

by another employee, Bill Wilson. He stated that as a result of this verbal abuse he experienced elevation of his blood pressure and anxiety. Jerald V. Wilson, a coworker, reported that on October 20, 1994 Bill Wilson approached appellant and him while they were sitting in a clinic waiting area at the employing establishment. He stated, “[Bill] Wilson stopped and pointed to [appellant] as he looked at me and in a very loud voice asked me if this was my seeing eye dog.” Jerald Wilson heard laughter from the patients and staff in the waiting area and told Bill Wilson that he could not make such a remark.

The Office claims examiner conducted a telephone conference with appellant on January 13, 1995. The Office provided him and the employing establishment with copies of the memorandum of the conference on January 13, 1995. Appellant stated that Bill Wilson worked in a different section of the employing establishment and that the October 20, 1994 remark was the last in a series of remarks directed toward appellant beginning in 1989. He explained that he had facial scars and skin grafts on the right side of his face and that Bill Wilson would look at him in a funny way and shake his head saying “Too bad” and would also make comments about the way appellant walked. Appellant noted in 1992, that he was walking down a hall with his supervisor, James P. Thompson, and met Bill Wilson, who asked where they were going. Appellant invited him to join them for lunch and Bill Wilson stepped back a step or two and stated, “Not the way you’re swishing. I wouldn’t want to be seen with you.” Appellant assumed that Bill Wilson was implying that he was a homosexual. These remarks resulted in a discussion between appellant, Mr. Thompson, Bill Wilson and his supervisor during which Bill Wilson was cautioned regarding his remarks about appellant.

Appellant filed an occupational disease claim on January 17, 1995 noting that he first became aware of his emotional condition on January 10, 1989 and first related his condition to his employment on December 25, 1992.

Appellant’s supervisor, Mr. Thompson, submitted a statement dated January 24, 1995 and noted that he had reviewed the memorandum of conference and found the information to be correct. He addressed the difficult relationship that appellant had with Bill Wilson, who was described as difficult, troublesome, argumentative, critical and sarcastic. Mr. Thompson stated that during the 1992 discussion Bill Wilson continued to be sarcastic. He stated: “This was the ‘straw that broke the camel’s back’ and was very traumatic given the history of sarcasm which had been ongoing for a number of years.”

The Office accepted appellant’s claim for a temporary aggravation of delusional disorder, paranoid type and social anxiety phobia on April 28, 1995. The Office entered appellant on the periodic rolls on August 2, 1995.

Appellant returned to full-duty work on November 1, 1995. His only restriction was to work outside the date-of-injury building. On November 2, 1995 the Office stated that it was reducing appellant’s wage-loss compensation effective October 31, 1995 based on his actual earnings. By decision dated January 3, 1996, the Office determined that appellant’s actual earnings fairly and reasonably represented his wage-earning capacity as they met or exceeded those of his date-of-injury position.

On April 10, 1996 the employing establishment reassigned appellant back to his date-of-injury building and noted that his work assignments would not require any direct contact with Bill Wilson until appellant received a full medical release.

In a letter dated April 30, 1996, the Office proposed to terminate appellant's medical benefits on the grounds that the medical evidence established that he had no remaining work-related disability or residuals of his accepted conditions. The Office found that the medical evidence established that appellant's temporary aggravation of emotional conditions had ceased and that his fear of a recurrence if additional exposure to Bill Wilson occurred was not a compensable factor. By decision dated June 14, 1996, the Office terminated medical benefits. The Office noted that the only accepted factor in the case was appellant's difficult relationship with Bill Wilson.

The employing establishment removed appellant from his position on August 23, 1996.

No further action was taken in this matter until appellant filed an additional occupational disease claim on October 8, 2002 alleging that events occurred within his employment that aggravated his emotional condition. He claimed that he developed emotional reaction and aggravation of preexisting conditions. In an accompanying letter, appellant asserted that his emotional condition had not ceased. He filed a notice of recurrence of disability on October 9, 2002 and stated that he sustained a recurrence of his October 20, 1994 employment injury on September 18, 2002 and that he was experiencing problems with anger and recalled events that happened at the time of his original claim.

The Office requested additional factual and medical evidence by letter dated April 9, 2003. Appellant did not respond.

By decision dated May 16, 2003, the Office denied appellant's claim for a recurrence of disability.

Appellant requested reconsideration on June 27, 2003 and submitted additional medical evidence. Dr. Theodore Millon, a clinical psychologist, completed a report of testing on April 2, 2003 and diagnosed schizoaffective disorder, adjustment disorder with anxiety and post-traumatic stress disorder.

In a report dated June 5, 2003, Dr. Robert F. Sarmiento, a licensed psychologist, noted that he began treating appellant on August 1, 1995. He described his return to work and the restrictions that he provided at that time. Dr. Sarmiento stated that appellant's work restrictions were violated at the employing establishment as he was required to return to the building where Bill Wilson worked and as he was under the jurisdiction of his former supervisors. He noted that his mental state deteriorated resulting in a suicide attempt and hospitalization. Dr. Sarmiento examined appellant on October 16, 2002 and noted that he reported seeing Bill Wilson in a restaurant parking lot and that this had upset him. He stated that appellant was experiencing a recurrence of the delusional disorder with obsessive-compulsive features that he originally developed due to work trauma. Dr. Sarmiento stated that the specific nature of his preoccupations clearly related the present condition to a recurrence of his original work injury.

He concluded, “In my opinion, the recurrence began with the violations of medical restrictions.... [Appellant] has apparently been suffering up to this day from this recurrence....”

By decision dated July 28, 2003, the Office declined modification of the May 16, 2003 decision.

Appellant requested reconsideration on August 19, 2003. By decision dated September 18, 2003, the Office declined to reopen his claim for consideration of the merits on the grounds that his request for reconsideration did not contain any legal argument nor supportive evidence.

Appellant again requested reconsideration on March 13, 2004. He submitted a report dated June 25, 2004 from Dr. John B. Schoonmaker, a Board-certified psychiatrist, diagnosing paranoid schizophrenia. He stated that appellant’s condition worsened due to the recurring abuse and ridicule at the employing establishment and when his medical restrictions were violated. Appellant advised the physician that the employing establishment had violated his prearranged work area, replaced his medically authorized supervisor and forced him to trespass into areas made off limits by his treating physician.

By decision dated July 28, 2004, the Office found that appellant’s request for reconsideration was not timely as it was received on May 17, 2004 and the merit decision was dated May 16, 2003 more than one year previously.¹ However, the Office chose to review the merits of appellant’s claim on its own motion. The claims examiner determined that, in the 1994 decision, the Office failed to make a determination regarding the factors alleged as causing or contributing to appellant’s condition. The Office reviewed the factual evidence of record and found:

“[Appellant] indicates that a coworker who is making abusive remarks is not his supervisor and that he works in a different section of the [employing establishment]. He further reports that a meeting was held with his supervisor and the other parties and that offending coworker apologized. There has been no determination that error or abuse occurred on the part of the employing [establishment].”

The Office found that, because the factual record failed to substantiate error or abuse on the part of the employing establishment, the evidence, therefore, failed to establish a compensable factor of employment and appellant had not met his burden of proof to establish an emotional condition. The Office rescinded the acceptance of his original claim.

In regard to appellant’s claimed recurrence of disability, the Office found that Dr. Schoonmaker’s June 25, 2004 report was not based on a proper factual background as he

¹ The Board notes that the Office improperly found that appellant’s request for reconsideration was not timely filed. The Office issued a merit decision on July 28, 2003 less than one year from the date that he requested reconsideration on May 17, 2004. According to Office procedure, the one-year period for requesting reconsideration begins on the date of the original Office decision, but that right to reconsideration within one year also accompanies any subsequent merit decision on the issues. This would include any merit decision issued by the Board. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3b (January 2004).

included violations of appellant's work restrictions as causing or contributing to his current condition. The Office concluded that, even if appellant were to establish a compensable factor of employment, he failed to submit the necessary medical evidence to establish the claimed recurrence of disability.

LEGAL PRECEDENT -- ISSUE 1

The Board has upheld the Office's authority to reopen a claim at any time on its own motion under 5 U.S.C. § 8128² and where supported by the evidence, set aside or modify a prior decision and issue a new decision.³ The Office's regulations provide in part: "If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded or award compensation previously denied."⁴ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁵ It is well established that, once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁶ This holds true where the Office later decides that it has erroneously accepted a claim for compensation. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.⁷

ANALYSIS -- ISSUE 1

The Office found in its July 28, 2004 memorandum that, in accepting the claim in 1994, the Office had not made specific findings of fact with respect to the alleged factors of employment. The Board has held that a claim for an emotional condition must be based on compensable work factors that are substantiated by the probative evidence of record. An emotional reaction to regular or specially assigned work duties comes within coverage of the Federal Employees' Compensation Act, but not every situation that has some connection to employment is considered a compensable work factor.⁸ The Board has recognized the compensability of verbal altercations and difficult relationships between coworkers in certain circumstances. The Board notes that, in this case, the Office accepted as a compensable factor the difficult relationship that appellant had with Bill Wilson. This was supported by appellant's allegations, a witness statement and the letter of his supervisor, who addressed the difficulties

² 5 U.S.C. § 8128.

³ *Shelly D. Duncan*, 54 ECAB ____ (Docket No. 02-1260, issued January 22, 2003).

⁴ 20 C.F.R. § 10.610.

⁵ *Andrew Wolfgang-Masters*, 56 ECAB ____ (Docket No. 05-1, issued March 22, 2005).

⁶ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

⁷ *Andrew Wolfgang-Masters*, *supra* note 5.

⁸ *See Bobbie D. Daly*, 53 ECAB 691 (2002).

appellant experienced with Bill Wilson from the 1980s. He described repeated hostile, sarcastic and offensive remarks.

The Board finds that in rescinding acceptance of the claim, the Office failed to provide adequate rationale for the rescission of the compensable work factors. The Office claims examiner merely noted that the employing establishment actions following Bill Wilson's statements were appropriate. While the claims examiner properly noted that there was no error or abuse on the part of the employing establishment in dealing with the situation, the Office failed to address the accepted compensable employment factor. For these reasons, the Board finds that the Office failed to meet its burden of proof to rescind acceptance of appellant's 1994 claim for an emotional condition.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness.⁹ Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.¹⁰

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence of bridging symptoms between the recurrence of the accepted injury must support the physician's conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹¹

ANALYSIS -- ISSUE 2

In support of his claim for recurrence of disability, appellant submitted a report of psychological testing results from Dr. Millon, a psychologist, dated April 2, 2003 and diagnosing schizoaffective disorder, adjustment disorder with anxiety and post-traumatic stress disorder. Dr. Millon did not provide a history of injury and his report cannot establish a causal relationship between appellant's diagnosed condition and his accepted employment injury.

⁹ 20 C.F.R. § 10.5(x).

¹⁰ *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

¹¹ *Id.*

In a report dated June 5, 2003, Dr. Sarmiento, a licensed psychologist, noted appellant's history of injury in 1994. He again examined appellant on October 16, 2002 and noted that he reported seeing Bill Wilson in a restaurant parking lot and that this upset him. Dr. Sarmiento stated that appellant was suffering from a recurrence of the delusional disorder with obsessive-compulsive features that he originally developed due to work trauma. He stated that the specific nature of his preoccupations clearly related the present condition to a recurrence of his original work injury. Dr. Sarmiento concluded, "In my opinion, the recurrence began with the violations of medical restrictions.... [Appellant] has apparently been suffering up to this day from this recurrence...."

While Dr. Sarmiento opined that appellant had sustained a recurrence of disability, he did not attribute this recurrence to his accepted employment injury, but instead asserted that the employing establishment had violated appellant's work restrictions upon his return to work in 1995 and that these violations resulted in an ongoing recurrence of disability from that time. The Board notes that the Office did not accept any additional employment exposures such as exceeding work restrictions as compensable in appellant's claim and that as these alleged events occurred after his initial claim, this would require development as a new occupational disease claim rather than a recurrence of disability as there was an intervening injury or new exposure to the work environment which caused the illness.¹²

Appellant also submitted a June 25, 2004 report from Dr. Schoonmaker, a Board-certified psychiatrist, diagnosing paranoid schizophrenia. He stated that appellant worsened due to the recurring abuse and ridicule at the employing establishment and when his restrictions were violated. Dr. Sarmiento stated that the employing establishment violated his prearranged work area, replaced his medically authorized supervisor and forced him to trespass into areas made off limits by his treating physician. These allegations do not relate to a spontaneous worsening of appellant's employment-related condition, but as with Dr. Sarmiento's report attribute appellant's current condition to additional employment exposures. As the medical evidence does not support that appellant's current condition is due to his accepted employment injury, but instead to intervening events, the medical evidence does not support that he sustained a recurrence of disability.

CONCLUSION

The Board finds that the Office failed to meet its burden of proof to rescind the acceptance of appellant's 1994 claim for an emotional condition. The Board further finds that he failed to meet his burden of proof in establishing that he sustained a recurrence of disability causally related to his 1994 employment injury.

¹² 20 C.F.R. § 10.5(x).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2004 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part in accordance with this decision of the Board.

Issued: May 17, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member