

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

LLOYD W. RILEY, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Houston, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-1223
Issued: October 29, 2004**

Appearances:
Lloyd W. Riley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 6, 2004 appellant filed an appeal from an Office of Workers' Compensation Programs' nonmerit decision dated March 2, 2004, which denied his request for reconsideration, and a September 25, 2003 decision, which denied his emotional condition claim. Accordingly, the Board has jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office properly refused to reopen appellant's claim for a merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 19, 2002 appellant, then a 54-year-old addiction therapist, filed a claim alleging that he sustained stress as a result of factors of his federal employment. Appellant attributed his condition to his job responsibilities, *i.e.*, patient contact, group presentations,

compliance with deadlines for treatment plans, assessments, individual therapy appointments, discharge of patients that were noncompliant with treatment, intake and processing of an overwhelming amount of (unequally distributed) new clients with mental disorders and substance problems. He indicated that he first realized his condition on December 1, 1999 and that his employment caused or aggravated his condition on September 1, 2000. Appellant stopped work on July 1, 2002 and has not returned.

By letter dated October 22, 2002, the Office advised appellant that the evidence submitted was not sufficient to determine whether he was eligible for compensation benefits and that he needed to submit a detailed description of the specific employment-related incidents he believed contributed to his illness. The Office also asked him to submit a comprehensive medical report from a treating physician describing his symptoms and the medical reasons for a condition and an opinion as to whether the employment factors caused or contributed to his condition.

On November 8, 2002 appellant requested a copy of his case file. No information was submitted in response to the Office's October 22, 2002 letter.

By decision dated January 15, 2003, the Office denied the claim as the evidence failed to establish that appellant's condition arose in and out of the performance of his federal job duties.

In a June 24, 2003 letter, appellant requested reconsideration. He submitted medical reports from Paula J. Haymond, Ed.D., a psychologist; Dr. Robert J. Bacon, Jr., a psychiatrist, Dr. Sandhya Trivedi, a Board-certified psychiatrist; Dr. Victoria J. Sloan, a clinical psychologist; an April 3, 2003 letter from appellant advising that the above medical reports were being submitted; a copy of a case allocation report revised June 16, 1999; and copies of various consult requests, laboratory reports and progress notes from the Department of Veterans Affairs.

By decision dated September 25, 2003, the Office denied modification of the January 15, 2003 decision. The Office found that appellant had failed to establish a factual basis for his claim as he failed to provide any specifics regarding the events or incidents occurring on December 1, 1999 which allegedly caused him stress.

In an undated letter which the Office received on December 18, 2003, appellant advised that he was requesting reconsideration on the basis of a "statement of facts," which he stated identified the specific employment factors and incidents which caused or contributed to his emotional condition. He further asserted that the reconsideration request was based on a well-established legal principle that when the employment aggravates a preexisting emotional condition and causes disability, the disability is compensable. In an undated "statement of facts" appellant noted his daily job duties and advised that on or before December 1999 and throughout his employment, he was subjected to discrepancies in caseload allocations which exposed him to a stressful work environment which was demeaning, hostile and oppressive. Also submitted were new medical reports from Dr. Trivedi along with a previously submitted copy of a case allocation report revised June 16, 1999.

By decision dated March 2, 2004, the Office denied appellant's reconsideration request on the grounds that he neither raised a substantial legal question nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employee's Compensation Act¹ has the burden of establishing the essential elements of his or her claim,² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ An employee's burden of proof includes the submission of a detailed description of employment factors or conditions that the employee believes caused or adversely affected the condition for which compensation is claimed.⁶

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁷

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. 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

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.115.

³ 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Lillian Cutler*, 28 ECAB 125 (1976).

the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

ANALYSIS -- ISSUE 1

Appellant's CA-2 claim form did not contain a detailed description of the specific employment-related incidents he believed caused or contributed to his illness. Although appellant had listed his job responsibilities and that he was generally overworked due to an "overwhelming amount of (unequally distributed) new clients," his CA-2 claim form did not contain any specific information pertaining to the frequency or duration of any overwork or any details of the employment conditions believed to be responsible for causing his illness.⁹ As appellant's CA-2 form contained general allegations of nonspecific employment stresses and he failed to submit a statement in support of his claim, the Office properly informed appellant that more detailed information was necessary. It requested that he provide a detailed description of the specific employment-related conditions or incidents he believed contributed to his illness.¹⁰ Appellant did not respond to the Office's letter, but, in support of his June 24, 2003 reconsideration request, he submitted a copy of a revised June 16, 1999 case allocation report. Appellant, however, failed to provide any explanation as to what the report meant and how it related to his claim.

An employee must support his or her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹ Furthermore, an employee cannot simply allege that his employment caused or contributed to his emotional condition and, thus, be entitled to compensation; each employment factor alleged must be supported by probative and reliable evidence.¹² Accordingly, the Board finds that appellant has failed to present reliable, probative and substantial evidence that his emotional condition was caused or aggravated by the specific employment incidents and factors which he alleged.

As appellant failed to submit evidence indicating a specific event or incident at work which established a specific factor of employment, his mere allegations of an emotional condition caused by stress at work may not be evaluated by a physician for a determination of causal relationship. Thus, the Office properly did not consider the medical evidence submitted by appellant in finding that appellant failed to establish an injury in the performance of duty.

⁸ *Marguerite J. Toland*, 52 ECAB 294 (2001).

⁹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁰ See Federal (FECA) Procedure Manual, Part 2, Chapter 2.803.3, *Fact of Injury* (June 1995).

¹¹ *Roger Williams*, 52 ECAB 468 (2001).

¹² *Id.*

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹³ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁴

ANALYSIS -- ISSUE 2

In his reconsideration request which the Office received on December 18, 2003, appellant asserted that his employment had aggravated a preexisting condition and submitted a “statement of facts,” in which he set forth specific employment factors and incidents he believed caused or contributed to his emotional condition. In this statement, appellant for the first time asserted that he was subject to discrepancies in caseload allocations which had exposed him to a stressful work environment. He also referred to a case allocation attachment, which was previously submitted and of record, to support his allegation. Although appellant had generally alleged that he was overworked, the Board finds that on reconsideration he specifically contended in his “statement of facts” that he was subject to discrepancies in his caseload allocation and explained how the caseload allocation sheet, which was previously of record, supported and related to his allegation. This evidence is relevant to the issue decided by the Office in its September 25, 2003 decision as it relates to whether a compensable work factor has been established. The Office did not previously consider this evidence as it did not know how appellant’s earlier submission of the caseload allocation sheet related to his claim. The Board, therefore, finds that appellant’s request for reconsideration contains a relevant legal argument not previously considered by the Office and, thus, meets the second standard for obtaining a merit review of his case.

As appellant’s request for reconsideration meets at least one of the standards for obtaining a merit review of his case, the Board will set aside the Office’s March 2, 2004 decision and remand the case for review on the issue of whether the September 25, 2003 determination should be modified. The Office shall issue an appropriate final decision on this point.

CONCLUSION

The Board finds that the Office properly denied appellant’s claim on the grounds that he failed to establish a compensable factor within the performance of duty. The Board further finds, however, that the Office improperly denied appellant’s reconsideration request without conducting a merit review of the claim.

¹³ 20 C.F.R. § 10.606(b)(2) (1999).

¹⁴ 20 C.F.R. § 10.608(b) (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2004 is set aside and remanded for further action consistent with this decision. The Office's September 25, 2003 decision is affirmed.

Issued: October 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member