

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDIO VAZQUEZ and SOCIAL SECURITY ADMINISTRATION,
REGIONAL PERSONNEL OFFICE, Jamaica, NY

*Docket No. 02-1134; Submitted on the Record;
Issued March 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty on October 20, 1999 causally related to compensable factors of his federal employment.

This is appellant's second appeal before the Board on this issue.¹ In an August 30, 2001 decision, the Board set aside the Office of Workers' Compensation Programs October 6, 2000 decision and remanded the case to review the newly submitted medical evidence on its merits.² The facts and the circumstances of the case are detailed in the Board's prior decision and are hereby incorporated by reference.

Upon remand the Office obtained a translation of the January 14, 2000 medical report, but failed to obtain translations of two brief medical certificates signed by Dr. Isis M. Sanchez-Longo, a Board-certified psychiatrist, which appear to identify periods of treatment or disability. The translation of Dr. Sanchez-Longo's January 14, 2000 report, revealed that on Tuesday, October 19, 1999 while awaiting the arrival of hurricane Jose, appellant informed his supervisor that he would not be able to make it into work the following day because he needed to secure his house against the hurricane.³ On Wednesday, October 20, 1999 appellant returned to work and asked his supervisor to be excused. A verbal altercation ensued during which the supervisor allegedly told appellant to shut up; and appellant became very agitated. The following day, appellant was called back to work but was only able to remain in the office for two hours and from that time onwards, was disabled. Dr. Sanchez-Longo

¹ Docket No. 01-416 (issued August 30, 2001).

² The Board found as compensable the fact that appellant was verbally assaulted by his manager on October 20, 1999 in a witnessed confrontation that occurred as alleged.

³ The Board notes that Dr. Sanchez-Longo had the relevant days of the week correct but erroneously cited to Tuesday as being October 20, 1999 rather than October 19, 1999 and Wednesday as being October 21, 1999 rather than October 20, 1999.

indicated that appellant began to experience recurrent thoughts and nightmares regarding the traumatic event, that he tried to avoid places that he associates with or reminds him of the events and that he cannot tolerate walking in the building, in which he is employed. Dr. Sanchez-Longo noted that appellant claimed that he panicked at the mere thought of entering the office, that he had obsessive thoughts about the incident and that he dreamed that he was shooting his supervisor. Dr. Sanchez-Longo reported appellant's symptoms and indicated that they have not shown significant improvement, indicated that he showed obsessive and intrusive thoughts regarding the described incident, including signs of diminished attention span and concentration and recent and immediate diminished memories and opined that the "affect of the incident has caused [appellant] depression and anxiety." Dr. Sanchez-Longo diagnosed post-traumatic stress and severe major depression and concluded that appellant's "emotional condition is directly related to the above-mentioned incident. This has altered his lifestyle, caused a reduction in his capacity to work and [instilled] in him feelings of fear. These are considered to be psychological stress factors of moderate to severe intensity." Dr. Sanchez-Longo also indicated that appellant needed further psychological treatment.

On January 19, 2000 appellant submitted a December 27, 1999 report from Dr. Victoria Lopez, a psychologist, who noted that appellant was treated on October 25 and November 1, 1999, for major recurrent severe depression, which he related to various factors of his federal employment. Among the factors cited by appellant as possibly contributing to his depression were a forced transfer, failure to be selected for different positions, being constantly questioned by a local manager, coping with automation in the office, having his actions misinterpreted and his reputation, trust and integrity questioned and an October 20, 1999, incident when his manager offended him and applied physical aggression pushing him to the corner. Dr. Lopez diagnosed major recurrent severe depression.

By decision dated December 18, 2001, the Office denied modification of the prior decision finding that the evidence submitted in support was insufficient to warrant modification.

The Board finds that appellant has failed to establish that sustained an emotional condition in the performance of duty on October 20, 1999 causally related to compensable factors of his federal employment.

To establish appellant's claim that he has sustained an 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; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁴ Rationalized medical opinion evidence is medical evidence, which 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 one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

⁴ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁵

Workers' compensation law is not applicable 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 covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned-work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.⁶ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁷ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, such as in this October 20, 1999 altercation, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁸

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.⁹ 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. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by

⁵ See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell supra* note 4.

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁸ *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

⁹ See *Barbara Bush*, 38 ECAB 710 (1987).

supporting the allegations with probative and reliable evidence.¹⁰ 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.¹¹ The Office properly did so in this case.

Dr. Lopez, a psychologist, noted a number of employment factors mentioned by appellant as in possibly contributing to his emotional condition, none of which have been accepted as compensable factors, except for the incident on October 20, 1999 involving an altercation with his supervisor. The Board, in its previous decision accepted as compensable that the altercation with appellant and his supervisor occurred on October 20, 1999 as alleged. It found that the altercation was a compensable factor of appellant's employment. However, Dr. Lopez did not provide a rationalized medical opinion establishing the causal relation of appellant's emotional condition with that accepted compensable employment factor. Therefore, her report is of diminished probative value and is insufficient to establish appellant's claim.

Dr. Sanchez-Longo, a psychiatrist, identified the October 20, 1999 altercation, during which appellant was instructed to "shut up," and noted that appellant became very agitated. No more detailed analysis was presented and no medical explanation was provided for why she believed that appellant's subsequently reported problems with recurrent thoughts, nightmares and avoidance behaviors were causally or aggravation by this October 20, 1999 incident. She reported that appellant had subsequent obsessive and intrusive thoughts regarding the incident, a diminished attention span and diminished concentration, diminished memories, depression and anxiety and concluded, without rationale, that these symptoms were causally related to the October 20, 1999 incident. She did not address the psychopathology involved or explaining how a single verbal altercation impacted over time to cause a diagnosed post-traumatic stress syndrome. The Board has frequently explained that conclusory medical opinions, such as this one from Dr. Sanchez-Longo, are entitled to little probative weight and are insufficient to support a causal relationship claim.¹² Dr. Sanchez-Longo also discussed appellant's altered lifestyle, his reduction in capacity to work and his feelings of fear as being related to the October 20, 1999 verbal altercation, but then she considered these self-generated feelings and problems as ongoing disabling stressors, which required further psychological treatment, rather than relating these symptoms to the October 20, 1999 verbal altercation as the causal factor. Dr. Sanchez-Longo provided insufficient medical explanation for why the October 20, 1999 verbal altercation impacted so severely on appellant, so as to render him totally disabled due to his after-occurring avoidance feelings, fear and insecurities. Therefore, Dr. Sanchez-Longo's opinion as to the causal relation of appellant's emotional problems to the October 20, 1999 compensable incident is insufficient to establish that appellant sustained a disabling emotional condition.

¹⁰ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹¹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹² *Marilyn D. Polk*, 44 ECAB 673 (1993) (a medical opinion consisting solely of a conclusory statement regarding causal relation or disability is of little probative value).

In the instant case, none of appellant's treating physicians' reports contain adequate rationale sufficient to discharge his burden of proving by the weight of reliable, substantial and probative evidence that he sustained a disabling emotional condition, causally related to the compensable October 20, 1999 altercation.

Accordingly, December 18, 2001 the decision of the Office of Workers' Compensation Programs is hereby affirmed

Dated, Washington, DC
March 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member