

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MOHAMMED A. HUSSAIN, M.D. and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Washington, DC

*Docket No. 03-264; Submitted on the Record;
Issued February 21, 2003*

DECISION and ORDER

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

The issue is whether appellant established that he sustained physical and emotional conditions in the performance of duty.

On January 31, 2001 appellant, a 54-year-old physician, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he suffered from adjustment disorder and aggravation of asthma and hypertension as a result of his federal employment. Appellant identified January 8, 2001 as the date he first became aware of his condition. He ceased working January 12, 2001 and returned to work on February 1, 2001.

The Office of Workers' Compensation Programs denied appellant's claim by decision dated October 18, 2001, finding that appellant failed to establish that his claimed condition arose in the performance of duty. Appellant subsequently requested an oral hearing, which was held May 23, 2002.

In the August 5, 2002 decision, the Office hearing representative noted that appellant alleged that "he sustained injury from long hours of work on call without adequate leave, help, backup or equipment..." The hearing representative further stated that "[s]uch work factors, if proved as actually existing, are legally capable of causing an injury in the performance of duty." He found, however, that appellant failed to provide sufficient evidence establishing that he was actually subjected to these factors and, therefore, had failed to prove the occurrence of these alleged factors of employment.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

To establish that he sustained an emotional condition causally related to factors of his federal employment, appellant must submit: (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 condition or psychiatric

disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.¹

The Board has held that an emotional reaction to a situation in which an employee is trying to meet the regular or specially assigned requirements of his employment is compensable. Additionally, the Board has found that employment factors such as an unusually heavy workload and the imposition of deadlines may be covered under the Federal Employees' Compensation Act.²

In a November 16, 2001 letter to the Office, appellant stated that “[a]fter the departure of the Service chief from [my] department, I became the only physician until [September] 2001 (4 years).” Appellant further noted that during the last four years he performed both clinical and administrative work and was “on call practically 365 days a year” because of the lack of physician coverage. He also stated that he had not planned a vacation, family visits, a professional meeting, or recreational activities for the past four years.

Appellant made similar allegations in an earlier statement dated April 23, 2001. The lack of adequate coverage reportedly began in July 1997, and appellant explained that he had approached management on numerous occasions regarding the provision of adequate physician coverage.

The Office offered the employing establishment at least two opportunities to comment on appellant's various allegations. However, the employing establishment did not respond. As such, there is no basis in the record to question the veracity of appellant's allegations concerning his hours of work, his on-call status and the lack of adequate physician coverage. The type of evidence that the hearing representative found lacking in the instant claim is information that is generally in the custody of the employing establishment.

Office regulations provide that an employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to the Office that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position.³ The applicable regulation further provides that the employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.⁴

In its March 30, 2001 request for information in response to appellant's allegations, the Office properly informed the employing establishment that without a response the Office may

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

² See *Lillian Cutler*, 28 ECAB 125 (1976).

³ 20 C.F.R. § 10.117(a) (1999).

⁴ *Id.*

accept appellant's allegations as factual.⁵ As previously noted, the employing establishment did not respond to the Office's March 30, 2001 request for information. A second request dated July 10, 2001 also went unanswered.

The case will be remanded to the Office to again request the employing establishment to provide comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant relative to his claim. Should no response be forthcoming, the Office may proceed to accept appellant's allegation as factual. Following this and such other factual development as the Office deems necessary, the Office should prepare a statement of accepted facts and refer appellant to an appropriate physician for an opinion on any condition or injury sustained as a result of any compensable factors. If the employing establishment does not respond to the Office's third request, the Office may accept appellant's allegations as factual in accordance with its regulations and in preparing its statement of accepted facts.⁶

The August 5, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
February 21, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See 20 C.F.R. § 10.117(b); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.4 (d)(1) (October 1995).

⁶ *Alice F. Harrell*, 53 ECAB ____ (Docket No. 01-1249, issued August 1, 2002).