

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

JOSE E. PACHECO, Appellant

and

**U.S. POSTAL SERVICE, INSPECTIONS
SERVICE, Hartford, CT, Employer**

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**Docket No. 05-457
Issued: May 16, 2005**

Appearances:
Hector Cordero-Vega, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 16, 2004 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 10, 2004 finding that the medical evidence did not establish that his emotional condition was causally related to his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board on appeal. In a May 20, 2004 decision, the Board found that appellant had established compensable factors of employment regarding his regular and specially assigned duties of carrying firearms, undertaking investigations, making arrests and performing undercover work as well as an erroneous order from his supervisor,

Ms. Crespo, directing him to leave a courthouse in violation of a court order.¹ The Board also accepted as compensable employment factors appellant's duties as the acting inspector-in-charge in 1985, his sensitive detail following a stressful interview in 1987, studying for an examination in October 1988, his detail to the New York office in September 1988, his detail in the National Headquarters in 1988 as well as working on a joint taskforce in 1982 when two police officers were killed on that investigation. The Board further found that the opinion of the second opinion physician, Dr. Jose Alonso, a psychiatrist, was sufficiently supportive of a causal relationship between appellant's diagnosed condition of major depression and the compensable factors of employment to require additional development of the medical evidence. The Board set aside the November 27 and March 12, 2002 Office decisions and remanded the claim for additional development. The facts and the circumstances as set forth in the prior Board decision are hereby incorporated by reference.

Following the Board's decision, appellant requested that his physician "be allowed to participate in the medical examination. The Office responded on June 25, 2004 that appellant's physician was not to prepare the report to be submitted in conjunction with the selected physician. The Office noted that appellant's physician could be present and participate in the second opinion evaluation in accordance with section 8123(a) of the Federal Employees' Compensation Act, which did not include the right to interfere in or comment on the examination."²

The Office referred appellant for a second opinion evaluation on September 10, 2004 with Dr. Nestor J. Galarza, a Board-certified psychiatrist. The Office included a list of questions and a statement of accepted facts. In a report dated September 30, 2004, Dr. Galarza noted appellant's medical history and reviewed the statement of accepted facts. He diagnosed depression, mild and chronic, as well as paranoid and obsessive personality traits. Dr. Galarza stated:

"This person is very conscientious and intolerant of imperfections, not only his own but that of others including organizations and institutions. These obsessive traits are not, in my opinion induced or caused by his employment nor by his employer's actions but are a lifelong pattern of functioning already noticed by his wife early in their marriage. Intolerance of his own imperfection, including losing an opportunity for professional development and later losing his job, has led to a depressive illness, of mild to moderate degree."

He noted that appellant's obsessive and paranoid traits were not caused by the accepted compensable factors of employment, but stated that the compensable factors and the stress associated with fighting for his rights as an employee, may have precipitated or accelerated his depressive symptoms.

By decision dated November 10, 2004, the Office denied appellant's claim for an emotional condition finding that Dr. Galarza's report established that his depression was due to

¹ Docket No. 03-720 (issued May 20, 2004).

² 5 U.S.C. §§ 8101-8193, § 8123(a).

his obsessive and paranoid personality traits rather than the accepted compensable employment factors.

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 of existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.³

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁴ Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible.⁵ The Office has an obligation to see that justice is done.⁶ The Board has stated that when the Office selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.⁷ Where the Office referred appellant for a second opinion physician and the report did not adequately address the relevant issues, the Office should secure a report on the relevant issues.⁸

ANALYSIS

In this case, the Board made definitive findings regarding the compensability of the employment factors alleged and remanded the case to the Office for additional development of the medical evidence. The Office referred appellant, a statement of accepted facts and a list of questions to Dr. Galarza, a Board-certified psychiatrist, for a second opinion evaluation. In his September 30, 2004 report, Dr. Galarza addressed appellant's obsessive and paranoid personality traits in the development of his depression and opined that the accepted compensable factors of employment did not cause or contribute to these personality traits. However, he did not provide a clear opinion regarding the contribution of appellant's compensable factors of employment to his diagnosed condition of depression. He stated that compensable factors of employment may have precipitated or accelerated appellant's depressive symptoms. As Dr. Galarza did not

³ *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

⁴ *John J. Carlone*, 41 ECAB 354, 359-60 (1989).

⁵ *Edward Schoening*, 41 ECAB 277, 282 (1989).

⁶ *Lourdes Davila*, 45 ECAB 139, 143 (1993).

⁷ *Steven P. Anderson*, 51 ECAB 525, 534 (2000).

⁸ *Robert Kirby*, 51 ECAB 474, 476 (2000).

adequately address the central issue in the case, whether it was his reasoned medical opinion that appellant's accepted employment factors in any way caused or contributed to his diagnosed emotional condition, the Office should secure a report discussing this relevant issue. The Office selected Dr. Galarza to provide an opinion on causal relationship, and it has an obligation to secure clarification of his report and to have a proper evaluation made.

CONCLUSION

The Board finds that the opinion of the Office's second opinion physician, Dr. Galarza, is not clear on the central issue of the case, whether appellant's accepted employment factors caused or contributed to his diagnosed condition of depression. On remand, the Office should obtain clarification of Dr. Galarza's report and determine whether or not he believes that the compensable factors of employment had any impact on the development of appellant's depression, whether this impact was by causation or aggravation and the extent of any resultant disability if, in fact, he believes that appellant's compensable employment factors contributed to the diagnosed condition of depression. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2004 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: May 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member