

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENJAMIN F. HOWZE, III and U.S. POSTAL SERVICE,
POST OFFICE, Mobile, AL

*Docket No. 02-2340; Submitted on the Record;
Issued May 15, 2003*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to compensable factors of his federal employment.

On February 28, 2000 appellant, then a 57-year-old supervisor, filed a claim alleging that he developed a disabling emotional condition in the performance of duty causally related to compensable factors of his federal employment.

Appellant alleged the following factors caused or contributed to the development of his disabling emotional condition: stress due to the fact that in 1993, on his first day of work he was short-handed due to a planned sick-out, which lasted for a week; that he worked an average of 50 hours per week; that he had to supervise and counsel several employees on a regular basis between the years 1993 and 1998, who had extensive problems;¹ that in 1997 following supervisory training as they were leaving a supervisor was confronted by a homeless man who threw a punch at him and appellant tried to break it up by pinning the man's hand in his pocket, only to discover that the homeless man had a gun in his pocket; that appellant was responsible for postal stock totaling between \$200,000.00 and \$300,000.00; and that he supervised a large group of employees, scheduled work assignments, determined priorities, ensured that an operational information report was complete, coordinated mail flow, supervised on-the-job training programs and provided input for the facility operating budget. The Office of

¹ Appellant had to supervise an obese suicidal female who repeatedly defecated and urinated on herself while serving the window customers; an employee with a spousal abuse problem; a female employee who had connections with a white supremacist group; and an employee who was dubbed a trouble-maker and was transferred to his supervision.

Workers' Compensation Programs accepted that these factors of employment arose out of and in the course of appellant's employment and, therefore, were compensable.²

Appellant submitted an undated report from his treating physician, Dr. Daniel L. Koch, a clinical psychologist, who provided appellant's factual and medical history, reviewed psychological testing results and diagnosed "[p]ost-[t]raumatic [s]tress [d]isorder [and] [s]chizoaffective [d]isorder." Dr. Koch opined that, "While [appellant] was hired with a [psychiatric] disability it seems quite clear that the condition of employment exacerbated his problems severely. At this point [appellant] is unable to work and I consider his illness to be work related." He concluded that appellant would "continue in treatment with psychotherapy and chemotherapy on a regular basis with a return to duty date indefinite at this time."

The Office then referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Claude L. Brown, a Board-certified psychiatrist, for a second opinion examination. By report dated September 12, 2000, Dr. Brown reviewed appellant's factual and medical history, noted that in 1966 he was discharged from military service with a 10 percent disability due to "nerves," reported the findings of his examination and diagnosed "[s]chizoaffective disorder [and] [o]bsessive/[c]ompulsive personality; possibly post[-]traumatic stress disorder residuals." Dr. Brown opined:

"[Appellant's] condition is not a result of conditions related to his employment although these may well have been stressful. The main stressful incident that he has experienced is his own internal stress, his need to obsessively work, to be fearful of taking any time off even when he fractured his leg and his fear of not working excessively led him to do so to the point that he is now incapacitated.... I feel that his condition is temporary pending adequate treatment."

Dr. Brown recommended treatment with psychotropic drugs and supportive psychotherapy.

By decision dated November 1, 2000, the Office denied appellant's claim finding that the medical evidence of record failed to establish that his emotional condition was not causally related to the compensable factors of employment identified by appellant.

On November 21, 2000 appellant disagreed with the November 1, 2000 decision and requested a review of the written record. He also submitted a November 17, 2000 report from Dr. Brown, which noted as follows:

"I saw [appellant] again on November 16, 2000, at which time he showed me a lengthy job description furnished by the [employing establishment] and also an indication that his job has been taken over by two other individuals. The point that I wish to make is that after further review of his entire situation and a review of the job description plus the data that he furnished today, it is my opinion that,

² Multiple other allegations of factors were found either to be not compensable or to not have occurred as alleged. These included an employment fall injury, the grade, at which he started work, that he supervised an excessive number of employees and units, that he lived in fear of losing his job, that he never took a vacation and that he had a prior history of mental problems dating back to his Viet Nam experience, for which he received disability.

although [appellant] definitely does have his internal emotional problems, that the circumstances of his work situation did contribute to his emotional decompensation. Specifically, the hours that he did work, the requirements of his job and terms of dealing with multiple responsibilities in different locations, the responsibility of attending to problems of personnel plus occasional customers, these circumstances were in themselves stressful producing in terms of pressures exerted by the work. These stresses combined with his innate tendency to work himself excessively hard, *et cetera*, produced the present decompensation, for which he had to stop work in 1999.”

In an illegibly dated decision, the Branch of Hearings and Review’s hearing representative set aside the Office’s November 1, 2000 decision and remanded the case for further development finding that Dr. Brown had provided a substantially revised opinion as to whether appellant’s emotional condition was causally related to the identified compensable factors of employment. The hearing representative directed the Office to obtain clarification and elaboration of Dr. Brown’s report and the reason for his changed opinion.

In a July 14, 2001 clarification of his November 17, 2000 report, Dr. Brown did not attempt to answer the Office’s questions but instead provided comments regarding appellant’s strong work ethic and his need to work and he opined that we “leave well enough alone.”

By undated notice, the Office referred appellant for another second opinion evaluation, as Dr. Brown was unresponsive to requests for clarification. On August 15, 2001 appellant was referred to Dr. Daniel F. Becker, a Board-certified psychiatrist, for another second opinion examination.

By report dated August 20, 2001, Dr. Becker reviewed appellant’s factual and medical history, performed a mental status examination and diagnosed major depression with psychotic features. Dr. Becker answered the Office’s questions noting that he had no information on appellant’s Viet Nam experience or his preexisting emotional condition, that appellant’s mental state seems to have not improved at all and that he could only state that appellant’s mental state “occurred while he was working and that a person with this condition certainly can have a recurrence of this condition under any sort of stress.” Dr. Becker opined that appellant had definitely not recovered from his condition or returned to baseline. He opined: “I would conclude that this man is presently extremely disturbed and would honestly state that to make a direct relationship between this condition and specific incidents would be beyond the scope of psychiatric knowledge. We can only state that a stressful life situation or a number of stressors can certainly lead to a worsening or recurrence of this condition”

On September 6, 2001 upon receipt of Dr. Becker’s report, the Office determined that it did not adequately address the questions posed and it requested that Dr. Becker clarify his opinion.

By note dated September 17, 2001, Dr. Becker stated that “the questions were stated in such a manner that they required some direct relationship between certain events and [appellant’s] symptoms, which I was unable to make, nor do I believe any other physician can honestly do that.”

On October 12, 2001 the Office referred appellant to another second opinion specialist, Dr. Robert Scott Benson, a Board-certified psychiatrist, for evaluation to answer the questions posed.

By report of evaluation dated October 31, 2001, Dr. Benson reviewed appellant's factual and medical history, reported mental status and diagnostic testing results and diagnosed major depressive disorder, single episode, in full remission. Dr. Benson opined as follows:

“[Appellant] developed a pattern of symptoms that easily met the criteria for a diagnosis of major depression in 1999.... There are multiple factors that may have contributed to [appellant's] experience of depression. He had a service-connected disability for an anxiety reaction. That condition had substantially resolved. He had had no active treatment for that condition for more than 20 years prior to the onset of his present condition. There is no indication that his recent psychiatric problems are related to his service-connected disability. [Appellant] had worked effectively in his position as a supervisor in the [employing establishment]. While he began to experience difficulty managing employee problems, there is no indication that these stressors were substantially different from the ordinary stress of [appellant's] position as a supervisor. While he has focused on these employee conflicts as a factor in his depression, it is more likely that he developed depression and only then became unable to effectively manage expected life stressors. [Appellant] developed hypertension shortly before the onset of his problems with depression. Patients with hypertension have a high incidence of depression that may be related to the hypertension or may be related to medication treatment for that condition. It is my opinion with reasonably medical certain[ty] that [appellant's] medical condition of hypertension was the substantial contributing factor to the development of his depression.”

By decision dated December 21, 2001, the Office rejected appellant's claim finding that the weight of the medical evidence of record established that his depression was not causally related to the accepted factors of employment. The Office found that Dr. Benson's thorough and well-rationalized medical opinion constituted the weight of the medical evidence of record and established that hypertension was the substantial causative factor of appellant's condition.

In a letter dated January 21, 2002, appellant disagreed with the December 21, 2001 decision and he requested a review of the written record. In support of his request appellant submitted an affidavit stating that his hypertension was controlled by taking Lisinopril 10 milligrams (mg) and Hydrochlorothiazide 25 mg and that he had no side effects from either of these medications.

In a letter dated May 7, 2002, appellant claimed that Dr. Brown's second report was rationalized and that Dr. Becker supported his claim because he stated that the depression occurred while he was working.

By decision dated June 21, 2002, the hearing representative affirmed the Office's December 21, 2001 decision, finding that the well-rationalized and thorough opinion by

Dr. Benson constituted the weight of the medical evidence of record. The hearing representative found that Dr. Brown's second opinion needed clarification, which he refused to provide and that he failed to explain the reason for his changed opinion, which he apparently based upon appellant's version of the facts rather than upon the statement of accepted facts. The hearing representative found that Dr. Brown's opinion was not clarified as requested and was apparently based upon information other than that contained in the statement of accepted facts, it was of significantly reduced probative value and was, therefore, insufficient to support appellant's claim. The hearing representative also found that Dr. Becker's report did not support appellant's claim as it was not responsive on the issue of causal relation, as he opined that he did not believe any physician could answer the Office's questions and as he declined to elaborate further upon request for clarification. The hearing representative found that Dr. Benson provided a thorough and well-rationalized report that was responsive to all of the Office's questions and, which established that, with reasonable medical certainty, appellant's depression was the substantial contributing factor to the development of appellant's depression.

The Board finds that appellant has failed to establish that he sustained an emotional condition in the performance of duty 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.³ 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 the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁴

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.⁵ 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

³ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell supra* note 3.

⁵ See *Barbara Bush*, 38 ECAB 710 (1987).

supporting the allegations with probative and reliable evidence.⁶ 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.⁷

In this case, appellant alleged that several compensable factors of employment were implicated in the development of his emotional condition.

However, in an emotional condition claim, a claimant's burden of proof is not discharged merely by the fact that he or she has implicated compensable factors of employment. The claimant must also submit rationalized medical opinion evidence establishing that the identified compensable factors of employment caused or contributed to the development of the diagnosed emotional condition.⁸ To be of significant probative value, a physician's opinion regarding the cause of an emotional condition must be based upon a proper and accurate factual and medical history, must relate the development of the emotional condition to the specific incidents or conditions of employment found to be compensable and must contain adequate medical rationale in support of the conclusions.⁹

In the instant case, the only medical report of record that was based upon a proper factual and medical background, which included the statement of accepted facts and that contained a well-rationalized medical opinion on the issue of causal relation was the thorough and well-rationalized report of Dr. Benson.

Appellant's treating psychologist, Dr. Koch, did not identify any specific factor of appellant's employment implicated in causing or aggravating his psychiatric condition, referring only to "constant duty" and "stress." He further did not discuss causal relation, noting that appellant was hired with a preexisting psychiatric disability and that he was "badly served" by his supervisors because his need for relief was not recognized. Dr. Koch concluded only that "the condition of employment exacerbated [appellant's] problems severely," omitting delineation any specific actions or conditions. The Board has frequently explained that a medical opinion not fortified by medical rationale is of little probative value on the issue of causal relationship.¹⁰ Further, the Board has stated that a medical opinion consisting solely of a conclusory statement regarding causation or disability, without supporting rationale, is of little probative value.¹¹ Because Dr. Koch's report was mostly an analysis of psychological testing results stated in generalities and omitted mention of any specific employment factors or incidents implicated in the development of appellant's emotional conditions and because it lacked any analysis as to causal relationship between such employment factors and the development of appellant's emotional conditions, merely concluding that the "condition of employment exacerbated

⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁷ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

⁸ *Ruth C. Borden*, 43 ECAB 146 (1991).

⁹ *Mary J. Ruddy*, 49 ECAB 545 (1998).

¹⁰ *See James H. Botts*, 50 ECAB 265 (1999); *Bonnie Goodman*, 50 ECAB 139 (1998).

¹¹ *See Marilyn D. Polk*, 44 ECAB 673 (1993); *Leon Harris Ford*, 31 ECAB 514 (1980).

[appellant's] problems severely," it is of seriously reduced probative value and is insufficient to establish appellant's employment-related emotional condition claim. Moreover, Dr. Koch's report is so vague, discussing generalities related to psychological testing results¹² and only conclusorily stating that appellant's employment exacerbated his preexisting psychiatric problems and that he considered appellant's illness to be work related and lacking in specifics or medical rationale, that it is insufficient to even create a conflict with the subsequent reports of the Office second opinion specialists, whose reports were at least based on a complete and accurate factual and medical history and addressed the issues to be resolved.¹³

Dr. Brown was the first second opinion specialist selected by the Office to examine appellant and provide an opinion as to the causal relationship of appellant's emotional condition with factors of his federal employment. In his first September 2000 report, Dr. Brown reviewed appellant's factual and medical history, provided a diagnosis of schizoaffective disorder and obsessive/compulsive personality, possibly with post-traumatic stress disorder residuals and opined that appellant's condition was not a result of conditions related to his employment. Following this second opinion examination, however, appellant again sought Dr. Brown out for a November 2000, follow-up opinion evidently based on information provided by appellant rather than upon the statement of accepted facts. Dr. Brown contradicted his earlier opinion to state that, although appellant did have internal emotional problems, the circumstances of his work situation did contribute to his emotional decompensation. The Board notes that appellant sought Dr. Brown out in November 2000, for a revised medical opinion, apparently without seeking treatment or obtaining evidence that psychiatric treatment had been provided and that, therefore, Dr. Brown could reasonably have presumed that he was still acting in the capacity of an Office second opinion examiner. The Board has held that an Office referral physician cannot create a conflict on behalf of a claimant in a situation where the claimant did not use the referral physician as a treating physician.¹⁴ As Dr. Brown was not clearly acting as appellant's treating physician in his November 2000 report, his changed opinion does not create a conflict with the subsequently obtained second opinion reports and it's inconsistency with his earlier opinion merely reduces the probative value of both reports. Dr. Brown's lack of responsiveness when subsequently asked by the Office for clarification of his conflicting reports, renders both reports of greatly reduced probative value and insufficient to establish or contradict appellant's claim.¹⁵

Dr. Becker reviewed appellant's psychiatric history of a Viet Nam related emotional condition and opined that appellant's condition "occurred while he was working." The Board has frequently explained that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the

¹² Dr. Koch continually referred to "patients with this profile tend to be" and "such patients probably have" in discussing the meaning of appellant's testing results.

¹³ The Board has explained that when there are opposing medical reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a). See *Theresa Goode*, 51 ECAB 650(2000); *Cathy B. Millin*, 51 ECAB 331 (2000). In this case, Dr. Koch's report was not nearly of equal weight or rationale, such that no conflict was created.

¹⁴ See *Noah Ooten*, 50 ECAB 283 (1999).

¹⁵ *James D. Zurcher*, 48 ECAB 274 (1997).

employment and the disease or condition.¹⁶ Neither the fact that the disease or condition became apparent during a period of employment nor the belief by the claimant that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁷ Therefore, Dr. Becker's statement regarding temporal occurrence does not support causal relationship with specific factors of appellant's employment. Further, Dr. Becker stated that to make a direct relationship between appellant's emotional condition and specific incidents of employment would be beyond the scope of psychiatric knowledge and, in response to the Office's request for clarification, he admitted that he was unable to provide such an opinion and suggested that any other physician would likewise be unable. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁸ As Dr. Becker was unable to provide the requested opinions or to clarify his responses, his reports are of diminished probative value and are, therefore, insufficient to establish appellant's claim.

Dr. Benson on the other hand, based his report on a complete factual and medical background of appellant and on his own examination and testing results and he provided a well-rationalized opinion, which did not need clarification and, which supported that appellant's onset of hypertension, which shortly preceded the onset of appellant's depression and his hypertensive medications, were the proximate causes of his emotional condition. Dr. Benson opined that appellant developed depression and only then began to have problems in dealing with employee conflicts and problems, rather than becoming depressed from dealing with these employee conflicts and problems. As Dr. Benson's report was clear, complete, thorough and well rationalized, as it addressed all of the Office's concerns and as it was based upon a proper factual and medical background, it is entitled to great weight and consequently constitutes the weight of the medical opinion evidence of record and establishes that appellant's emotional condition did not arise out of and due to his implicated employment factors.

¹⁶ *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Joe T. Williams*, 44 ECAB 518 (1993).

¹⁷ *Id.*

¹⁸ *See Vicky L. Hannis*, 48 ECAB 538 (1997); *Linda I. Sprague*, 48 ECAB 386 (1997).

Accordingly, the June 21, 2002 and December 21, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 15, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member