

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JORGE A. RODRIGUEZNEGRON and DEPARTMENT OF THE AIR FORCE, AIR FORCE SYSTEMS COMMAND, EDWARDS AIR FORCE BASE, CA

*Docket No. 02-1291; Submitted on the Record;
Issued June 3, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's heart surgery was due to stress caused by his employment.

On May 29, 2000¹ appellant, then a 58-year-old environmental specialist, filed occupational disease claims (Forms CA-2), alleging that on May 1, 2000 he first realized his heart surgery/stress was employment related and that he was afraid of losing his job.² In a memorandum dated May 30, 2000, appellant attributed his stress to being placed in an overhire position and fear of losing his job. Appellant stated that his stress was caused "by [Richard A.] Wood throughout the years that he had been director of EM [environmental management]." He stated that Mr. Wood was "taking advantage of me and that stresses me to the point of blowing up."

Appellant submitted a January 8, 1999 memorandum from Mr. Wood as an example of his taking advantage of appellant and causing appellant stress. In this memorandum, Mr. Wood granted appellant permission to attend training and noted that appellant would remain in his overhire position during this period. Upon completion of appellant's training, Mr. Wood indicated that appellant could return to his duty station or another position in the government, if offered. Lastly, he noted that, if a reduction-in-force (RIF) occurred, there was no guarantee that appellant could "remain in his current position."

In a May 1, 2000 procedure record, Dr. Venkat Devineni, an attending physician, reported that appellant underwent a "left heart catheterization, coronary angiography, and left ventriculogram via the right femoral artery."

¹ Appellant subsequently filed a duplicate occupational disease claim dated May 15, 2001 alleging that on May 1, 2000 he first realized his heart surgeries were due to his employment stress.

² The Board notes that the Office of Personnel Management approved appellant's disability retirement by letter dated August 27, 2001.

Dr. Siva Arunsalam, a Board-certified internist with subspecialty certificates in cardiovascular disease and interventional cardiology, reported performing a “percutaneous transluminal coronary angioplasty” on appellant in a May 1, 2000 procedure report.

Dr. Devineni diagnosed an “extreme heart condition” which he attributed to the “great amount of stress in the last two years related to his work” in a May 31, 2000 report.

In a June 8, 2000 note, Dr. Devineni noted that appellant was to be admitted on June 13, 2000 for a medical procedure. His diagnosis was coronary artery disease and status postmyocardial infarction.

In an email dated June 5, 2000, to Larry Tolley, appellant’s supervisor, appellant stated that he found the departure of Greg Beckner, a coworker, to be “extremely stressful” and Mr. Beckner related “He saw my package together with his and other people in overhire positions from EM laying (sic) on top of a desk.”

By decision dated August 2, 2000, the Office of Workers’ Compensation Programs denied appellant’s claim on the basis that he failed to establish any compensable factor of employment. Specifically, the Office found that appellant’s reaction to his permanent job being converted to an overhire position, his reaction to a January 8, 1999 memorandum from Mr. Wood regarding RIF actions and possible bumping and appellant’s frustration at not qualifying for other government positions were not sustained in the performance of duty.

In an August 23, 2000 response to appellant’s comments, Mr. Tolley noted, regarding the 028 series personnel being placed in an overhire status, there was “an increase in agitation from several of those impacted -- [appellant] more so than the others” and that was the reason he suggested appellant take advantage of the employing establishment’s education offer to meet the qualifications for the 020 series. Mr. Tolley stated that appellant “completed the education and was expecting to be put into a 020 slot.” Upon appellant’s return from training, Mr. Tolley noted that appellant was more rounded with the exception being the issue of being reassigned to a 020 slot position. Appellant would then become agitated. Mr. Tolley, although he was not present at the time, related that an incident occurred when appellant was locked out of the local area network (LAN) system. Due to his being locked out of the LAN system, appellant “could not sign on to his mail or his computer. He was told he no longer worked here.” Mr. Tolley noted that this occurred “after he had been turned down a job at the 412th that did not provide the 020 series position (what he expected...).”

Mr. Tolley, in a May 8, 2001 memorandum, noted that all the employees, including appellant, in the Series 028 exhibited a degree of stress since the overhire letter. He stated that appellant had “been working hard to keep up with his workload, and he has done so” and that appellant “has not been able to get additional job-related training to do his work more efficiently.”

In a May 10, 2001 letter, Mr. Tolley recommended that appellant be retired on medical disability. In support of his recommendation, Mr. Tolley stated “Job stress is causing the employee to become increasingly agitated” and appellant’s “continued work in EM was becoming more difficult” for appellant. Mr. Tolley noted that appellant “blew up at me via

emails complaining that I have not been moving fast enough to complete the form he gave me” and that appellant got into an email fight with Mr. Tolley and other individuals regarding what was accomplished at a meeting appellant attended. On May 9, 2001 Mr. Tolley responded to a telephone call from appellant regarding an incident with his current supervisor. Mr. Tolley met with appellant’s supervisor and noted:

“The supervisor apparently had met that morning with the employee and threatened to put a letter of reprimand into his folder. At the request of the supervisor, a TSgt was also present at this meeting. The supervisor was not happy to hear that the employee had been complaining about not receiving sufficient training, and according to the supervisor, this was creating a morale problem within the office.”

Mr. Tolley then informed appellant that from his “observation the employee was probably not receiving sufficient training” and that he had heard this complaint over the past few years from other employees in Civil Engineering. Appellant’s supervisor related to Mr. Tolley that appellant “just could not do the work,” that appellant was not qualified for the position and that “he wanted him out of there.” In concluding, Mr. Tolley noted that appellant was detailed by EM to Plans and Programs, at appellant’s request and that:

“The stresses of the new job in an office that is undergoing an A-76 study, and the inability of the office to provide additional support to transition him into the job appear to be too great an obstacle to overcome.”

Appellant requested reconsideration by letter dated September 28, 2001 and submitted numerous materials including copies of email correspondence, medical reports and diagnostic tests, memorandum from his supervisor, a 13-page proposal regarding reengineering of EM, a history of his sick and annual leave record, a December 18, 2001 witness statement by Michele LaComb, a 1998 memorandum concerning training and placement of employees in overhire positions and a June 12, 2000 letter regarding stress management.

Dr. Devineni, in a May 22, 2001 report, stated that he had treated appellant since May 2000 for acute coronary syndrome which required a coronary angioplasty of appellant’s right coronary artery. He noted that appellant “has since had severe procedure (sic) requiring coronary angiography and subsequent angioplasty to the coronary arteries” which he attributed to appellant’s stress at work. In support of this causal relationship, Dr. Devineni noted that appellant “appears to be having a great deal of stress at work and his symptoms of chest pain seem to be exacerbated when he is at work.”

In a September 10, 2001 memorandum, appellant attributed his heart surgeries to the stress of working in the environmental management section. He noted “working at home on flexiplace work schedule has not helped the symptoms.”

In a report dated May 22, 2001, Dr. Devineni noted that appellant “appears to be having a great deal of stress at work and his symptoms of chest pain seem to be exacerbated when he is at work.” He noted that he had treated appellant since May 2000 when he diagnosed appellant as “having an acute coronary syndrome.”

In a memorandum dated November 18, 2001, Mr. Tolley denied cursing appellant out on the telephone although he agreed that there had been a disagreement between himself and appellant during the telephone call.³ Regarding appellant's allegation that Mr. Tolley harassed him by constantly calling appellant at home, Mr. Tolley noted that appellant was on flexiplace and Mr. Tolley "called to determine where he was on that work." Mr. Tolley admitted that he also called to get advice from appellant regarding toxics due to appellant's experience with toxic material. In addition, during this period, Mr. Tolley and appellant were working to put together appellant's compensation packages for workers' compensation and medical retirement. Lastly, Mr. Tolley noted that the civil engineering section, to which appellant transferred, had greatly reduced its staff and that "this situation could set up stressful situations."

In a January 17, 2002 letter, Frank J. Biggins, Chief, Human Resources Flight, noted:

"The operational tempo is quite high in the Comprehensive Planning Flight and [appellant] managed very well. However, the workload and stress incurred, exacerbated his medical problems to the point where the stress was more than he wanted to endure."

By decision dated February 5, 2002, the Office affirmed the denial of his claim as modified. In affirming the denial, the Office found that appellant had established two compensable factors. The compensable factors found were the August 21, 2000 incident when appellant was locked out of the LAN network and was told he did not belong as he was reassigned to the 412th Squadron and overwork due to the Civil Engineering office being extremely understaffed. However, the Office found the medical evidence insufficient to establish a causal relationship between appellant's condition and the accepted factors of employment. Thus, the Office affirmed the denial of his claim, but modified it to reflect that the denial was based on the failure to establish a causal relationship rather than the failure to establish a compensable factor in the performance of duty.

The Board finds that appellant's heart surgery was not due to stress caused by 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.⁴ On the other hand, the disability is not covered where it results from such factors as an

³ The subject of the telephone call is not addressed. Appellant submitted an email dated May 7, 2001 and Mr. Tolley's response dated May 8, 2001 regarding disability forms in the subject line. Appellant requested that Mr. Tolley not use profanity in talking to him. Mr. Tolley responded by stating that he did not recall using profanity on the telephone, but that if he did he apologized.

⁴ 5 U.S.C. §§ 8101-8193.

employee's fear of a RIF or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

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.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁷

Appellant seeks compensation for his heart surgeries based on stress at work. He states that he was under stress at work due to being placed in an overhire position and was in fear of losing his job. The Board has held job insecurity, including fear of loss of salary, is not a compensable factor of employment where there is no evidence that the employing establishment acted in error or abusively in handling the personnel matter.⁸ There is no such evidence of error or abuse in this case.

In the present case, appellant has only identified two compensable factors of employment with respect to the incidents on August 21, 2000 when he was locked out of the LAN system and the fact that his section was severely understaffed. Appellant's supervisor supported appellant's statement that he had been locked out the LAN system and that the Civil Engineering section was severely understaffed. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor which 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.⁹

The only relevant medical evidence is the reports from Dr. Devineni dated May 31, 2000 and May 22, 2001. In his May 22, 2001 report, Dr. Devineni diagnosed an "extreme heart condition" which he attributed to the "great amount of stress in the last two years related to his work." Similarly, in his May 22, 2001 report, Dr. Devineni related that appellant appeared "to be having a great deal of stress at work and his symptoms of chest pain seem to be exacerbated when he is at work." Thus, while Dr. Devineni attributed appellant's heart condition to appellant's stress at work, he did not identify what the stress was beyond a general characterization of appellant being under "great deal of stress at work." Furthermore, the

⁵ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁸ *Ronald C. Hand*, 49 ECAB 113 (1997).

⁹ See *William P. George*, 43 ECAB 1159, 1168 (1992).

physician's May 22, 2001 opinion is speculative in nature and of diminished probative value as he opines that appellant's symptoms "seem" to be exacerbated by his being at work.¹⁰

As the evidence of record fails to establish that appellant sustained an emotional condition in the performance of duty, he has not met his burden of proof and the Office, therefore, properly denied his claim for compensation benefits.

The February 25, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ See *Linda I. Sprague*, 48 ECAB 386 (1997).