

FACTUAL HISTORY

On February 27, 2002 appellant, then a 55-year-old supervisory trial attorney, filed an occupational disease claim alleging that job stress caused anxiety, depression and a panic disorder. He stopped work on January 31, 2002.

By letter dated March 4, 2002, the Office informed appellant of the type evidence needed to support his claim, which was to include the employment factors that he believed contributed to his condition and a comprehensive medical report relating his condition to the claimed employment factors. In a second letter also dated March 4, 2002, the Office asked that the employing establishment provide comments regarding appellant's claim.

In an undated response, appellant alleged that he had been placed on new, more demanding performance standards in late 2001 and this led to his stress. He stated that he believed the new standards to materially differ from those he had been under for the prior 20 years, alleging that the new standards were framed in broad terms and that reviewing them and trying to come up with a strategy to deal with them caused him to suffer anxiety attacks at 4:00 a.m. He described "racing thoughts about the cases I was supervising and I would be terrified that things would go wrong with them." Appellant further stated that if confronted with stressful events during the day, such as meetings, the anxiety attack would last the entire day and not abate until he reached home. He described an acute anxiety attack and depression with suicidal ideation, which led to his hospitalization on January 31, 2002 stating it occurred as a result of a discussion with the regional solicitor regarding how his depression was interfering with his job performance. Appellant stated that while hospitalized, when he would think of his job duties, he would have an anxiety attack manifested by a tingling scalp and face, increased heart rate, racing thoughts and abdominal distress. He noted that he had continued therapy after his hospitalization.

On February 18, 2002 appellant described the January 31, 2002¹ meeting with the regional solicitor, Catherine Oliver Murphy, who informed appellant that she was concerned that he had been confused during a meeting held the previous day, mixing up the names of attorneys involved in cases. Appellant informed Ms. Murphy that he was being treated for depression and that during his discussion with her, his depression deepened and he had a panic attack. He reported that she expressed concern that he was suicidal and suggested that he call his physician, who told him to go to the nearest emergency room. Ms. Murphy accompanied him to Pennsylvania Hospital, which referred him to its Hall-Mercer Crisis Center where he was examined and admitted, remaining until February 7, 2002.

Appellant described additional stressors that he felt caused his emotional condition, including "stressed at management and staff meetings," especially when goals for accomplishing work were discussed. He stated that he was under stress when he reviewed the work of other attorneys and was fearful that the work would not be correct. He alleged the attorneys were not talented enough to accomplish the tasks assigned them and that he would be incapable of instructing the attorneys on how to improve their work. Appellant stated that he was "obsessive"

¹ It is noted that on several statements, appellant used the date January 31, 2001. It is obvious from the tenor of the statements, however, that the meeting occurred on January 31, 2002.

about all the cases in his program, constantly thinking and worrying about them and that training attorneys caused stress, particularly working with new attorneys in their first cases going to trial. He was also stressed at workload meetings, concluding that the depression had left him bereft of confidence in training attorneys.

Appellant alleged that his job led to daily exposure of stressors including the review of the work of other attorneys and he described a recent case which he characterized as “high profile” which required a great deal of work in a short time. He had to correct the work of the attorneys he supervised, returning drafts several times, which caused exhaustion. Appellant stated that he had missed a crucial proof, which destroyed his confidence and, following a meeting with the regional solicitor and his attorneys, experienced a panic attack. Appellant concluded that “the tasks that cause stress are reviewing the work of other attorneys, training attorneys, conducting program meetings, meetings and other interactions with clients from OSHA [the Office of Safety and Health Administration] and attending out of the office training meetings.” Appellant added that he had previously had work-related depression in 1973 and 1987, which had been in remission.

Appellant submitted a February 8, 2002 letter, in which Ms. Murphy informed him that he needed a physician’s clearance before returning to work and that the employing establishment would pay for the examination. He submitted medical records including a psychiatric evaluation dated January 24, 2001, treatment notes dating from March 28, 2001 to January 11, 2002,² hospital records covering an admission from February 14 to March 1, 2002 at Eugenia Hospital, which included an admit note, a treatment care plan, a list of prescribed medications, a discharge summary, a March 5, 2002 report from Dr. John J. Thomas, a Board-certified psychiatrist, who diagnosed major depressive disorder and a report dated March 12, 2002 from Dr. David Frankel, Board-certified in psychiatry.

In a letter dated March 8, 2002, Ms. Murphy stated that appellant provided an accurate description of his medical history and the events leading to his admission to Pennsylvania Hospital on January 31, 2002. She provided a description of the employing establishment and appellant’s job duties,³ noting that over the previous 18 months appellant had experienced difficulties in performing his usual job duties with declining performance in areas such as review of legal analyses and documents, both technically and substantively. Ms. Murphy indicated that appellant did not provide the proper training or supervision of his staff and avoided the necessary communication with the staff he supervised. He experienced difficulties in group settings such

² The copy quality of the treatment notes is poor, the signatures are illegible and it is unclear if the notes were rendered by a physician.

³ Ms. Murphy stated that since July 12, 1981, appellant had been a GS-15, supervisory trial attorney, regional counsel for OSHA, responsible for reviewing all legal work prepared in cases arising in the OSHA program in the office. In that regard he was responsible for guiding, directing and supervising the work of approximately 15 attorneys and paralegals, that he oversaw all legal services and litigation activities performed by these, including evaluating matters for civil prosecution such as drafting pleadings, conducting depositions, preparing for trial, negotiating settlements, attending court appearances, etc., ensuring the quality of the legal work such as trial plans, strategies and overall decision making and must meet regularly with top agency officials to discuss the status of cases availability of resources, etc. He also had frequent contact with a wide variety of individuals both inside and outside the employing establishment.

as routine meetings, having problems with the flow of conversation, becoming preoccupied with a particular, often irrelevant topic, which could disrupt the meeting and also engaged in inappropriate conduct at meetings and at trial. Ms. Murphy stated that because of appellant's behavior, she was reluctant to permit him to attend outside meetings, trials and other routine matters. He was provided with closer supervision in the hope that the performance problems would be resolved but that the problems had continued, stating that on January 30, 2002 appellant was "obviously" unable to effectively participate in a meeting with two other managers.⁴ When she questioned him about this the next morning, appellant explained that he had experienced severe panic attacks. Ms. Murphy noted that appellant explained that his behavior the previous afternoon was a result of a routine staff meeting⁵ he attended that morning and that he became very distressed in both group settings as well as one-on-one meetings, listing numerous job duties that caused stress. She related that appellant then stated he realized he could commit suicide by running a car in a closed garage. Ms. Murphy advised him to call his physician and she escorted him to the Pennsylvania Hospital, where he was admitted.

Ms. Murphy advised that appellant's last performance appraisal reflected a downturn in his performance from "highly effective" to "fully successful," and he had not shown signs of improvement. She contemplated establishing a Performance Improvement Plan (PIP) but delayed this after giving him his new performance standards in late December 2001, stating that she wanted to give him time to perform under the new standards before instituting a formal PIP. Although she had counseled appellant throughout the year regarding performance problems, this had not been effective. She gave him the performance standards and advised appellant that if his performance did not improve after 90 days, she would have to develop a formal PIP. Appellant expressed concern regarding the new standards, especially those that required him to communicate with others. Ms. Murphy noted a review of the legal work in his programs reflected that he had not provided sufficient oversight to some attorneys and had not analyzed cases sufficiently. She stated that a separate issue was that appellant had difficulty in making supervisory decisions in a thorough and careful manner, having great difficulty considering an issue from more than one perspective and often did not recognize key factors, with the result that his most routine decisions had to be monitored. Ms. Murphy concluded that appellant did not seem to be able to respond to feedback and make the changes needed to cure his performance deficiencies, which impacted the entire program.

In a letter dated March 14, 2002, appellant related that he had been admitted to the Pennsylvania Hospital from January 31 to February 7, 2002 and at Eugenia Hospital from February 14 to March 1, 2002. He reiterated that his stress was caused by amorphous, new performance standards, that he was fearful he could not meet the requirements of the new standards, that he feared his work would not be correct and feared that he was incapable of

⁴ Ms. Murphy specifically stated that throughout the meeting appellant's face appears tense, he repeatedly turned his head "as if to release tension, frequently extended his arms out to his sides, "almost in a low flailing motion," had difficulty following the conversation, appeared to be unable to understand comments made by the participants and when he tried to respond to questions, struggled to answer and sometimes could not finish his sentences.

⁵ Ms. Murphy explained that this meeting was "a usual monthly meeting with attorneys/paralegals and addressed areas of typical concerns, such as reminding the staff to meet deadlines, reviewing the requirements for writing legal analyses and watching a presentation on courtroom technology."

directing attorneys, including working with new attorneys in their first cases for trial and attending periodic workload meetings. Appellant acknowledged that he was “obsessive about all cases” and noted that he was first diagnosed with depression in 1973 and that it had been exacerbated by work factors in 1987. He stated that on January 31, 2002 he determined that the only solution to his problems was ending his life.

By letter dated April 9, 2002, the Office informed appellant that the information received was not sufficient to adjudicate his claim. The Office requested that, since he had a preexisting condition, he should submit medical records of his prior treatments. The Office further noted that the medical evidence previously submitted was illegible and he should provide a narrative medical report. Appellant was given until April 30, 2002 to submit the additional information. In a second letter dated April 9, 2002, the Office requested that the employing establishment furnish information regarding the new performance standards.

In a decision dated May 6, 2002, the Office denied the claim, finding that the reviewing and training of attorneys and interaction with others were compensable factors of employment, but that the institution of new performance standards and his fear that he could not adequately perform his duties under the new standards were not compensable factors. The Office found that, as the medical evidence did not support that appellant’s condition was caused by the compensable factors, he did not establish that he sustained an employment-related emotional condition.

On May 2, 2003 appellant, through his attorney, requested reconsideration and contended that appellant’s September 2001 performance appraisal, which included criticisms that appellant failed to adequately train and supervise newer lawyers and that he intimidated the new lawyers caused his stress. Counsel contended that Ms. Murphy had required that appellant undergo a fitness-for-duty examination before returning to work. Additional medical evidence was also submitted, including a second report dated March 5, 2002 from Dr. Thomas and additional hospital records.⁶

In a May 29, 2003 letter, Ms. Murphy explained that she counseled appellant that he had to provide feedback to his staff attorneys. She noted that she did not question whether appellant could be relied upon in the January 31, 2002 meeting but discussed the unusual mannerisms he had displayed the previous day. Ms. Murphy stated that she did not require appellant to undergo a fitness-for-duty examination prior to returning to work but asked that he provide medical documentation to support his ability to return to work, adding that he volunteered to be examined at the employing establishment’s expense and, after being provided with several names, selected Dr. Larry Miller. She advised that all managers were placed on the new performance standards at the same time and that the new standards were implemented following a change of administration and were applicable to all regional counsel, GS-15 attorneys in the Office of the Solicitor.

⁶ These records consisted of progress notes from Eugenia Hospital dating from February 14 to March 1, 2002, forms, plans and laboratory reports from Pennsylvania Hospital, a medicine consultation report dated February 1, 2002, a Pennsylvania Hospital emergency room report dated January 31, 2002, diagnosing major depressive disorder, recurrent, severe and other forms and releases. The signatures on most reports are illegible. Appellant also submitted duplicates of medical reports previously of record.

By decision dated June 4, 2003, the Office denied the claims, finding the medical evidence insufficient.

LEGAL PRECEDENT

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁹ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.¹⁰ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.¹¹

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.¹² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹³

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ 28 ECAB 125 (1976).

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ *See Robert W. Johns*, 51 ECAB 137 (1999).

¹¹ *Lillian Cutler*, *supra* note 8.

¹² *See Dennis J. Balogh*, 52 ECAB 232 (2001).

¹³ *Id.*

ANALYSIS

The Board notes that appellant's regular duties of supervising attorneys and interacting with others were accepted as covered employment factors. Appellant, however, also alleged that his emotional condition that began on January 31, 2002 was caused by the enactment of new performance standards late in 2001 and that he was fearful he could not meet the terms of these standards. He explained that the new standards were framed in such broad terms that he had no idea how to deal with them, that reviewing them and trying to come up with a strategy to deal with them caused him to suffer anxiety. He described the acute attack of anxiety and depression with suicidal ideation which led to his hospitalization on January 31, 2002 stating it occurred as a result of a meeting with Ms. Murphy, where the new standards and appellant's performance were discussed.

The Board has held that an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.¹⁴ 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.¹⁵ The Board has specifically held that classification of positions and preparation of position descriptions are administrative functions of the employer,¹⁶ as is any reorganization undertaken by the employing establishment.¹⁷ Likewise, the review of an employee's work performance is an administrative matter and is, therefore, not generally considered to be a compensable factor of his employment.¹⁸

Ms. Murphy advised that the new performance standards were enacted in response to a change in administration and were applied to all regional counsel, GS-15 attorneys in the Office of the Solicitor. She also explained that appellant had experienced difficulty performing his work duties with declining performance over the previous 18 months, which impacted his performance appraisal. There is no evidence in the record before the Board that the employing establishment acted in an abusive manner in appraising appellant's performance or in enacting the new performance standards. The Board, therefore, finds that appellant failed to establish a compensable factor of employment regarding these matters.

Regarding the January 31, 2002 meeting between appellant and Ms. Murphy, appellant is not alleging that he was harassed at the meeting, merely that the subject matter of the meeting caused stress. The Board has long held that absent error and abuse, attendance at counseling sessions is an administrative function of the employing establishment.¹⁹ In the instant case, there

¹⁴ *Felix Flecha*, 52 ECAB 268 (2001); *Thomas D. McEuen*, 42 ECAB 566 (1991).

¹⁵ *James E. Norris*, 52 ECAB 93 (2000).

¹⁶ *Georgia M. McCardle*, 48 ECAB 502 (1997).

¹⁷ *See Mary Margaret Grant*, 48 ECAB 697 (1997).

¹⁸ *Sherman Howard*, 51 ECAB 387 (2000).

¹⁹ *Dinna M. Ramirez*, 48 ECAB 308 (1997).

is no evidence that Ms. Murphy acted abusively in conducting this meeting. Appellant, therefore, failed to establish a compensable employment factor in this regard.

To the degree that appellant is alleging that having to attend a fitness-for-duty examination caused his emotional condition, the Board notes that it would appear that any examination appellant was requested to undergo would have been after the instant claim was filed and would properly be the subject of a new occupational disease claim.²⁰

Appellant alleged that he became fearful that he would not be able to perform the duties required under the new performance standards which were enacted late in 2001. Appellant further alleged that, following the enactment of the new performance standards in December 2001, he would awaken in a panic worrying that things would go wrong with the cases he was supervising. He feared his work and that of the attorneys he supervised would not be correct and that he was incapable of instructing the attorneys on how to improve their work. The Board finds that appellant's fear that he would not be able to perform the duties under the performance appraisal is not an accepted factor of employment. The Board has long held that fear of future injury is not a compensable factor of employment.²¹ This is true even if the employee were to be found medically disqualified to continue in the employment because of the effect, which employment factors might have on the underlying condition.²² Under such circumstances, the employee's disqualification for continued employment would be due to the underlying condition, not the employment.²³

Appellant established compensable factors of employment, pertaining to his regular duties as a supervisor.²⁴ The relevant medical evidence in the instant case includes a discharge summary dated March 1, 2002, in which Dr. David Frankel, who is Board-certified in psychiatry, noted that appellant was hospitalized at Eugenia Hospital from February 14 to March 1, 2002 for suicidal ideation, depression and anxiety. He diagnosed major depressive disorder, recurrent, severe, with work-related stressors. In a psychiatric evaluation dated March 5, 2002, Dr. John J. Thomas, also Board-certified in psychiatry, provided a history that appellant had been depressed since April 1973 and described his hospitalization at Pennsylvania Hospital. He diagnosed major depressive disorder. Dr. Thomas submitted a March 5, 2002 report, in which he stated that appellant had a history of depression dating back to 1973, which had been exacerbated in January 2002, following the enactment of new performance standards at work. The physician diagnosed major depressive disorder with generalized anxiety disorder and panic disorder without agoraphobia, which he found were exacerbated by "work stress," continuing "[h]e is unable to cope with the new performance standards laid out at his job." Dr. Thomas

²⁰ Nonetheless, the Board notes that absent error and abuse, the requirement that a claimant attend an examination to determine fitness for work is an administrative matter of the employing establishment. See *Lillie M. Hood*, 48 ECAB 157 (1996).

²¹ *Manuel Gill*, 52 ECAB 282 (2001).

²² *Joseph G. Cutrufello*, 46 ECAB 285 (1994).

²³ *Mary A. Geary*, 43 ECAB 300 (1991).

²⁴ See *Dennis J. Balogh*, *supra* note 12.

recommended a “protracted medical leave of absence due to his significant work[-]related stress” of a minimum of six months.

In a report dated March 12, 2002, Dr. Frankel reported a history of depression going back to 1973 and that “work[-]related duties as well as thoughts of going back to work appear to be recurrent stressors.” He stated:

“It is my opinion that even though [appellant’s] diagnosis of [m]ajor [d]epression is a chronic disorder, his current episode of acute, debilitating depression and anxiety was caused by work[-]related stress. While the underlying condition is chronic, it has been exacerbated by job[-]related stress. Even though his periods of depression go back to 1973, he has had success in managing the symptoms of depression. This success seems clear from the fact that he has been [r]egional [c]ounsel for OSHA in the Office of the Solicitor, Region [3] for [20] years. I reviewed his performance evaluation for FY 2001 and his performance on the job was satisfactory to his raters. He reports that for FY 2002, his performance standards were changed and that it was explained to him that his role as [r]egional [c]ounsel would be more demanding than in the past. He related that the new performance standards are unfamiliar and that he is uncertain on how to formulate a plan to meet these new standards. That uncertainty resulted in great stress. On January 31, 2002 his supervisor confronted him over his apparent confusion at a meeting the previous day and that meeting led to a discussion of his depression and the symptoms of depression. This meeting precipitated a bout of acute depression and a panic attack, which led to his hospitalization. His therapist at this program conducted a workshop on anxiety triggers. She reported to me that [his] triggers for anxiety were almost all work related. Moreover, in reviewing the history of the disease he provided, all the triggers for acute episodes of depression were work related.”

Dr. Joshua Saks, Ph.D., provided a discharge summary dated April 23, 2002, in which he related that appellant had been admitted to Pennsylvania Hospital from January 31 to February 7, 2002, with a principal diagnosis of major depressive disorder, recurrent, severe and additional diagnoses of generalized anxiety disorder and personality disorder. Dr. Saks stated that appellant “related his recent increase in depressive symptomatology to a number of stressful changes in his workplace” and described appellant’s treatment regimen.

The Board finds that Dr. Thomas’ initial March 5, 2002 report and that of Dr. Saks dated April 23, 2002 are too general in nature to establish appellant’s claim is causally related to his supervisory work requirements. The Board had long held that medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relationship.²⁵ The reports of the physicians focus on appellant’s fear pertaining to the new performance standards as opposed to the work duties he performed. In a March 1, 2002 report, Dr. Frankel furnished insufficient rationale.²⁶ In a report dated March 5, 2002, Dr. Thomas

²⁵ *Albert C. Brown*, 52 ECAB 152 (2000); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

²⁶ *Id.*

advised that appellant was unable to cope with the new performance standards at work, which led to his anxiety and depression, causing him to be totally disabled. In a report dated March 12, 2002, Dr. Frankel advised that, in part, appellant's uncertainty in meeting the requirements of his job-duties precipitated the panic attack, which led to his hospitalization on January 31, 2002. As noted, appellant's fear that he would be unable to perform under the new standards is not compensable under the Act. The Board finds the medical evidence insufficient to meet appellant's burden of proof to establish that he sustained an emotional condition causally related to the accepted factors regarding his regular duties of supervising attorneys and interacting with others.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 4, 2003 be affirmed.

Issued: April 21, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member