

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

F.R., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Boston, MA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-2320
Issued: September 17, 2008**

Appearances:
William E. Shanahan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 11, 2007 appellant, through his attorney, filed a timely appeal from a June 7, 2007 merit decision of the Office of Workers' Compensation Programs 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 his accepted condition of right foot hallux rigidus.

FACTUAL HISTORY

On November 22, 2004 appellant, then a 54-year-old mail handler, filed a recurrence of disability claim on September 14, 2004 causally related to a May 8, 2000 employment injury, assigned file number 010375500 and accepted for right foot hallux rigidus. Prior to stopping work on September 14, 2004, he worked four hours per day limited duty. Appellant asserted that he sustained an emotional reaction to the pain and discomfort in his right foot.

In a report dated October 13, 2004, Dr. Madan L. Zutshi, a Board-certified internist, opined that appellant was disabled from work beginning September 20, 2004 due to job stress. On October 19, 2004 Dr. Brian A. Yeaman, Board-certified in family practice, diagnosed “anxiety and depression that unfortunately are job related.” He referred appellant to a psychiatrist.

In an October 21, 2004 work restriction evaluation, Dr. Thomas C. Bond, a Board-certified psychiatrist, related that appellant was unable to work full time because of severe anxiety, poor concentration and physical discomfort. He stated, “[Appellant] feels unduly criticized and forced to perform duties he feels unable to fulfill.” On October 29, 2004 Dr. Zutshi opined that appellant should remain off work another three weeks due to job stress.

On October 27, 2004 Dr. Joel A. Saperstein, a Board-certified orthopedic surgeon, diagnosed double joint osteoarthritis, multiple workers’ compensation injuries and chronic discomforts. He found that due to appellant’s work injuries he could perform only sedentary employment.

On November 19, 2004 Dr. Bond discussed appellant’s history of work injuries and surgeries beginning in 1984. He stated, “These later two surgeries have resulted in [appellant] being placed on limited duty which [he] feels have led to frequent comments about his being a malingerer and causing him increasing stress.” Dr. Bond described appellant’s symptoms and noted that they “appear to be related to what he regards as an intolerable work situation.” He related:

“The question you raise as to whether his foot injury is causally related to his current symptoms is best addressed by Dr. Saperstein, his orthopedic surgeon, in his letter of October 27, 2004. In his opinion, the injuries are causally related to his work situation, and I have no reason to disagree. What can be said is that his orthopedic injuries clearly have limited his ability to perform his job as before, and thus are causally related to the extreme stress he experiences at work and his current symptoms.”

Dr. Bond diagnosed panic disorder with agoraphobia and adjustment disorder with anxiety and depression. He concluded, “As his condition appears related to perceived job stress, the prognosis is dependent upon whether he returns to work.”

After reviewing appellant’s notice of recurrence of disability and the medical evidence submitted, the Office determined on December 16, 2004 that appellant’s claim was for a new occupational disease. The Office assigned the case file number 012027596. It requested that he submit additional factual and medical evidence in support of his claim, including a rationalized medical report from his attending physician addressing the causal relationship between his diagnosed condition and employment factors.

On December 20, 2004 and March 7, 2005 appellant’s attorney argued that the Office should adjudicate appellant’s notice of recurrence of disability and maintained that he claimed a consequential injury rather than a new occupational disease.

On March 29, 2005 the employing establishment related that appellant's job was not stressful and that he could perform the duties of his position. The employing establishment disputed that he was called a malingerer or subject to a hostile work environment. Appellant was not assigned work outside his abilities.

By decision dated May 12, 2005, the Office denied appellant's claim on the grounds that he did not establish an injury in the performance of duty. It noted that he had not provided a statement identifying the employment factors to which he attributed his condition.

On May 18, 2005 appellant, through his attorney, requested an oral hearing in file numbers 010375500 and 012027596. On November 17, 2005 the hearing representative informed him that there was no final decision issued in file number 010375500. He noted that the case files for 010375500 and 012027596 had been combined. By letter dated November 18, 2005, appellant's attorney protested the Office adjudicating file number 012027596 instead of issuing a decision on the notice of recurrence of disability under file number 010375500. He requested a review of the written record in lieu of an oral hearing.¹

On January 6, 2006 counsel contended that the case should be remanded for the Office to adjudicate appellant's claim for a consequential emotional condition under file number 01375500. In a decision dated February 22, 2006, an Office hearing representative affirmed the May 12, 2005 decision. He found that the medical evidence was insufficient to show that appellant sustained an emotional condition due to his accepted foot injury.

On March 1, 2006 Dr. Saperstein diagnosed osteoarthritis, multiple employment injuries and chronic discomfort. He noted that appellant "is also suffering an emotional component to his problem with chronic pain which has made him quite anxious." Dr. Saperstein found that he was disabled due to his physical and emotional conditions.

In a report dated July 20, 2006, Dr. Bond related that he began treating appellant on October 15, 2004 at the request of his attending physician. He stated:

"[Appellant] related a history of a series of orthopedic injuries, dating back to 1984, [which] impacted his ability to perform his duties at the [employing establishment]. He felt that he had been increasingly criticized by his supervisors and singled out by them. He then began to have anxiety attacks surrounding the work site and developed the symptoms as mentioned previously. Even any mention of possible return to work results in an exacerbation of his anxiety and somatic symptoms."

Dr. Bond related that he could "find no alternative explanation for his condition other than a[n] emotional response to a hostile work environment." He opined that appellant was disabled from employment.

¹ The employing establishment submitted an October 11, 2005 investigative memorandum obtained in file number 010375500.

The record contains evidence regarding disciplinary actions taken by the employing establishment against appellant.

Appellant appealed to the Board. On February 23, 2007 the Board remanded the case for reconstruction of the case record. The Board noted that the record did not contain the May 12, 2005 decision.

By decision dated June 7, 2007, the Office denied appellant's claim on the grounds that he did not establish an emotional condition due to his accepted work injury. It noted that it considered all evidence relating to a psychiatric condition in file numbers 010375500 and 01207596.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his stress-related condition.² If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.³ 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.⁴

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.⁵ 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.⁶ The medical evidence must be based on a complete factual and medical background of the claimant and must be one of reasonable medical certainty

² *Leslie C. Moore*, 52 ECAB 132 (2000).

³ *Dennis J. Balough*, 52 ECAB 232 (2001).

⁴ *Id.*

⁵ *David Apgar*, 57 ECAB 137 (2005).

⁶ *Doretha M. Belnavis*, 57 ECAB 311 (2006).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

Appellant attributed his emotional condition to pain and limitations from his prior employment injury of right foot hallux rigidus. He filed a notice of recurrence of disability on November 22, 2004 and claimed that he sustained an emotional condition due to his accepted employment injury. Appellant submitted medical evidence attributing his condition to his prior employment injury, job stress and criticism by his supervisors. The Office adjudicated his notice of recurrence of disability as an occupational disease claim. It found that he had not established that he sustained an emotional condition due to his accepted work injury.

The record contains copies of disciplinary actions taken by the employing establishment toward appellant. Appellant did not, however, attribute his emotional condition to any action taken by the employing establishment. Instead, he alleged that he sustained a psychotic reaction due to pain and discomfort in his right foot from his accepted employment injury. An emotional condition due to chronic pain and limitations resulting from an employment injury may be compensable under the Act.⁸ Appellant, consequently, has established a compensable employment factor. His burden of proof, however, is not discharged by establishing a compensable factor of employment. Appellant must also submit rationalized medical opinion evidence establishing that his emotional condition is causally related to the accepted employment injury.⁹

On October 13, 2004 Dr. Zutshi found that appellant was disabled from work beginning September 20, 2004 due to job stress. On October 19, 2004 Dr. Yeaman diagnosed “anxiety and depression that unfortunately are job related.” He referred appellant to a psychiatrist. On March 1, 2006 Dr. Saperstein diagnosed osteoarthritis, multiple employment injuries and chronic discomfort. He opined that appellant was “also suffering an emotional component to his problem with chronic pain which has made him quite anxious.” The opinions of Dr. Zutshi, Dr. Yeaman and Dr. Saperstein, however, are of reduced probative value as they are not specialists in the appropriate field.¹⁰

On November 19, 2004 Dr. Bond noted that appellant worked limited duty because of his employment injuries and that he sustained stress due to “frequent comments about his being a malingerer....” He found that appellant’s symptoms “appear to be related to what he regards as an intolerable work situation.” Dr. Bond opined that appellant’s orthopedic injuries “clearly have limited his ability to perform his job as before, and thus are causally related to the extreme

⁷ *Judy C. Rogers*, 54 ECAB 693 (2003).

⁸ *Clara T. Norga*, 46 ECAB 473 (1995); *Arnold A. Alley*, 44 ECAB 912 (1993).

⁹ *Charles D. Gregory*, 57 ECAB 322 (2006).

¹⁰ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the opinion of a physician having training and knowledge in a specialized field of medicine has greater probative value concerning questions peculiar to that field than other physicians).

stress he experiences at work and his current symptoms.” He diagnosed panic disorder with agoraphobia and adjustment disorder with anxiety and depression. Dr. Bond concluded, “As his condition appears related to perceived job stress, the prognosis is dependent upon whether he returns to work.” He found that appellant’s work limitations caused him to experience stress but did not provide any rationale in support of his opinion.¹¹ Dr. Bond further determined that the diagnosed conditions of panic disorder with agoraphobia and adjustment disorder with anxiety and depression “appear related to perceived job stress.” His conclusion that appellant’s condition appeared to be due to perceived stress at work is couched in speculative terms and thus is of diminished probative value.¹²

In a report dated July 20, 2006, Dr. Bond found that appellant’s history of employment injuries beginning in 1984 adversely affected his ability to work. He experienced anxiety attacks because he believed that his supervisors criticized and singled him out. Dr. Bond found “no alternative explanation for [appellant’s] condition other than a[n] emotional response to a hostile work environment.” Appellant, however, did not submit a factual statement attributing his condition to a hostile work environment or provide any evidence corroborating that he was unfairly criticized or harassed.¹³ As Dr. Bond did not attribute a condition directly to the accepted employment factor of pain and limitations from his right foot hallux rigidus, his report is insufficient to meet appellant’s burden of proof. The Board, therefore, finds that appellant has not established that he sustained an emotional condition causally related to his accepted employment injury.

On appeal, appellant’s attorney contends that the Office should have adjudicated the claim as a consequential injury. The Office, however, properly found in its June 7, 2007 decision that the issue was whether the medical evidence established that he sustained an emotional condition due to his accepted work injury.

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition causally related to his accepted condition or right foot hallux rigidus.

¹¹ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale. *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹² *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹³ A claimant must specifically identify the employment factors or incidents alleged to have caused her condition and establish a factual basis for her allegations with probative and reliable evidence. *See David Apgar*, *supra* note 5; *Pamela D. Casey*, 57 ECAB 260 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 7, 2007 is affirmed.

Issued: September 17, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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