

on October 5, 1993 was aggravated by prolonged sitting, standing, bending, stooping, lifting and pulling required in his job. He also alleged that he developed an emotional condition on November 19, 1996 caused by the stress of his back pain.¹ On the reverse of the claim form, Alexander Kerekes, a supervisor, indicated that appellant stopped work on July 20, 1998.² Mr. Kerekes stated that appellant never told him that his work conditions caused pain but appellant expressed dissatisfaction with the Office's procedures for authorizing medical treatment.

In a November 16, 2000 letter, Jeanette Johnson, an employing establishment human resources specialist, noted that appellant worked at the Directorate of Security as an office automation clerk in a light-duty capacity in April 1996. He was allowed to take walks and move about as needed, provided with an ergonomic chair, and his workstation was adjusted to adhere to limitations established by his physician. In September 1996, he was reassigned at his request to the Directorate of Law Enforcement. In that job, appellant was not required to lift heavy items or pull or lift file drawers, allowed breaks as needed and worked at one workstation using an ergonomic chair. His tasks included answering the telephone, greeting visitors and inputting information into a computer.

In a report dated May 24, 2000, Dr. Daniel S. Robbins, a clinical psychologist, stated that he had treated appellant for dysthymic disorder since April 9, 1997 and that he had a six-year history of depression. He opined that appellant's depression was exacerbated by the pain from his back condition and the stress of pursuing his compensation claim.

Dr. Eric M. Jacobson, a psychiatrist, stated on June 9, 2000 that he had treated appellant for severe depression since November 1996 and opined that his chronic back and leg pain had significantly contributed to his depression.

In a June 19, 2000 report, Dr. Alberto G. Lopez, a Board-certified psychiatrist and neurologist, diagnosed chronic major depression and opined that appellant was not capable of returning to his usual work because he could not deal with the stress of working with demanding and critical personalities and keeping to schedules. The physician noted that, while appellant worked in the Directorate of Law Enforcement, a highly publicized crime took place involving the disappearance of a teenager and the large number of Federal Bureau of Investigation (FBI) agents and members of the press created a stressful environment. Appellant also found it stressful to work with police and military personnel and with a coworker identified as Bernice who constantly complained and criticized him.

Dr. Don Williams, appellant's attending Board-certified orthopedic surgeon, provided findings on examination in an August 8, 2000 report. He diagnosed a lumbar disc protrusion at L4-5 and a lumbar disc bulge at L3-4, spinal stenosis and degenerative facet arthritis. Dr. Williams indicated that appellant's job required kneeling, bending, crouching, overhead

¹ At the hearing held in this case, appellant indicated that he was claiming that his job duties from April 1996 to July 1998 aggravated his accepted back condition sustained on October 5, 1993.

² Appellant has a separate claim alleging that he sustained a recurrence of total disability on July 20, 1998 due to an accepted employment-related back condition sustained on October 5, 1993 and a related emotional condition.

work, sitting and standing. He indicated that appellant could not perform his regular job because sitting and typing for long periods of time did not allow him to adjust and change his position, pulling open file drawers required bending and twisting, and he was unable to stand for long periods to shred documents or talk to customers.

By decision dated March 5, 2001, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an aggravation of his accepted October 5, 1993 back condition or a new emotional condition causally related to factors of his employment between April 1996 and July 1998.

By letter dated March 24, 2001, appellant requested a hearing that was held on December 6, 2001. He testified that Bernice constantly criticized him and he sometimes had to complete her tasks when she was absent. She accused him of deleting files from her computer and reported a conversation she overheard in which appellant and a coworker discussed guns. Appellant testified that his light-duty job requirements between 1996 and 1998 aggravated his back condition. He worked for three months beginning on April 1, 1996 as an automation clerk at the Directorate of Security and his duties included filing, answering the telephone and updating regulation and publication files. He then transferred to the Directorate of Law Enforcement where he worked as an automation clerk assisting customers with traffic reports and traffic tickets and retrieving files from file cabinet drawers weighing up to 175 pounds. Appellant testified that his job also included working on a computer for three to four hours a day, walking to various offices to distribute documents, retrieving 40-pound file boxes from a warehouse, shredding 40-pound bundles of documents, moving 40-pound boxes of printer paper, standing at a copy machine for extended periods, moving pistol targets and attending court proceedings.

By decision dated February 7, 2002 and finalized February 8, 2002, the Office hearing representative affirmed the Office's March 5, 2001 decision.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the

³ The Board has held that, in certain cases, where the causal connection is obvious, expert medical testimony may not be necessary to establish a claim. *See Naomi A. Lilly*, 10 ECAB 560 (1959). The instant case, however, is not a case of obvious causal connection.

claimant's diagnosed condition and the implicated employment factors.⁴ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.⁶ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.⁷ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁸ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁹ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.¹⁰

ANALYSIS

Appellant alleged that between April 1996 and July 1998 he engaged in heavy physical labor which included pulling file drawers weighing up to 175 pounds and lifting boxes weighing up to 40 pounds. However, this allegation is contradicted by his supervisor's statements that he performed "very light clerical work." According to appellant's supervisor, he was not required to lift heavy items or pull or lift file drawers and was allowed breaks as needed. Appellant has submitted no evidence to support his allegation that his job requirements between April 1996 and July 1998 involved the kind of heavy physical labor that he described.

Dr. Williams opined in an August 8, 2000 report that appellant could not perform his light-duty position. However, Dr. Williams' opinion is not based on an accurate factual background. He indicated that appellant's job required kneeling, bending, crouching, overhead work, sitting and standing. This job description, provided to Dr. Williams by appellant, is not accurate based on the statements of appellant's supervisor as noted above. Due to this deficiency, this report is insufficient to establish that appellant sustained a work-related aggravation of his accepted back condition between April 1996 and July 1998.

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁷ *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁹ *Edward E. Olson*, 35 ECAB 1099 (1984).

¹⁰ *Manuel Garcia*, 37 ECAB 767 (1986); *Joseph T. Gulla*, *supra* note 8.

In his February 7, 2002 decision, the Office hearing representative referenced numerous documents from a separate file concerning appellant's claim for a recurrence of total disability on July 20, 1998 causally related to his October 5, 1993 employment injury. However, the medical reports in that file do not address the issue of whether appellant sustained an aggravation of his accepted back condition due to his job requirements between April 1996 and July 1998.¹¹

Regarding appellant's allegation that he sustained an emotional condition between April 1996 and July 1998 due to chronic pain and limitations from his accepted back condition, the Office has already accepted, in the separate file for his claim for a recurrence of total disability on July 20, 1998, the condition of depression as resulting from pain from his October 5, 1993 back condition.¹²

Dr. Robbins, a clinical psychologist, stated his opinion that appellant's depression was exacerbated by the pain from his back condition, which, as noted above, has already been accepted by the Office, and also the stress of pursuing his compensation claim. However, the development of an emotional condition related to the stress of filing a compensation claim would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.¹³

Dr. Lopez noted in his examination of appellant that a highly publicized crime took place during appellant's employment and created a stressful environment for him. Appellant also found it stressful working with police and military personnel and his coworker Bernice who constantly complained and criticized him. Dr. Lopez diagnosed chronic major depression and indicated that appellant was not capable of returning to his usual work because he could not deal with the stress of working with demanding and critical personalities and keeping to schedules. However, his allegation regarding the stress of dealing with coworkers and schedules is not sufficiently detailed or corroborated by other evidence to be considered a compensable employment factor. Regarding the stress from the crime that occurred and dealing with FBI agents and the press, appellant also provided insufficient detail for a determination to be made of whether compensable factors of employment were involved. The Board finds that the evidence of record is insufficient to establish that appellant sustained a new emotional condition between April 1996 and July 1998 causally related to factors of his employment.

On appeal, appellant's representative argued that the Office hearing representative improperly reviewed the case file for appellant's October 5, 1993 injury claim in adjudicating this claim. However, at the hearing conducted on December 6, 2001, appellant's representative

¹¹ In a March 14, 1996 disability certificate, Dr. Halamanderis released appellant to full-time regular work on April 1, 1996 and none of Dr. Halamanderis' reports in the file for a recurrence of total disability on July 20, 1998 indicate that appellant's accepted back condition was aggravated by his job requirements between April 1996 and July 1998.

¹² The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Federal Employees' Compensation Act. *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362 (1988).

¹³ *Virgil M. Hilton*, 37 ECAB 806 (1986).

agreed that the hearing representative should review the 1993 file for documents pertinent to appellant's claim in this case.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an aggravation of his October 5, 1993 accepted back condition or a new emotional condition between April 1996 and July 1998 causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 8, 2002 is affirmed.

Issued: May 21, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member