing a continuing employment-related arthritis condition or disability as of June 18, 1998. The record indicates that appellant continued to receive treatment for rheumatoid arthritis; there is, however, no reasoned medical opinion on causal relationship with employment. For example, in a report dated October 22, 1998, Dr. V.M. Padmanabha, a Board-certified internist, diagnosed exacerbation of rheumatoid arthritis and benign essential hypertension and opined that appellant was totally and permanently disabled. Dr. Padmanabha did not provide a history or discuss appellant's employment duties, and he did not offer a reasoned opinion with respect to a continuing employment-related arthritis condition. The Board accordingly finds that Dr. Gordon represents the weight of the evidence on this issue.

With respect to left lateral epicondylitis, the Office accepted that appellant remained entitled to medical benefits. The Office did not accept any period of disability for work associated with the left elbow condition and it remains appellant's burden of proof to establish that any disability for which compensation is claimed is causally related to the employment injury.⁴ There is no evidence that the epicondylitis condition resulted in any disability for work. A second opinion referral physician, Dr. J. Pierce Conaty, a Board-certified orthopedic surgeon, opined in a report dated May 21, 1999 that appellant was not disabled due to an orthopedic condition. Appellant did not submit any probative medical evidence regarding disability for work causally related to the accepted left elbow condition, nor is there evidence sufficient to establish any other orthopedic conditions as employment related.

The Board further finds that appellant has not established an emotional condition causally related to compensable work factors.

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 factors of his federal employment.⁵ To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual

³ *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Pamela R. Rice*, 38 ECAB 838 (1987).

evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) 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.⁶

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 coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁷

Appellant's allegations include a claim of harassment and discrimination by his supervisor. The record, however, does not contain sufficient evidence to establish a compensable work factor in this regard. Appellant indicated that he had filed complaints with the Equal Employment Opportunity Commission and grievances with the employing establishment, but the record does not contain any findings as to allegations of harassment or error. The supervisor has denied any harassment and the record contains conflicting witness statements that are of little probative value. With respect to specific administrative actions by a supervisor, it is well established that administrative or personnel matters are considered compensable factors only when the evidence discloses error or abuse by the employing establishment.⁸ The Board finds that the record does not contain any probative evidence that is sufficient to establish harassment, discrimination or administrative error as a compensable work factor in this case.

The Office has accepted that appellant did substantiate compensable work factors based on prior traumatic injuries and the performance of appellant's work duties. In order to meet his burden of proof to establish an employment-related emotional condition, appellant must submit probative medical evidence. The issue of causal relationship is a medical issue, and the medical evidence must provide a reasoned opinion on the relationship between a diagnosed emotional condition and the compensable work factors. Appellant did not submit a reasoned medical opinion on this issue. In a report dated June 24, 1998, Dr. Jeremiah Umakanthan, a Board-certified psychiatrist, stated that appellant's symptoms of anxiety, insomnia and depression were precipitated by job stress resulting from conflicts and perceived harassment from his supervisor. As noted above, the record does not substantiate a compensable work factor with respect to

⁶ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

⁸ See *Michael Thomas Plante*, 44 ECAB 510 (1993); *Kathleen D. Walker*, 42 ECAB 603 (1991).

harassment or administrative error by the supervisor and therefore this report is of little probative value.

The Office referred appellant to Dr. Reynaldo Abejuela, a Board-certified psychiatrist, for evaluation. In a report dated May 10, 1999, he stated that appellant had been subject to discrimination by his supervisors and this had caused depression and anxiety. Dr. Abejuela opined that there were no current disabling residuals. By letter dated June 21, 1999, the Office advised Dr. Abejuela that harassment or discrimination were not accepted as a compensable work factor and asked him to again review the statement of accepted facts and clarify his prior opinion on causal relationship. In a report dated July 14, 1999, he opined that none of the accepted compensable work factors had contributed to appellant's depression and anxiety.

The Board finds no probative medical evidence of record containing an accurate background and a reasoned medical opinion supporting causal relationship between compensable work factors and a diagnosed emotional condition. Accordingly, appellant did not meet his burden of proof to establish an employment-related emotional condition in this case.

The decisions of the Office of Workers' Compensation Programs dated June 7, 2000 and July 22, 1999 are affirmed.

Dated, Washington, DC
April 19, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member