

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

LUIS COLAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Paterson, NJ, Employer**

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**Docket No. 06-597
Issued: July 7, 2006**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 20, 2006 appellant, through his attorney, filed a timely appeal from a merit decision of a hearing representative of the Office of Workers' Compensation Programs dated August 12, 2005 denying his emotional condition claim. 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 established that he sustained an emotional condition causally related to factors of his federal employment. On appeal, counsel argues that the Office erred in failing to further develop the medical evidence by referring appellant for a second opinion examination.

FACTUAL HISTORY

This case is before the Board for the second time. In the first appeal, the Board set aside the Office's June 18, 2003 decision after finding that appellant had established as a compensable employment factor that he sustained stress trying to deliver mail within the allotted time while in

the performance of his duties as a letter carrier.¹ The Board further determined that the opinion of Dr. Jose-Luis Benitez, his attending Board-certified psychiatrist, was sufficient to warrant further development of the medical evidence. The findings of fact and the conclusions of law from the prior decision are hereby incorporated by reference.

By letter dated June 17, 2004, the Office requested that Dr. Benitez review an enclosed statement of accepted facts, address which employment factors caused appellant's emotional condition and discuss any period of disability. The Office provided the physician 30 days to respond. Dr. Benitez did not respond within the time allotted.

By decision dated July 23, 2004, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained an emotional condition causally related to factors of his federal employment.

In a report dated July 20, 2004, received by the Office on July 26, 2004, Dr. Benitez diagnosed chronic depression and anxiety. He opined that appellant's condition was "caused by the stress of his job" as he had "no preexisting condition before the incident on February 28, 2002 when in discharge of his duties he had to be taken to the [e]mergency [r]oom with severe pain on his chest [and] difficulties breathing and anxiety." Dr. Benitez stated:

"I cannot offer evidence as to the veracity of the allegation that the supervisor yell[ed] at him and berated him before his coworkers but it is reasonable, from a psychiatric point of view, that such a confrontation could be enough to explain the symptoms presented by [appellant] if we take into consideration that there were other pressures placed on him to deliver mail within [the] allotted time in a rout[e] that changed every day."

Dr. Benitez opined that he was totally disabled from employment.

On August 9, 2004 appellant, through his representative, requested an oral hearing. At the hearing, held on May 23, 2005, appellant's representative argued that he had submitted sufficient medical evidence "to require medical development in a nonadversarial system."

By decision dated August 12, 2005, the hearing representative affirmed the July 23, 2004 decision. He found that Dr. Benitez did not adequately explain how appellant experienced anxiety on February 28, 2002 because of delivering mail and that the Office had adequately developed medical evidence by requesting clarification from the attending physician. The hearing representative noted that the Office's procedure manual provided that the Office could further develop the medical evidence by obtaining information from either an attending or referral physician.

LEGAL PRECEDENT

To establish an emotional condition causally related to factors of federal employment, a claimant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical

¹ *Luis Colan*, Docket No. 04-89 (issued March 10, 2004).

evidence establishing that he has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that his emotional condition is causally related to the identified compensable employment factors.²

The Office's procedure manual provides as follows:

"When the medical report is *prima facie* sufficient but the opinion provided is unrationalized or speculative, the CE [claims examiner] may find that causal relationship cannot be properly determined on the basis of the medical evidence of record. When this happens, the CE must obtain additional medical evidence."³

The Office's procedure manual states that additional medical information may be obtained from an attending physician, second opinion specialist or referee specialist.⁴ Regarding second opinion specialists, the procedure manual provides that "[i]n cases which cannot be adjudicated on the basis of opinions provided by the attending physician, an opinion will be requested from a physician who specializes in the pertinent field of medicine."⁵

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.⁶ Once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner.⁷

ANALYSIS

In the prior appeal, the Board determined that appellant had established as a compensable employment factor that he sustained stress while in the performance of his duties as a letter carrier. He received treatment at the emergency room on February 28, 2002 for anxiety and benign cardiac arrhythmia after experiencing a loss of breath while delivering mail. The Board found that the opinion of Dr. Benitez generally supported appellant's claim and was sufficient to warrant further medical development by the Office.

On remand, the Office requested that Dr. Benitez review the statement of accepted facts and indicate the employment factors responsible for appellant's emotional condition. In a report dated July 20, 2004, Dr. Benitez diagnosed chronic depression and anxiety and found that he remained disabled from employment. He attributed appellant's emotional condition to work stress because of his lack of a preexisting condition and because on February 28, 2002 "when in

² *Brenda L. DuBuque*, 55 ECAB ____ (Docket No. 03-2246, issued January 6, 2004).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.5 (June 1995).

⁴ *Id.* at 2.805.5(c)(2).

⁵ *Id.*

⁶ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

⁷ *Melvin James*, 55 ECAB ____ (Docket No. 03-2140, issued March 25, 2004).

discharge of his duties he had to be taken to the [e]mergency [r]oom” with chest pain, anxiety and breathing problems.” Dr. Benitez related that, while he could not verify the truth of appellant’s allegation that his supervisor yelled at him, this could explain his symptoms taking “into consideration that there were other pressures placed on him to deliver mail within [the] allotted time in a rout[e] that changed every day.”

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.⁸ The Board finds that, although Dr. Benitez failed to provide sufficient medical rationale to explain how appellant’s job requirements of delivering mail within the time allotted caused his emotional condition, his report is supportive of his claim and raises an uncontroverted inference of causal relationship sufficient to require further development by the Office. The Office’s procedure manual and Board case law provide that additional medical evidence shall be obtained when a medical report establishes a *prima facie* case but is insufficiently rationalized or speculative.⁹ The hearing representative, citing to the procedures manual, found that the Office had satisfied the requirement for further developing the medical evidence by requesting additional information from appellant’s attending physician. The Board notes, however, that the procedure manual further provides, “In cases which cannot be adjudicated on the basis of opinions provided by the attending physician, an opinion will be requested from a physician who specializes in the pertinent field of medicine.”¹⁰ In this case, the Office obtained additional medical information from appellant’s attending physician which supported his claim and was uncontroverted but lacked sufficient rationale to fully adjudicate the claim. The case will be remanded to the Office for further development of the medical evidence. On remand, the Office should refer appellant to an appropriate specialist for an opinion on whether he sustained an emotional condition due to stress in the performance of his duties as a letter carrier and, if so, any resulting periods of disability. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁸ *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004).

⁹ See *Jimmy L. Hammonds*, *supra* note 6; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.5 (June 1995).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.5(c)(2) (June 1995).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 12, 2005 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 7, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board