

stopped working on June 21, 1999. Appellant stated that he had an obsessive-compulsive disorder, having previously been diagnosed with anxiety and depression, and that his physician's report dated August 30, 2000 reflected the cause of his condition.

Appellant submitted a report dated August 30, 2000 signed by Dr. Carol A. Dobrzynski, Board-certified in psychiatry and neurology, who indicated that appellant had been treated for severe anxiety and obsessive-compulsive disorder by Dr. Jan Sari Herscovitz, Board-certified in the areas of psychiatry and neurology, from April 20, 1994 until his death in July 2000. Based on Dr. Herscovitz' records, Dr. Dobrzynski related that "the stressors of appellant's job aggravated his anxiety and depression" and that, due to his obsessive disorder, he would ruminate obsessively about his cases at work and feel compelled to check and recheck his work repeatedly. This behavior "apparently compounded his clinical depression leading to feelings of despondency, diminished interest in activities, changes in appetite and sleep patterns, fatigue and diminished ability to concentrate and organize." She also gleaned from Dr. Herscovitz' records that when requests for accommodations were not granted, the stressors of work contributed to his ongoing symptomology, requiring an extended period of disability and ultimately left him fully disabled and unable to return to work. Dr. Dobrzynski provided diagnoses of major depressive disorder, generalized anxiety disorder and obsessive-compulsive disorder, "moderate, secondary to inability to work, due to his disability."

By letters dated August 20 and September 20, 2001, the Office requested additional information, including details of employment-related conditions or incidents which appellant believed contributed to his illness and a medical report with a reasoned medical opinion as to the cause of his condition.

In response to the Office's request, appellant submitted a letter signed by Dr. Herscovitz dated August 9, 1999, indicating that she had evaluated and treated appellant on August 3 and 9, 1999 for the diagnosis of major depression, anxiety disorder and adult attention deficit disorder. Dr. Herscovitz opined that appellant was unable to work at that time and should not return to work for the next four weeks. Appellant also provided another copy of Dr. Dobrzynski's August 30, 2000 letter. The record reflects that appellant's former supervisor had retired by the time he filed his claim and that no one at the employing establishment had actual knowledge of the incidents or circumstances surrounding his alleged work-related condition.

By decision dated October 29, 2001, the Office denied appellant's claim, finding that he failed to provide a factual statement outlining the job factors that he believed caused his condition and, therefore, had failed to establish that a factor of his federal employment caused or contributed to his medical condition.

On November 6, 2001 appellant requested reconsideration. He submitted a personal statement dated October 16, 2001, indicating that his employment duties included reviewing complex documents, which he checked and rechecked to make sure he did not "miss anything." He alleged that he maintained a large inventory of ongoing cases that required his review and that he was presented with so much information and so many details that he felt compelled to research that he was unable to complete his work on time. He reported that his inability to complete his work satisfactorily resulted in deep depression and an inability to focus, which, in

turn, exacerbated his poor work performance and increased his symptoms of obsessive-compulsive disorder.

Appellant submitted a report dated October 20, 2001 from Dr. Dobrzynski, who elaborated on appellant's history and identified appellant's stressor "as being his need to be precise and accurate in his job [which] caused him to have anxiety with checking and checking and rechecking to make sure his work was just right." Dr. Dobrzynski stated that, although he had symptoms of obsessive compulsive disorder, he appeared to function successfully in his job until the stressor of having a negative review by his supervisor, which caused him to have anxiety and an increased need for checking and rechecking his work.¹ Dr. Dobrzynski provided diagnoses of obsessive-compulsive disorder, major depressive disorder and general anxiety disorder and opined that appellant was unable to return to his previous occupation.

Appellant submitted his position description as a tax technician dated June 27, 1983. Pursuant to the position description, appellant was required to examine tax liability issues from assigned cases; review applicable data pertaining to the taxpayer; identify potential tax issues; explore issues to determine nature, scope, direction, and method of inquiry; develop necessary information and evidence through correspondence, interview or field examination; evaluate evidence and information including alternate courses of action; reach final decisions on tax liability and explain to taxpayer the basis for any adjustments; fully advise taxpayers of all appeal rights; and furnish assistance to the public in answering questions related to tax matters.

By decision dated January 16, 2002, the Office vacated the October 29, 2001 decision on the grounds that appellant had submitted a factual statement outlining job factors which he believed caused or contributed to his condition. By decision dated January 17, 2002, the Office denied the claim on the grounds that he had not established that he had a medical condition caused or aggravated by compensable factors of employment.

On February 19, 2002 appellant requested review of the written record. He submitted several letters signed by Dr. Herscovitz, including a letter dated December 6, 1996 recommending that appellant carry a "two-third caseload inventory;" a letter dated June 11, 1997 indicating that appellant was released to work with a medical recommendation of a reduced caseload; a letter dated October 1, 1997 repeating previously-made requests for accommodations and indicating that the employing establishment's refusal to provide accommodations had contributed to appellant's major clinical depression;² numerous disability slips; and a letter dated February 3, 1999 reiterating appellant's need for accommodations. In a letter dated November 19, 1999, Dr. Herscovitz opined that appellant was totally disabled as a result of his depression and obsessive-compulsive disorder. She stated that "a series of acute stressors contributed to the development of a severe acute episode of major depression in June 1996" and that, after an extended period of disability sick leave, appellant remained in partial remission, with recurrence and relapse in symptomology. Dr. Herscovitz stated that appellant had not been

¹ The record reflects an undated performance review indicating that appellant failed to efficiently carry out his duties as assigned.

² Accommodations requested included a quiet, nondistracting workplace, as well as flexible daily work hours and work inventory.

fully successful in evaluation of critical elements of his job and that his symptoms had exacerbated, resulting in further decline in his ability to perform his job. She also indicated that appellant's obsessive behavior, manifesting itself in his ruminating about his cases and checking and rechecking his work, was compounded by his clinical depression.

On February 3, 1995 appellant requested accommodations, including a quiet workplace, a flexible work schedule, and a reduced caseload. By memorandum dated September 5, 1995, the employing establishment provided appellant with accommodations which permitted him to work in an alternate workplace within his building and to accrue compensatory time, which he could use when his medical condition did not permit him to perform his assigned functions. A memorandum from his manager dated November 3, 1995 advised appellant that he was to use compensatory time as sick leave only with the full knowledge of the manager. By letter dated December 22, 1997, Dr. Herscovitz provided an update of appellant's condition and expressed concern that the employing establishment had not followed any of her recommendations regarding reasonable accommodations for appellant's condition.

By letter dated January 29, 2002, Dr. Dobrzynski opined that the employing establishment's failure to make the reasonable accommodations, as requested by Dr. Herscovitz, caused appellant's major depression and exacerbated his obsessive-compulsive disorder to the point of disability.

By decision dated December 9, 2002, the Office hearing representative affirmed the October 29, 2001 decision, finding that appellant's "reaction in this matter is clearly due to the evaluation of his job performance and not to his inability to perform his job duties."

By memorandum dated December 30, 2002, appellant indicated that he was submitting 38 pages consisting of "items provided January 2002 but not considered in decision dated December 9, 2002 -- review of written record." Evidence included previously-referenced letters and reports from Drs. Herscovitz and Dobrzynski, as well as appellant's request for reasonable accommodations.

By decision dated February 6, 2003, the Office hearing representative affirmed the October 29, 2001 denial of appellant's claim, stating that this decision superceded the December 8, 2002 decision. The hearing representative found that the employing establishment's failure to accommodate appellant was not a compensable factor in the absence of error or abuse.

By letter dated April 15, 2003, appellant requested reconsideration of the February 6, 2003 decision. He submitted a letter dated March 27, 2003 from Dr. Dobrzynski, who opined that the requirements of appellant's job (specifically the need to check and recheck work and the demands for precision and accuracy) caused an exacerbation of his symptoms of obsessive-compulsive disorder, which in turn led to the impairment of his ability to function and subsequent depression and anxiety.

By decision dated August 12, 2004, the Office denied modification of the February 6, 2003 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴ 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 employment."⁵

To establish his occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁶ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion 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 appellant.⁷

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 illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the medical evidence establishes that the disability results from an employee's emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Act. The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of his work or his fear and anxiety regarding his ability to carry out his duties.⁸ By contrast, there are disabilities having some kind of causal connection with the employment that are not covered under workers' compensation law because they are not found to have arisen out of employment, such as when disability results from 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.⁹ Moreover, although administrative and

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8102(a).

⁵ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued, September 10, 2004); see also *Bernard D. Blum*, 1 ECAB 1 (1947).

⁶ *Claudio Vazquez*, 52 ECAB 496, 498 (2001).

⁷ *Id.*

⁸ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁹ *Id.* See also *Peter D. Butt, Jr.*, 56 ECAB ____ (Docket No. 04-1255, issued October 13, 2004).

personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that reactions to actions taken in an administrative capacity are not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.¹⁰

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment which may be considered by a physician when providing an opinion on causal relationship, and which are not deemed factors of employment and may not be considered. When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.¹¹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.¹² As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.¹³ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁴

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment conditions. The Board finds that appellant has established conditions of employment that are compensable factors of employment.

Appellant alleged that he experienced emotional stress in carrying out his employment duties, which included reviewing complex documents, which he checked and rechecked to make sure he did not "miss anything," and in maintaining a large inventory of ongoing cases that required his review. He claimed that he was presented with so much information and so many details that he felt compelled to research, that he was unable to complete his work on time. He further noted his inability to complete his work satisfactorily exacerbated his poor work performance and increased his symptoms of obsessive-compulsive disorder. Appellant's June 27, 1983 position description supports his depiction of his duties, which included identifying, examining and exploring tax liability issues from assigned cases; evaluating

¹⁰ See *Charles D. Edwards*, 55 ECAB ____ (Docket No. 02-1956, issued January 15, 2004); see also *Ernest J. Malagrida*, 51 ECAB 287, 288 (2000).

¹¹ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

¹² See *Charles D. Edwards*, *supra* note 10.

¹³ *Charles E. McAndrews*, *supra* note 5; see also *Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case, the Board looked beyond the claimant's allegations to determine whether or not the evidence corroborated such allegations).

¹⁴ See *Thelma Rogers*, 42 ECAB 866 (1991).

evidence and information, including alternate courses of action; reaching final decisions on tax liability; and fully advising the taxpayer of all appeal rights. His performance review reflecting his failure to efficiently carry out his duties as assigned further corroborates his allegation. The employing establishment did not dispute this aspect of appellant's claim.

Having described appellant's history of obsessive compulsive disorder, Dr. Herscovitz indicated that he had appeared to function successfully in his job until he received a negative review by his supervisor. An employee's reaction to a performance evaluation is generally not compensable unless it is shown that the employing establishment erred or acted abusively in its administrative capacity.¹⁵ However, in the instant case, appellant's condition was not caused by the poor performance review. The record reflects that, although he was apparently able to function satisfactorily in his job, appellant experienced stress as a result of his regular employment responsibilities, which required him to monitor and review a large volume of cases.

Where a disability results from a claimant's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within coverage of the Act.¹⁶ The Board has held that conditions related to stress from situations in which an employee is trying to meet his or her position requirements are compensable.¹⁷ In this case, the evidence is sufficient to establish that appellant experienced stress and anxiety in performing his regular duties. Thus, the Board finds that appellant has established a compensable employment factor.

From December 19, 1994 until he stopped work on June 21, 1999, appellant and his psychiatrist requested that accommodations be made for his diagnosed conditions of obsessive-compulsive disorder, depressive disorder and general anxiety disorder. On December 19, 1994 Dr. Herscovitz asked that the employing establishment accommodate appellant's major clinical depression by providing him access to a work space with few auditory and visual distractions; an opportunity to complete work in an alternative quiet environment, such as a home office; a flexible hourly workday; and flexible inventory. On February 3, 1995 appellant requested accommodations. Again on December 6, 1996 Dr. Herscovitz recommended that appellant carry a "two-third caseload inventory." Letters dated June 11 and October 1, 1997 and February 3, 1999 repeated previously-made requests for accommodations and indicated that the employing establishment's refusal to provide accommodations had contributed to appellant's major clinical depression.

The Board finds that the employing establishment's response to the requests for accommodations did not comply with the recommended restrictions and constituted error. The

¹⁵ See *Charles D. Edwards*, *supra* note 10; see also *Ernest J. Malagrida*, *supra* note 10.

¹⁶ See *Lillian Cutler*, *supra* note 8. See also *Tina D. Francis*, 56 ECAB ____ (Docket No. 04-965, issued December 16, 2004). (Where claimant alleged that stress related to her regular supervisory duties and to specially assigned duties associated with complaint investigations caused her emotional condition, the Board found that she had established compensable employment factors.)

¹⁷ *Trudy A. Scott*, 52 ECAB 309 (2001); see *Richard H. Ruth*, 49 ECAB 503 (1998) (claimant's stress, as related to his regularly assigned duties, constituted a compensable factor of employment); see also *Lillian Cutler*, *supra* note 8.

record reflects that the only accommodation made by the employing establishment was pursuant to a September 5, 1995 memorandum, in which appellant was authorized to work in an alternate workplace within his building and to accrue compensatory time, which he could use as sick leave. The record contains numerous letters from Dr. Herscovitz reiterating appellant's need for accommodations and stating that the failure to provide accommodations was contributing to appellant's diagnosed condition. In a January 29, 2002 letter, Dr. Dobrzynski opined that the employing establishment's failure to make the reasonable accommodations as requested by Dr. Herscovitz, exacerbated appellant's obsessive-compulsive disorder to the point of disability. The employing establishment did not dispute that the recommended restrictions were reasonable or that they had not been accommodated, nor did it obtain any opinion to refute the necessity of the accommodations. Unrefuted by strong or persuasive evidence, appellant's allegations are of significant probative value.¹⁸ The Board finds that requiring appellant to perform duties outside of his medical restrictions constitutes a compensable factor of employment.

The fact that appellant has established employment factors that may give rise to a compensable disability under the Act does not discharge his burden of proof. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical opinion evidence establishing that he has an emotional condition or psychiatric disorder and that such disorder is causally related to an accepted compensable employment factor.¹⁹

Appellant submitted numerous reports from Drs. Herscovitz and Dobrzynski regarding the causal relationship between his mental condition and his employment duties. These are sufficient to require further development of the case record by the Office.²⁰ Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.²¹ The Board will remand the case for review of the medical evidence.

CONCLUSION

The Board finds that appellant has established compensable employment factors which require an analysis of the medical evidence. As the Office found that there were no compensable employment factors, it did not analyze or develop the medical evidence. The case will be remanded to the Office for this purpose. After such further development as deemed necessary, the Office should issue an appropriate decision on this matter.

¹⁸ See *Thelma Rogers*, 42 ECAB 866 (1991).

¹⁹ See *Roger W. Robinson*, 54 ECAB ____ (Docket No. 03-348, issued September 30, 2003).

²⁰ See *Felix Flecha*, 52 ECAB 268, 274 (2001).

²¹ See *William J. Cantrell*, 34 ECAB 1223 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 12, 2004 be set aside and the case be remanded for further proceedings consistent with this decision of the Board.

Issued: May 11, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member