

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY E. MANSFIELD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Martinsburg, WV

*Docket No. 03-1833; Submitted on the Record;
Issued August 3, 2004*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly found that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

This case was before the Board on a prior occasion. On May 4, 1999 appellant, a 55-year-old program analyst, filed a Form CA-2 claim for benefits based on occupational disease, alleging that he experienced high blood pressure and stress caused by factors of his employment. Appellant alleged that his problems began in March 1999 when the employing establishment discussed with him whether he would be interested in instituting a tumor registry. He initially asked that the project be deferred, but ultimately began work on the tumor registry project and began studying materials pertaining to medical terminology. Appellant alleged that the more he read regarding the subject the more he became upset and that as a result he developed anxiety because of this new work assignment. Appellant stopped working on April 23, 1999. By decision dated October 20, 1999, the Office denied the claim on the grounds that the evidence was insufficient to establish that appellant's emotional condition had arisen in the performance of duty. In a decision and order dated June 12, 2001, the Board reversed the Office's October 20, 1999 decision, finding that appellant established a compensable factor of employment; *i.e.*, that he developed stress from his work assignment to the tumor registry and the requirement of studying information pertaining to the registry, which was a specially assigned work duty and therefore a requirement of his employment.¹ The Board remanded the case to the district Office for further development of the medical evidence.²

The Office prepared a statement of accepted facts dated July 23, 2001, which it then referred, with questions regarding appellant's alleged emotional disability to Dr. James Bakhtiar,

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² Docket No. 00-835 (issued June 12, 2001).

a physician, who submitted a supplemental report dated October 25, 2001 in which he stated that appellant's depression was precipitated, reactivated and made manifest by numerous job-related issues. The statement of accepted facts reiterated the Board's finding that appellant's assignment to the tumor registry was a compensable factor of employment. The statement asserted that appellant began his training for the tumor registry position on April 12, 1999 and continued to read the new manual until April 23, 1999, during which time appellant was being instructed in the reading of the manual by another experienced employee. The statement also indicated, however, that "[appellant] never actually performed the duties of Tumor Registry."

By decision dated October 17, 2001, the Office denied appellant's claim for compensation based on an alleged emotional condition. The Office stated that appellant's reassignment to the tumor registry was an administrative function of the employing establishment and that, because it had not been shown that the employing establishment erred or acted abusively in this reassignment, appellant had failed to show this was a compensable factor of employment. The Office, however, did not consider any additional medical evidence, as the Board had instructed in its June 12, 2001 decision.

By letter dated October 11, 2002, appellant's attorney requested reconsideration.

By decision dated January 14, 2003, the Office denied reconsideration of the October 17, 2001 Office decision. The Office stated that "it has been determined that the claimant's reaction to a new assignment is not a factor of employment for compensation purposes and thus a condition resulting from stress due to a new assignment is not considered to have developed in the performance of duty. A factor of employment that is accepted as being in the performance of duty is reading the manuals to learn the new assignment."³ In addition, the Office considered Dr. Bakhtiar's October 17, 2001 report in conjunction with previous reports submitted by Dr. Bakhtiar dating back to 1999, but found that this medical evidence was insufficient to establish that appellant's claimed emotional contention was caused by the accepted factor of employment.

By decision dated June 12, 2003, the Office denied reconsideration of the October 17, 2001 Office decision.

The Board finds that the case is not in posture for decision.

In its June 12, 2001 decision, the Board clearly stated that appellant had established a compensable factor of employment by alleging that he developed stress causally related to his work assignment to the tumor registry and to the requirement of studying information pertaining to the registry. The Board found that this assignment constituted a specially assigned work duty and was therefore a requirement of his employment. The Board specifically instructed the Office, on remand, to prepare a statement of accepted facts and further develop the medical evidence in this case in order to determine whether there was sufficient medical evidence to establish that appellant had an emotional condition or disability causally related to the

³ The Board found in its June 12, 2001 decision that appellant's work reassignment was not unreasonable or in error, but that the assignment to the tumor registry and the requirement of studying information pertaining to the registry, by itself, was a special duty.

compensable employment factor. Although the Office did prepare a statement of accepted facts and submitted them, together with relevant questions, to Dr. Bakhtiar, it erroneously stated in the statement of accepted facts that appellant never actually performed the duties of tumor registry. In fact, once appellant began the process of training for the new position and reading the manuals, this effectively constituted “performing the position.” In addition, the Office erred by failing to consider Dr. Bakhtiar’s October 25, 2001 report prior to rendering its January 14, 2003 decision. Finally, the Office erred in its January 14, 2003 decision by finding that appellant’s reaction to a new assignment to the tumor registry was not a factor of employment for compensation. Although the Office did find that the requirement for appellant to read training manuals was a compensable factor of employment, this did not constitute a complete, unequivocal acceptance of the Board’s finding in its June 12, 2001 decision that appellant developed stress from both his work assignment to the tumor registry and the requirement of studying information pertaining to the registry, which the Board found to be a compensable factor of employment under *Cutler* and thus in the performance of duty. The Office therefore erred by ignoring the Board’s finding on remand and reconsidering this issue instead of developing the medical evidence; *i.e.*, Dr. Bakhtiar’s October 25, 2001 report, which it had been instructed by the Board to consider in determining whether appellant sustained an emotional condition causally related to the accepted factor of employment. The Board will therefore set aside and remand the Office’s June 12, 2003 decision for the Office to prepare a proper statement of accepted facts and to consider Dr. Bakhtiar’s October 25, 2001 report and determine whether Dr. Bakhtiar’s report constitutes sufficient medical evidence to establish that appellant sustained an emotional condition causally related to the compensable work factor the Board found in its June 12, 2001 decision -- that he developed stress from his work assignment to the tumor registry and the requirement of studying information pertaining to the registry, which was a specially assigned work duty and therefore a requirement of his employment. Accordingly, the June 12, 2003 Office decision is set aside and the case is hereby remanded for consideration in accordance with the instructions stated above. After such development as it deems necessary, the Office shall issue a *de novo* decision.

The Office's decision of June 12, 2003 is therefore set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
August 3, 2004

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member