

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**PHILLIP D. ELIAS, Appellant**

**and**

**SOCIAL SECURITY ADMINISTRATION,  
OFFICE OF HEARINGS & APPEALS,  
Tulsa, OK, Employer**

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**Docket No. 03-2275  
Issued: January 22, 2004**

*Appearances:*  
*Phillip D. Elias, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On September 24, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated September 12, 2003. Under 20 C.F.R. §§ 501(c), 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

This is the second time this case has been before the Board. Appellant, a 51-year-old attorney adviser, filed a claim for benefits based on an emotional condition on March 13, 2000. Appellant submitted an April 4, 2000 report from Dr. P.T. Arehart, a specialist in psychiatry, who stated that appellant had preexisting post-traumatic stress disorder aggravated by extreme stress from his job with the employing establishment. Dr. Arehart opined that appellant

developed conditions of anxiety and major depression with psychotic features and required hospitalization. By decisions dated October 17, 2000 and July 17, 2001, the Office denied the claim for benefits based on an emotional condition, finding that appellant failed to identify any compensable factors of employment. In a decision dated February 13, 2003,<sup>1</sup> the Board set aside the October 17, 2000 and July 17, 2001 Office decisions. The Board found that appellant established a compensable factor of employment by showing that his preexisting emotional condition was aggravated by his work requirements as an attorney adviser. The Board therefore found that appellant had established a *prima facie* claim for compensation. It stated that, while the medical reports of record did not provide a full medical history of appellant's emotional condition and treatment, they did attribute an aggravation of his condition, in part, to the work requirements of his position. The Board therefore remanded the case for further development of the medical evidence.

In order to determine whether appellant has an emotional disorder causally related to the accepted, compensable employment factor, the Office referred appellant to Dr. Dominic Losacco, Board-certified in psychiatry and neurology. In a report dated August 12, 2003, Dr. Losacco stated findings on examination, reviewed the medical history and statement of accepted facts. He diagnosed major depressive disorder with panic disorder and agoraphobia, with possible psychotic depressive disorder, stating that he did not find that the employment in any significant way aggravated the illness. Dr. Losacco stated his disagreement with the diagnosis of post-traumatic stress disorder, opining that the traumatic event did not reach the requisite level of severity to result in this condition. Dr. Losacco concluded that he did not believe that appellant's illness was post-traumatic in nature nor that the job had precipitated or aggravated his disorder; rather, it was the depressive disorder itself that prevented appellant from functioning in the work environment and led to his incapacity.

By decision dated September 12, 2003, the Office denied appellant compensation for an emotional condition, finding that the medical evidence was not sufficient to establish that his stress-related condition was causally related to his employment. The Office found that the report of Dr. Losacco represented the weight of the medical evidence.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>2</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>3</sup> In other words, in order to discharge his burden to establish his occupational disease claim for an emotional condition, appellant must

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<sup>1</sup> Docket No. 01-1901 (issued February 13, 2003).

<sup>2</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>3</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>4</sup>

### ANALYSIS

There is a conflict in the medical evidence between the opinions of Drs. Arehart and Losacco regarding whether appellant's emotional condition was causally related to the accepted, compensable factor of employment. The Board found in its February 13, 2003 decision that the medical evidence, *e.g.*, Dr. Arehart's reports, were sufficient to raise an inference of causal relationship between appellant's emotional condition and his accepted employment factor to require further development of the medical evidence. The Office referred appellant to Dr. Losacco, who stated in his August 12, 2003 report that appellant did not have post-traumatic stress disorder, as Dr. Arehart had diagnosed and that appellant's employment did not precipitate or aggravate his emotional condition. Dr. Losacco opined that appellant's emotional condition had not been affected by his work environment. He asserted that appellant's depressive disorder was the sole cause of his incapacity.

When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires that the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."<sup>5</sup> In order to resolve the conflict of medical opinion, the Office should, pursuant to 5 U.S.C. § 8123(a), refer appellant, the case record and a statement of accepted facts to an appropriate, impartial medical specialist or specialists for a reasoned opinion to resolve the aforementioned conflict regarding whether appellant has established that his emotional condition is causally related to the accepted, compensable employment factor. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>6</sup> After such development as it deems necessary, the Office shall issue a *de novo* decision.

### CONCLUSION

Under the circumstances described above, the Board finds that the case is not in posture for decision and requires further development of the evidence.

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<sup>4</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

<sup>5</sup> Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part, "[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." See *Dallas E. Mopps*, 44 ECAB 454 (1993).

<sup>6</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Issued: January 22, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member