United States Department of Labor
Employees' Compensation Appeals Board

MICHAEL CEBZANOV, Appellant	)	
and	)	**Docket No. 04-897**
	)	**Issued: July 9, 2004**
U.S. POSTAL SERVICE, BUSTELTON STATION, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 19, 2004 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated July 10 and October 27, 2003, denying his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this emotional condition claim.

ISSUE

The issue on appeal is whether appellant has established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

This is appellant's second appeal before the Board. By decision issued January 19, 2001,[1] the Board set aside the Office's April 1, 1999 decision, denying appellant's emotional condition claim, on the grounds that he had not established any compensable factors of

[1] Docket No. 99-2315 (issued January 19, 2001).

employment. The Board found that he had established an increased workload on August 13, 1997 as a compensable factor of employment. The Board remanded the case for further development. The law and the facts of the case as set forth in the Board's decision are hereby incorporated by reference.

Following remand, the Office reviewed the reports of Dr. Charles W. McElfresh, an attending psychiatrist, to ascertain whether the physician supported a causal relationship between appellant's increased workload on August 13, 1997 and the claimed emotional condition. By decision dated June 1, 2001, the Office denied the claim on the grounds that causal relationship was not established. The Office found that Dr. McElfresh's reports did not relate the claimed emotional condition to an increased workload, but to unsubstantiated allegations of harassment.

Appellant requested an oral hearing, which was held on July 29, 2002. At the hearing, his attorney asserted that a June 8, 2001 report from Dr. McElfresh was sufficient to establish causal relationship. In this report, Dr. McElfresh stated that he disagreed with the Office's June 1, 2001 decision, noting that appellant showed him "documents requesting additional time to complete his duties. His supervisors repeatedly denied these requests." Dr. McElfresh explained that appellant's inability to perform his duties caused supervisory harassment, which in turn caused appellant's emotional condition. Dr. McElfresh, therefore, concluded that appellant's condition was "directly related to the increased mail load."[2] In an August 6, 2002 report, Dr. McElfresh noted that appellant came under new supervision in September 1997, coinciding with a United Parcel Service (UPS) strike, that resulted in an increased volume of mail. Appellant experienced anxiety as he needed more time to prepare his route due to the increased mail volume.[3]

By decision dated and finalized October 24, 2002, the Office hearing representative affirmed the June 1, 2001 decision, finding that appellant submitted insufficient medical evidence to establish a causal relationship between the accepted increased workload on August 13, 1997 and the claimed emotional condition.

In a February 4, 2003 letter, appellant requested reconsideration. He submitted a January 21, 2003 report from Dr. McElfresh reiterating his remarks about the increased mail volume during the UPS strike and that appellant did not receive adequate assistance to complete his duties. Dr. McElfresh noted that appellant was a perfectionist who worked hard "for his own satisfaction."

By decision dated July 10, 2003, the Office denied modification of the prior decision on the grounds that the medical evidence did not establish causal relationship. The Office found

[2] Appellant's attorney also submitted chart notes from Dr. McElfresh dated December 29, 1998 to March 21, 2000. These notes do not mention increased workload.

[3] In a September 3, 2002 letter, the employing establishment asserted that appellant had adequate time to prepare his route and was given appropriate overtime. Appellant responded in a September 7, 2002 letter, that the employing establishment's mail volume measuring system was inadequate. However, the Office has already accepted increased workload on August 17, 2003 as a compensable factor of employment. Thus, the employing establishment's attempt to deny that appellant had an increased workload is moot.

that Dr. McElfresh's January 21, 2003 report did not mention any specific incidents of increased workload.

In a July 30, 2003 letter, appellant again requested reconsideration, asserting that Dr. McElfresh's opinion was unopposed. He enclosed a July 28, 2003 report from Dr. McElfresh which asserted that increased mail volume was an "ongoing problem … not adequately addressed by [appellant's] supervisors," leading to incidents of harassment. Dr. McElfresh asserted that his December 8, 1998 report mentioned "time imposed by management."

By decision dated October 27, 2003, the Office denied modification of the prior decision on the grounds that causal relationship was not established. The Office found that Dr. McElfresh's July 28, 2003 report was insufficiently rationalized.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[4] provides for the payment for compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[5] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[6] "Arising in the course of employment" related to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his employer's business, at a place where he may reasonably be expected to be in connection with his employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. This alone is insufficient to establish entitlement to compensation. The employee must also establish an injury "arising out of the employment." To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[7]

As the Board observed in the case of *Lillian Cutler*, workers' compensation law does not cover each and every illness that is somehow related to the employment. When an employee experienced emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his 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

[4] 5 U.S.C. §§ 8101-8193.

[5] *Id*. § 8102(a).

[6] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[7] *See Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

the employee's disability resulted from his emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work.[8]

When working conditions are alleged as factors in causing an emotional condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working condition 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.[9] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Where 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.[10]

ANALYSIS

In this case, appellant established an increased workload on August 13, 1997 as a compensable factor of employment. It must then be ascertained whether the medical record supports a causal relationship between this accepted factor and the claimed emotional condition.

In support of his claim, appellant submitted several reports from Dr. McElfresh, an attending psychiatrist, supporting a causal relationship between increased workload during the UPS strike and the development of an emotional condition. In a June 8, 2001 report, he asserted that in late 1997, appellant showed him documents relating to his requests for assistance with an increased workload and that his supervisor denied these requests. Dr. McElfresh also noted appellant's anxiety over not being able to handle the increased mail volume caused by the strike in his August 6, 2002, January 21 and July 28, 2003 reports. Although these reports also attribute appellant's emotional condition to supervisory harassment which has not been established as factual, Dr. McElfresh consistently supports a causal relationship between increased workload and the claimed emotional condition.

Although Dr. McElfresh's opinion is not sufficiently rationalized[11] to meet appellant's burden of proof in establishing his claim, it stands uncontroverted in the record and is, therefore, sufficient to require further development of the case by the Office.[12] However, the Office did not undertake further development of the medical record, such as referring appellant for a second opinion examination. In view of the above evidence, the Board finds that the Office should have referred the matter to an appropriate medical specialist to determine whether the established

[8] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[9] *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

[10] *Sandra F. Powell*, 45 ECAB 877 (1994); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

[11] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[12] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

employment factor of increased workload on August 13, 1997 caused or aggravated the claimed emotional condition.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[13] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner. Therefore, the Board finds that the case must be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant may have developed an emotional condition as a result of increased workload or other aspects of his job duties. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in this case.

CONCLUSION

The Board finds that the case is not in posture for a decision and the case is remanded for further development.

ORDER

IT IS HEREBY ORDERED THAT the October 27 and July 10, 2003 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further development consistent with this opinion.

Issued: July 9, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[13] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W.Butler*, 39 ECAB 852 (1988).