

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES M. JEWELL and U.S. POSTAL SERVICE,
POST OFFICE, Aurora, CO

*Docket No. 03-1264; Submitted on the Record;
Issued October 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant's work-related temporary adjustment reaction with mixed anxiety and depressed mood ceased as of August 1, 2001; and (2) whether appellant established that his myasthenia gravis is causally related to his employment.

On December 11, 2000 appellant, then a 41-year-old supervisor of customer service, filed an occupational disease claim, alleging that factors of his employment caused extreme anxiety and depression. In a narrative statement dated February 16, 2001, submitted in response to a request from the Office of Workers' Compensation Programs for additional information, appellant alleged that his problems began on December 18, 1998 following a December 16, 1998 due process interview and investigation by the employing establishment, which resulted in his being placed in an emergency off-duty status and being escorted from the premises. On December 23, 1998 appellant received a letter of proposed removal charging him with failing to report delayed mail and falsification of records important to the daily operation of the employing establishment. On March 11, 1999 appellant received a notice of charges and proposed removal, but by letter dated April 21, 1999, he was notified that his proposed removal had been reduced to a 90-day suspension for the period May 3 to August 2, 1999. Appellant stated that he sought psychological counseling on June 15, 1999, for feelings of anxiety, muscle tension, insomnia, difficulty in rationalizing and stress. He stated that he filed an appeal with the Merit Systems Protection Board (MSPB) and in a preliminary decision dated June 19, 2000 and finalized on July 24, 2000 the MSPB reversed his suspension in its entirety and retroactively restored his pay and benefits. Appellant alleged that in an act of reprisal for the MSPB decision, on August 15, 2000 his supervisor changed his job duties while he was on vacation. He stated that he went on sick leave from August 31 through September 9, 2000 for extreme anxiety and depression and that he filed a complaint with the Equal Employment Opportunity (EEO) Commission on August 28, 2000. On December 4, 2000 appellant again went on leave for severe anxiety and depression. He alleged that on December 22, 2000 he was diagnosed with myasthenia gravis and scheduled for a surgical thymectomy, which was performed on January 4, 2001. Appellant

subsequently stated that he stopped work on December 4, 2000 in order to prepare for his surgery and returned to work, four hours a day on August 20, 2001.

Also submitted into the record were reports from Dr. James S. Wilk, his treating Board-certified internist; a copy of the employing establishment's standards of conduct; an October 8, 1998 letter of warning to appellant for failure to follow instructions; a December 16, 1999 employing establishment memorandum placing appellant in emergency off-duty status; a December 29, 1999 mid-year performance evaluation finding appellant's performance unacceptable; a March 11, 1999 notice of charges and proposed removal; an April 21, 1999 letter of decision reducing the removal to a suspension; transcripts of the December 16 and 19, 1998 questioning of appellant by the Office of the Inspector General of the employing establishment; information regarding an EEO claim brought by appellant; the June 19, 2000 initial MSPB decision; and an employing establishment memorandum dated August 7, 2000 notifying appellant that his job description had been changed.

The employing establishment submitted a statement dated March 29, 2001, noting that appellant had a history of disciplinary actions against him, including an October 8, 1998 letter of warning related to the conduct of effectiveness reports and asserting that the charges against appellant were justified. The employing establishment further asserted that the disciplinary actions against appellant were administrative in nature and, therefore, had not occurred in the performance of duty.

By decision dated March 13, 2001, the Office denied appellant's claim on the grounds that his emotional condition did not arise in the performance of duty. Appellant requested an oral hearing and submitted additional factual and medical evidence in support of his claim. In a decision dated January 25, 2002, an Office hearing representative found that all of appellant's allegations related to administrative or personnel actions which ordinarily fell outside of the performance of duty, absent evidence of error or abuse on the part of the employing establishment. With respect to appellant's allegations that he received an unacceptable performance appraisal, was interviewed and investigated, received a letter of warning and his job duties were changed, the hearing representative found that appellant had not provided any evidence of error or abuse with respect to these matters. The Office hearing representative further found, however, that with respect to the employing establishment having accused appellant of falsification of reports, removed him from work and suspended him for 90 days, while the MSPB judge did not specifically find that the employing establishment was in error in its actions against appellant, by canceling them, the MSPB decision supported that these actions of the employing establishment were in error. Therefore, the Office hearing representative found that these were compensable factors of employment. The Office hearing representative concluded, however, that appellant failed to submit sufficient medical evidence to establish that his emotional condition was caused by these compensable factors and denied the claim. Finally, the Office hearing representative found that appellant had also submitted insufficient medical evidence to establish that his myasthenia gravis was causally related to his employment.

By letter received April 14, 2002, appellant requested reconsideration of the Office's decision and submitted additional medical and factual evidence pertaining to both his diagnosed emotional condition and his myasthenia gravis.

At the request of the Office, on July 25, 2002 an Office medical adviser reviewed the additional medical evidence submitted by appellant and noted that the evidence supported a causal relationship between emotional stress and myasthenia gravis. Therefore, by letters dated August 9 and 12, 2002, the Office referred appellant, together with a statement of accepted facts, a list of questions to be answered and copies of the relevant medical evidence of record, for second opinion evaluations with Dr. Kenneth H. Ash, a Board-certified psychiatrist and Dr. David Madison, a Board-certified neurologist.

In a report dated September 12, 2002, Dr. Ash provided a history of appellant's condition and the results of a mental status examination. Dr. Ash noted that appellant reported developing high anxiety and depression shortly after the employment incidents of December 1998. He noted that appellant sought psychiatric treatment and received counseling and medication. Subsequently, he was diagnosed with myasthenia gravis and underwent a thymectomy in January 2001. Dr. Ash noted that appellant reported that, subsequent to his surgery and with rest and convalescence, he felt his anxiety and depression had resolved and attempted to return to work in August 2001. Appellant further reported, however, that by October he was having difficulty with symptoms of myasthenia gravis, as well as having difficulties in his relationship with the employing establishment administration. Appellant reported that he then experienced a return of anxiety and depression, although not to the degree that he felt in December 1998. Dr. Ash diagnosed adjustment reaction with mixed anxiety and depressed mood and stated that these reactions were caused by the accusations brought against appellant at work in December 1998 and by appellant's removal from work. He stated that this condition was temporary and appellant was essentially back to his asymptomatic self during the summer of 2001. Dr. Ash concluded that the return of appellant's symptoms of anxiety and depression was related to appellant's ongoing difficulties with the employing establishment as well as to his development of myasthenia gravis. He completed a work capacity evaluation form in which he indicated that appellant could not work eight hours a day, primarily due to his physical condition of myasthenia gravis, which was complicated by a mild to moderate degree of anxiety and depression. Dr. Ash clarified that appellant's anxiety and depression were currently mainly related to appellant's myasthenia gravis and that if under stress at work appellant were to become more symptomatic, he believed appellant's anxiety and depression would also become more severe.

In a report dated September 20, 2002, Dr. David Madison provided a history of appellant's condition and the results of his physical examination. He noted that appellant was diagnosed with myasthenia gravis in November or December 2000, but that his psychological condition arose much earlier in December 1998. Dr. Madison diagnosed a history of myasthenia gravis and severe psychological disorder, with anxiety, depression and insomnia. In response to the Office's question as to whether appellant's condition had been aggravated by stress in appellant's work, Dr. Madison responded: "I would say that because of the stresses he has been sleeping poorly and this has a negative effect on his stamina during the day." When asked whether appellant's condition was permanent, Dr. Madison stated: "I think if [appellant's] psychological status can be greatly improved, his level of function will be appreciably better. Myasthenia gravis is a rather unpredictable disease and it is unlikely he will ever be as well as he was before his symptoms began back in late 2000." When asked when appellant's condition was expected to clear, Dr. Madison stated: "This pretty clearly relates to his recovery from his psychological condition." The Office also asked what material change occurred in appellant's underlying condition due to compensable work factors, to which Dr. Madison responded: "All

one can say is that his symptoms were made worse by the fact that he was not sleeping well and this had a further detrimental on his physical stamina.” Finally, in response to whether appellant had any physical limitations resulting from any work-related disability, Dr. Madison stated: “In the strictest sense, he does not have a disability that is the result of his job. Anxiety and loss of sleep compound his physical condition.”

In a decision dated October 7, 2002, the Office modified its prior decision to accept temporary adjustment reaction with mixed anxiety and depressed mood, which, based on the report of Dr. Ash, had resolved by August 1, 2001. The Office further found that appellant failed to establish that his myasthenia gravis was causally related to his employment.

By letter dated November 16, 2002, appellant requested reconsideration and submitted statements indicating his disagreement with the Office’s determination that his emotional condition had resolved as of August 1, 2000 and further asserting that the Office should have requested a supplemental report from Dr. Madison regarding the etiology of appellant’s myasthenia gravis. Appellant submitted reports dated November 10, 2002 and December 15, 2002 from Dr. Julian Ang, his treating clinical psychologist and a January 1, 2003 report from Dr. Khoi D. Pham, his treating Board-certified neurologist.

In a decision dated January 14, 2003, the Office found the additional arguments and medical reports to be insufficient to warrant modification of the Office’s prior decision.

The Board finds that the Office met its burden of proof in finding that appellant’s employment-related emotional condition resolved as of August 1, 2001.

To establish that an emotional condition was sustained in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.¹ Once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits.² After determining that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

In this case, by decision dated October 7, 2002, the Office accepted that appellant sustained temporary adjustment reaction with mixed anxiety and depression attributable to the compensable employment factors of being accused of falsifying a report, being escorted from the building on December 16, 1998 and the subsequent proposed removal that was later changed to a 90-day suspension. The Office further found, based upon the medical evidence that appellant’s condition had resolved August 1, 2001.

¹ *Claudio Vazquez*, 52 ECAB 496 (2001); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

² *Gloria J. Godfrey*, 52 ECAB 486 (2001).

³ *Id.*

The Board agrees that the evidence was insufficient to establish that appellant falsified reports concerning delayed mail and, therefore, his being accused of falsifying a report, being escorted from the building on December 16, 1998 and the subsequent proposed removal that was later changed to a 90-day suspension showed error on behalf of the employing establishment and are, therefore, compensable factors of employment. The Board, however, finds appellant's remaining contentions without merit.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of coverage of the Federal Employees' Compensation Act.⁴ However, an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.⁵ In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁶ To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence⁷ as appellant did in the instant case with the MSPB finding.⁸ Therefore, the Board finds that the evidence of record in the instant case is sufficient to establish that the employing establishment committed error in accusing appellant of falsifying a report, in placing him in an emergency off-duty status and escorting him from the building on December 16, 1998 and in issuing the subsequent proposed removal that was later changed to a 90-day suspension.

With respect to appellant's allegations that he received an improper letter of warning on October 8, 1998 he was improperly interviewed and investigated on and around December 16, 1998, he received an unacceptable performance appraisal on December 29, 1999 and his job duties were changed, the Board finds that these allegations again relate to administrative or personnel matters unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act absent a showing of error or abuse on the part of the employing establishment.⁹ In this case, appellant has not submitted any probative corroborative evidence to establish that the employing establishment committed error or abuse in these instances. Thus, appellant has not established a compensable employment factor under the Act with respect to these additional administrative matters.

However, while the Board finds that appellant established several compensable factors of employment, the Board also finds that the Office properly found that the medical evidence of record establishes that appellant's emotional condition had resolved by August 1, 2001.

⁴ An employee's emotional reaction which arises out of an administrative or personnel matter is not considered to be sustained in the performance of duty. *Roger Williams*, 52 ECAB 468 (2001).

⁵ *Reco Roncaglione*, 52 ECAB 454 (2001).

⁶ *James E. Norris*, 52 ECAB 93 (2000).

⁷ See *Roger Williams*, *supra* note 4.

⁸ See *Janet I. Jones*, 47 ECAB 345 (1996).

⁹ *Felix Flecha*, 52 ECAB 268 (2001); see *Janet I. Jones*, *supra* note 8; *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

In a report dated October 19, 1999, Dr. Ang, appellant's treating clinical psychologist, stated that appellant had depressive and anxiety symptoms related to stresses at work, specifically allegations of fudging reports in December 1998 and then being suspended. Dr. Ang stated that appellant's level of anxiety and depression seemed to have worsened over the past few months, but that they were working to increase his coping and stress management skills. In her next report of record, dated November 21, 2001, Dr. Ang noted that she had only seen appellant on four occasions, all in 1999: April 21, May 3, October 8 and October 18, 1999. She discussed appellant's symptoms and the employment factors alleged to have caused his condition, concluding that the allegations that were made against appellant in December 1998 and the resulting suspension contributed significantly to his psychological condition. Dr. Ang discussed the course of treatment offered appellant, but did not indicate that she had seen him again after October 18, 1999 or discuss his ability to work after August 1, 2001. In a follow-up report dated April 14, 2002, she again discussed appellant's emotional condition and the employment factors that led to its development. Dr. Ang also stated that, due to the stress-related original 1998 event and how appellant was treated by his supervisors subsequently, he developed myasthenia gravis, which compounded his acute stress disorder. She added that appellant was currently also struggling with symptoms of mood disorder, depressive features, due to his medical condition that seemed to have been triggered by the stress associated with mistreatment by his superiors at the employing establishment. Dr. Ang stated that it was notable that appellant's symptoms had improved somewhat since he began working part time in a different position. While Dr. Ang discussed appellant's current condition, she did not indicate whether she had seen him since 1999 or state upon what factors she based her conclusion. Her final narrative report of record, dated November 10, 2002, was submitted in response to the Office's request that she comment on the opinion of Dr. Ash, the Office referral physician. In her report, Dr. Ang stated that she had read Dr. Ash's report, the statement of accepted facts and the list of questions posed to Dr. Ash. Dr. Ang noted that appellant's psychiatric symptoms originated in December 1998, when he was escorted from work and told he could not return. She stated that appellant's symptoms were severe in nature during the period of his suspension from work and persisted even upon his return to work, although the severity then fluctuated. Dr. Ang explained that appellant's symptoms "have fluctuated from mild to moderate to severe depending on the stress at work and difficulties with his superiors" and have "never completely resolved at any time during treatment." She concluded that appellant had not been able to successfully work full time since the original incident and that appellant's myasthenia gravis also seemed to be exacerbated by the level of stress he experiences. In her final report of record, a Form CA-20 attending physician's form report dated December 15, 2002, Dr. Ang again diagnosed acute stress disorder and mood disorder, causally related to the December 1998 employment incidents. She noted that appellant was totally disabled from December 4, 2000 to August 19, 2001 and was able to resume light work on August 20, 2001. Dr. Ang indicated that she had seen appellant on 17 occasions beginning in 1999 and that appellant continued to receive therapy for depression and anxiety that was triggered by the work incidents of December 1998.

The Board notes that both Dr. Ang and Dr. Ash stated that appellant's severe psychological symptoms had abated somewhat by August 2001, allowing appellant to return to work, but that he experienced some return of symptoms following his return to work. Dr. Ang stated that, after appellant's return to work, his symptoms fluctuated depending on the stress at work and difficulties with his superiors and Dr. Ash stated that by October appellant reported that he was having difficulty with symptoms of myasthenia gravis, as well as having difficulties

in his relationship with the employing establishment administration. The Board finds, however, that Dr. Ash's opinion, that the return of appellant's symptoms of anxiety and depression was related to appellant's ongoing difficulties with the employing establishment as well as to his development of myasthenia gravis, outweighs the opinion of Dr. Ang, that appellant's condition continued to be causally related to the accepted 1998 employment incidents. As a Board-certified psychiatrist, he is a specialist with regard to appellant's emotional condition and he provided a thorough analysis and evaluation of his condition based upon a complete and accurate factual background. In addition, his opinion is more consistent with appellant's self-reported history, given to both Dr. Ang and Dr. Ash that his psychological symptoms returned in response to new difficulties in his relationship with the employing establishment, which arose after his return to work, rather than in connection with the accepted 1998 employment factors. The Board finds that the September 12, 2002 report of Dr. Ash establishes that appellant's work-related adjustment reaction with mixed anxiety and depressed mood had resolved as of August 1, 2001 and that the return of appellant's symptoms after that was causally related to new, unspecified "difficulties" in appellant's relationship with his superiors. Therefore, the Office properly relied on Dr. Ash's opinion in determining that appellant's aggravation of his depression had resolved as of August 1, 2001.

The Board further finds that appellant failed to meet his burden to establish that his myasthenia gravis was causally related to his federal employment.

Appellant asserts that his myasthenia gravis, diagnosed in 2000, was a consequence of his accepted employment-related stress condition, either directly, or through aggravation, acceleration or precipitation. It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own conduct.¹⁰ Once the work-connected character of any condition is established, "the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."¹¹

¹⁰ Larson, *The Law of Workers' Compensation* § 10.00; see *John R. Knox*, 42 ECAB 193 (1990). In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes that when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Larson § 10.01.

¹¹ Larson, *The Law of Workers' Compensation* § 10.01; see also *Robert W. Meeson*, 44 ECAB 834 (1993) (where the Board determined that striking a deer in an automobile accident constituted an independent intervening cause which broke the chain of causation with respect to a claimant's prior employment back injury).

The Board notes that appellant bears the burden of proof to establish his claim for a consequential injury in the form of myasthenia gravis due to his accepted emotional condition.¹² As part of this burden, appellant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.¹³ Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.¹⁴ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of relationship of the diagnosed condition and the specific employment factors or employment injury.¹⁵

In support of his claim that factors of employment not only caused his diagnosed emotional condition, but aggravated his subsequently diagnosed myasthenia gravis, appellant submitted several reports from his treating Board-certified neurologist, Dr. Khoi D. Pham. In a report dated November 2, 2001, he stated that appellant had been his patient since October 18, 2000, subsequent to his diagnosis with rather severe myasthenia gravis. Dr. Pham stated that, after undergoing a thymectomy on January 4, 2001, appellant was stable for a while until he returned to work and his condition deteriorated. He explained that the recent worsening was "likely due to the immense stress at work." In a supplemental report dated April 16, 2002, Dr. Pham attempted to further explain the connection between appellant's diagnosed myasthenia gravis and his employment. He stated that the immense work stress to which he had previously referred was caused by the accusations of falsification of reports, the expulsion from the workplace and all the events leading up to the charges brought against appellant and that these events had led to a worsening of the myasthenia gravis. Dr. Pham further explained that the precise cause of myasthenia gravis is unknown, but that the medical literature supports a conclusion that the condition is significantly aggravated by stress. He stated that the fact that appellant was previously healthy, experienced the onset of myasthenia gravis symptoms after experiencing significant stressful events at work and then experienced a worsening of his myasthenia gravis after returning to work, supported his conclusion that there was a relationship between appellant's myasthenia gravis and his employment. In addition, Dr. Pham stated that stress on the job, in this case, made appellant significantly less responsive to treatment and contributed to his need for treatment. In his final report of record, dated January 1, 2003, Dr. Pham stated that appellant had significant disability from his myasthenia condition, as well as from his chemotherapy and that he could not tolerate the stress brought by his mid-level supervisor work. He concluded that, for this reason, he had taken appellant off work indefinitely beginning May 28, 2002.

¹² An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the injury that any disability or specific condition for which compensation is claimed is causally related to the employment injury; see *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹³ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucretia M. Nielson*, 42 ECAB 583 (1991).

¹⁴ *Claudio Vazquez*, *supra* note 1.

¹⁵ *Id.*

The Office properly found that Dr. Pham's opinion is not sufficiently rationalized to carry appellant's burden of proof, in that the physician relies primarily on the timing of the onset of appellant's myasthenia gravis to support his conclusion that the condition is related to appellant's employment. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.¹⁶ In response to Dr. Pham's reports, as noted above, the Office referred appellant to Dr. Madison, a Board-certified neurologist. In his report dated September 20, 2002, he diagnosed a history of myasthenia gravis and severe psychological disorder, with anxiety, depression and insomnia. In response to the Office's question as to whether appellant's condition had been aggravated by stress in his work, Dr. Madison responded: "I would say that because of the stresses he has been sleeping poorly and this has a negative effect on his stamina during the day." When asked whether appellant's condition was permanent, Dr. Madison stated: "I think if [appellant's] psychological status can be greatly improved, his level of function will be appreciably better. Myasthenia gravis is a rather unpredictable disease and it is unlikely he will ever be as well as he was before his symptoms began back in late 2000." When asked when appellant's condition was expected to clear, Dr. Madison stated: "This pretty clearly relates to his recovery from his psychological condition." The Office also asked what material change occurred in appellant's underlying condition due to compensable work factors, to which Dr. Madison responded: "All one can say is that his symptoms were made worse by the fact that he was not sleeping well and this had a further detrimental on his physical stamina." Finally, in response to whether appellant had any physical limitations resulting from any work-related disability, Dr. Madison stated: "In the strictest sense, he does not have a disability that is the result of his job. Anxiety and loss of sleep compound his physical condition."

The Board finds that the Office properly relied on Dr. Madison's opinion to deny compensation for myasthenia gravis for lack of causal relationship. While Dr. Madison confirmed the diagnosis of myasthenia graves, his opinion does not establish that this condition is employment related, as he explicitly stated that appellant does not have a disability that is the result of his job. As the record contains no rationalized medical evidence which establishes that appellant's myasthenia gravis and associated disability, was causally related to his employment either directly, or through precipitation, acceleration or aggravation, he has failed to meet his burden of poof with respect to this issue.

¹⁶ *Alberta S. Williamson*, 47 ECAB 569 (1996).

The decisions of the Office of Workers' Compensation Programs dated January 14, 2003 and October 7, 2002 are hereby affirmed.¹⁷

Dated, Washington, DC
October 7, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁷ The Board notes that subsequent to the Office's January 14, 2003 decision, appellant submitted additional medical and factual evidence to the Office. The Board cannot consider this evidence, however, as the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997); *Robert D. Clark*, 48 ECAB 422 (1997).