United States Department of Labor
Employees' Compensation Appeals Board

G.P., Appellant	)	
and	)	**Docket No. 06-1161**
	)	**Issued: September 26, 2006**
DEPARTMENT OF EDUCATION, OFFICE OF INTERGOVERNMENTAL & INTERNAL AFFAIRS, Atlanta, GA, Employer	)	

Appearances:
Stephen Scavuzzo, 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

JURISDICTION

On April 19, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated February 3, 2006 denying modification of a prior denial of 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 met his burden of proof to establish that he sustained an emotional condition in the performance of his federal duties.

FACTUAL HISTORY

On May 5, 2004 appellant, then a 57-year-old vocational rehabilitation program specialist, filed an occupational disease claim alleging that he sustained an emotional condition as a result of his federal employment. He stated that he was first aware of his condition in April 1997 and that it was caused by his employment on January 2, 2001. Appellant also stated that he experienced a breakdown on January 19, 2004. He stopped work on January 19, 2004 and has not returned.

In an accompanying statement, appellant alleged that he had a breakdown in the early 1990's due to continued pressure from a supervisor who never "let up" on him. He stated that his supervisor told him at 4:00 p.m. to finish a report before a three-day holiday, which appellant felt was impossible. Appellant related that he started to feel overwhelmed and that he called the deputy commissioner crying out of control and begging him to get him out of the regional office. He stated that, as a result of his call, the supervisor was removed from his position and relocated to Washington, D.C., in a staff position. Appellant stated that he had no medical documentation of the breakdown as he did not realize that he had a stress-related breakdown at that time. He also alleged that he started to have trouble with increased complexity and demands of his job during the last two years and his depression became difficult to manage. Appellant indicated that he had trouble focusing and completing routine assignments without errors and became overwhelmed at writing reports and reviewing state documents. On January 19, 2004 he stated that he was looking for regulations to respond to an email when he started to feel overwhelmed and trapped from the work demands and pressures and an uncontrollable fear overcame him and he started to cry. Appellant indicated that he left to see his therapist and had not returned.

In an April 4, 2004 report, Dr. Gregory A. Haley, a Board-certified psychiatrist, advised that he had managed appellant's depression since January 2004 and indicated that the main stressor has been his job for a long period. He indicated that appellant seems to have lost his ability to tolerate confrontation, schedules and management under time constraints progressively over time. Dr. Haley opined that appellant was totally disabled from his former capacity as this was the second severe breakdown in functioning related to the environment and responsibility of that position. Subsequent reports of record from him documented appellant's treatment and his opinion that appellant was totally disabled for work.

In a March 19, 2004 report, Elle Udaykee Trapkin, a licensed social worker, stated that she had been working with appellant since January 2001 and that the diagnosis was, and remains, severe, recurrent major depression and alcohol dependence, in remission. She indicated that appellant's depression escalates during times of stress on his job and he becomes confused and overwhelmed. Ms. Trapkin indicated that appellant reported a nervous breakdown in 1994 due to stress on his job which was exacerbated by an abusive supervisor, who was consequently removed from his position. She indicated that appellant became overwhelmed at work in January 2004 and was suicidal. Ms. Trapkin opined that appellant was totally disabled as he could not manage job stress involving "detail analysis of law regulations" and that his job placed him in an adversarial position with state officials, which exacerbated his stress.

A May 7, 2004 statement from Mary S. Davis, a coworker, indicated that appellant had often shared his feelings of frustration and anxiety about his work situation. She indicated that on January 19, 2004, appellant spoke with her privately and, in her opinion, he was experiencing a panic attack.

By letter dated June 15, 2004, the Office advised appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days.

In a July 15, 2004 letter, Diane McCuen, appellant's supervisor, stated that she was appellant's colleague during the mid to late 1980s and she had a different understanding of the reason why the former supervisor was transferred to Washington, D.C. She indicated that the

supervisor appellant referred to was transferred to fill a vital line position that had been vacant for months. Ms. McCuen indicated that the supervisor continued to be a supervisor in the new position and that the supervisor's transfer did not initiate due to appellant's complaint. She recalled that the former supervisor was no more demanding of appellant than he was of the other individuals he supervised. Ms. McCuen advised that she had been appellant's first-line supervisor for almost nine years. She stated that appellant's personal situations were taken into account when assessing his performance, which had been either a pass or successful ratings. Ms. McCuen indicated that, while she was under the impression that appellant was accomplishing most of his assignments on his own initiative, she recently learned from appellant that for the past several years his assignments were completed with the assistance of colleagues. She stated that, over the past few years, the monitoring task appellant conducted had become more demanding and comprehensive, but that the demands, workload and complexity of the other areas of his job have remained the same. Ms. McCuen indicated that appellant was required to produce annually a report (monitoring review) for each of the three state vocational rehabilitation agencies assigned to him. She stated that in the past each report had been approximately 12 pages in length, but in the last two years the report averaged 27 pages. Ms. McCuen indicated that each review took almost two months and that the established office policy required a draft report within 45 days after the conclusion of the review. She noted that the deadline was routinely extended when necessary. Ms. McCuen stated that she observed a decline in appellant's performance in November and December 2003 as his work product contained more content, formatting, typographical and grammatical errors. She indicated that appellant seemed very agitated when she asked him to correct mistakes and he would later apologize and provide an explanation. Ms. McCuen stated that appellant did not indicate that the stress of the job was the problem or a contributing factor. To her recollection, appellant did not ask to have an assignment removed because he felt it was too stressful. Ms. McCuen indicated that, because appellant was not proficient in typing or in identifying grammatical errors, the clerical staff provided assistance in proofreading his work. She stated that adjustments to deadlines were accommodated and appellant was provided the training for which he applied. Ms. McCuen stated that, in the past five years, appellant's regular workload had not changed and he was not considered for additional assignments. Copies of appellant's leave records were submitted along with copies of appellant's performance appraisals, performance plan for nonsupervisors, job description and resume.

Appellant submitted an April 29, 2004 medical report and office notes from Dr. David W. Tascarella, a Board-certified psychiatrist, who documented appellant's treatment and diagnoses since October 2001. In an August 12, 2004 medical report, Dr. Haley opined that appellant had severe and recurrent major depression with psychotic features. He further opined that exposure to events at work contributed to depressive exacerbation. Dr. Haley noted that, as appellant had reports of difficulty since his twenties, he could not lay the full etiology of appellant's condition on work events, other than as a "trigger/stressor." He opined that appellant had a biological base for both his depressive, anxious and substance abuse disorders which appellant's job had exacerbated.

By decision dated October 12, 2004, the Office denied appellant's claim finding that he failed to establish a compensable factor of employment.

In an October 10, 2005 letter, appellant requested reconsideration.

By decision dated November 16, 2005, the Office denied appellant's reconsideration request without performing a merit review on the basis that no evidence or arguments were submitted in support of his reconsideration request.

In a November 22, 2005 letter, appellant, through his attorney, requested reconsideration. In support of his request, appellant submitted an August 26, 2005 statement from Harry Fulford, a former coworker. In his statement, Mr. Fulford provided his observations of Ralph Pacinelli, regional director of rehabilitation services administration, during his employment. He stated that "Mr. Pacinelli seemed to have a problem controlling his temper and had a tendency to fly into a rage when he was not satisfied with something you did. He would scream and yell to intimidate you. These outbursts were abusive and belittling in nature. On a number of occasions I witnessed him acting this way toward Mr. Paul. I also personally experienced this type of treatment from Mr. Pacinelli; however, at the time he was put in charge of the regional office I had already submitted my retirement papers and did not have to worry about being intimidated or losing my job. His behavior created a very stressful work environment."

Also submitted was a July 10, 2005 report wherein Dr. Haley indicated that appellant had a "nervous breakdown" in January 2004. He stated that appellant reported that the environment in which he worked had been steadily wearing on him emotionally and that he had had progressive trouble with depressed and hopeless mood as well as anxiety and panic attacks, which he attributed to this environment. Appellant reported that supervisors had yelled, threatened, screamed, made verbal treats, belittled him and his work in front of peers and other office staff, and set him up for failure with unrealistic time frames for projects for which no training was provided, and what he felt and reported to supervisors was behavior and standards not applied to peers. He apparently met with the director of personnel on several occasions about the situation, had sought counseling through the Employee Assistance Personnel system, and had unsuccessfully sought a transfer to Washington, D.C. Dr. Haley stated that appellant's depression progressed over time and he began to feel worthless and incapable of functioning with gross disruption of sleep, repeated panic attacks, hopelessness and eventual paranoia. He indicated that, despite all of appellant's care under his treatment, appellant still gets unduly overwhelmed with any deadline or perceived expectation of performance. Dr. Haley opined that work environment and appellant's perception of no escape without endangering his future ability to survive in retirement contributed greatly as the primary, or at least one of the primary etiologies of his depression.

By decision dated February 3, 2006, the Office denied modification of its October 12, 2004 decision.

LEGAL PRECEDENT

Workers compensation law does not apply to each and every injury or illness that is somehow related to an individual's employment. There are many situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers compensation. These injuries occur in the course of employment and have some kind of causal connection with it, but are not covered because they do not arise out of or in

the course of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act.[1] Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his or her employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.[2] The same result is reached when the emotional disability resulted from the employee's emotional reaction to the nature of appellant's work or her fear and anxiety regarding his ability to carry out his duties.[3] Conversely, if the employee's emotional reaction stems from employment matters which are not related to her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.[4]

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[6]

In cases involving emotional conditions, the Board has held that, 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.[7] 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 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]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Trudy A. Scott*, 52 ECAB 309 (2001); *see also Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Lillian Cutler*, *supra* note 2.

[4] *Id.*

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

ANALYSIS

Appellant alleged that his emotional condition was caused or aggravated as a result of harassment by a supervisor in approximately the mid-to-late 1980s, an increase in his job complexity, and his January 19, 2004 breakdown in which he was looking for his regulations to respond to an email. The Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must initially review whether the alleged incidents and conditions of employment are compensable under the terms of the Act.

Appellant alleged that his emotional condition was due in part to harassment by a supervisor in approximately the mid-to-late 1980s. He stated that his supervisor told him at 4:00 p.m. to get a report finished before a three-day holiday, which was an impossible task, and that he felt overwhelmed. Appellant also stated that his call to the deputy commissioner effectively removed the supervisor from his position and relocated him to Washington, D.C. in a staff position. Verbal altercations, name calling or difficult relationships with supervisors in the workplace may be compensable if there is objective factual evidence supporting such allegations of mistreatment in relationships at work or of conduct or language which is otherwise unusual or not encountered as the norm of the employment.[9] An employee's charges that he or she was harassed or discriminated against are not determinative of whether harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[10] Mere perceptions of harassment are not compensable under the Act.[11] Appellant has offered no evidence to support that a supervisor had instructed that a report was due before a three-day holiday or that he was harassed by the supervisor as alleged. Although Mr. Fulford, a former co-worker, indicated that a Mr. Pacinelli was put in charge of the regional office and appeared to have a problem with his temper, he did not provide details of any specific verbal alterations he witnessed toward appellant. Mr. Fulford provided a general and vague statement that he witnessed Mr. Pacinelli having an outburst at appellant on a number of occasions, but he failed to provide details of such outbursts or when they occurred. Thus, Mr. Fulford's statement is of limited probative value. Additionally, Ms. McCuen, appellant's supervisor, indicated that it was her understanding that appellant's former supervisor in the mid to late 1980's was transferred to Washington, D.C. because he was selected to fill a position which had been vacated for months. She further indicated that it was her understanding that appellant's call to the commissioner did not initiate or result in the transfer of the supervisor as he was already being considered for the position. Appellant has provided insufficient evidence to establish a factual basis for specific actions on specific dates by a particular individual. Thus, he has not established compensable work factors in this regard.

Appellant also alleged that an increase in his job complexity has caused or contributed to his emotional condition which is cumulative to the point he suffered a nervous breakdown on

[9] *Paul Trotman-Hall*, 45 ECAB 229 (1993).

[10] *Anthony A. Zarcone*, 44 ECAB 671 (1994).

[11] *Jack Hopkins, Jr.*, 42 ECAB 818 (1986).

January 19, 2004 breakdown. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements is compensable.[12] Ms. McCuen, appellant's supervisor, supported appellant's allegation regarding his job duties. She stated that in the last five years, appellant's monitoring tasks had become more demanding and comprehensive. Ms. McCuen further indicated that in the past two years, the annual monitoring review of the three state vocational rehabilitation agencies assigned to appellant had increased from a report of approximately 12 pages to an average of 27 pages in length. Appellant further related that his January 19, 2004 breakdown occurred while he was looking for his regulations to respond to an electronic mail. The Board finds that the evidence sufficiently details specific job duties to which appellant attributed, in part, his emotional condition. As appellant attributed his emotional reaction to his regular or specially assigned employment duties, he has established a compensable work factor.[13]

Appellant's burden of proof, however, is not discharged by the fact that he has identified an employment factor which may give rise to a compensable disability under the Act. To establish his claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor of responding to an electronic mail on January 19, 2004.[14]

The record contains a March 19, 2004 report from Ms. Trapkin, a licensed social worker. A licensed social worker is not a physician as defined under the Act and is therefore not competent to render a medical opinion.[15] Therefore, her report is of no probative value. The record also contains an April 29, 2004 medical report and office notes from Dr. Tascarella, who documented appellant's treatment and diagnosis from October 2001 to the present. Dr. Tascarella, however, did not address the causal relationship between the accepted work factor and the emotional condition. To be probative, a medical report must be based on a complete factual and medical background and address the issue of causal relationship.[16] The Board finds that Dr. Tascarella's report is insufficient to establish appellant's claim.

In an April 4, 2006 report, Dr. Haley indicated that appellant had lost his ability to tolerate confrontation, schedules and management under time constraints progressively over time and that the second severe breakdown in functioning of January 2004 related to the environment and responsibility of his position. In an August 12, 2004 report, he stated that appellant had severe and recurrent major depression with psychotic features and opined that appellant's position exacerbated or acted as a trigger/stressor for his depressive, anxious and substance abuse disorders. In a July 10, 2005 report, Dr. Haley opined that the work environment and appellant's perception of his situation was one of the primary etiologies of his depression. As previously

[12] *Tina D. Francis*, 56 ECAB ___ (Docket No. 04-965, issued December 16, 2004).

[13] *Lillian Cutler*, *supra* note 2.

[14] *William P. George*, 43 ECAB 1159 (1992).

[15] *See* 5 U.S.C. § 8101(2); *Ernest St. Pierre*, 51 ECAB 623, 626 (2000).

[16] *See Douglas M. McQuaid*, 52 ECAB 382 (2001).

noted, to be probative, a medical report must be based on a complete factual and medical background and address the issue of causal relationship.[17] Although Dr. Haley opined that appellant's breakdown in January 2004 was related to or exacerbated by the environment and responsibility of his position, his opinion consists of a general and vague statement. He fails to explain exactly what the environment and responsibility of appellant's position were and relate such to either of the compensable work factors of the increased complexity of the annual monitoring reports or appellant's responsibility to respond to electronic mails on the date in question. Furthermore, a review of Dr. Haley's July 10, 2005 report reveals that he relied on a factual background which has not been factually established or specifically alleged by appellant. For example, he noted that appellant reported that supervisors had yelled at him and made verbal threats, set him up for failure with unrealistic time frames for projects for which no training was provided and applied different standards to him than that applied to his peers. The medical opinion evidence from Dr. Haley, while supportive of appellant's claim, is too vague in referring to appellant's "environment and responsibility of his position" to establish the critical element of causal relationship.[18]

CONCLUSION

Appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: September 26, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

[17] *Id.*

[18] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); *Katherine W. Brown*, 10 ECAB 618, 620 (1959) (finding that the actual circumstances upon which the physician predicated his conclusion that the claimant was concerned with job insecurity and that "this insecurity could have been the cause of the ulcer" were not determinable because the report did not contain a recital of those circumstances).