

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

O.F., Appellant)

and)

**DEPARTMENT OF HOMELAND SECURITY,
CUSTOMS & BORDER PROTECTION,
LOS ANGELES INTERNATIONAL AIRPORT,
Carson, CA, Employer**)

Docket No. 08-958
Issued: September 10, 2008

Appearances:

Thomas Martin, 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 February 14, 2008 appellant filed a timely appeal from June 5 and December 12, 2007 decisions of the Office of Workers' Compensation Programs denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant has established that he sustained an emotional condition in the performance of duty; and (2) whether he sustained hypertension and lower extremity edema in the performance of duty.

FACTUAL HISTORY

On January 8, 2007 appellant, then a 60-year-old senior customs inspector, filed an occupational disease claim (Form CA-2) alleging that he sustained anxiety, depression and consequential hypertension due to overtime work. He also claimed that he sustained asthma and

chronic obstructive pulmonary disease (COPD) due to workplace exposures to toxic chemicals in warehouses and lower extremity edema due to prolonged standing at work. Appellant first became aware of his depression when diagnosed by Dr. Gene Oppenheim, an attending Board-certified family practitioner, on April 18, 2001. Dr. Oppenheim noted a history of resolved depression. Subsequently, appellant developed hypertension and lower extremity edema, conditions he first related to his employment on or before November 5, 2005. He stopped work on approximately December 1, 2005 and did not return.

The position description for appellant's job noted requirements of prolonged standing, inspecting passengers and their belongings, use of a firearm, extended hours and overtime work. Appellant performed these duties beginning in 1992.

In a December 8, 2006 report, Dr. Oppenheim noted treating appellant for obesity, hyperlipidemia, essential hypertension, obesity, migraine, acute and persistent asthma, COPD, kidney and urologic disorders, sleep apnea, peripheral edema, diabetic neuropathy, congestive heart failure, gastroesophageal reflux disease and major depression, single episode. He stated that "most of these problems [were] active for several years." Dr. Oppenheim characterized the lower extremity edema with cellulitis and severe pain as the most disabling of appellant's health problems. He noted that prescribed prednisone for lung disease aggravated the edema. Also, "standing for any period of time markedly increase[d] the lower extremity edema and pain." Dr. Oppenheim opined that appellant was totally disabled because "standing for any consistent period of time" at work exacerbated appellant's lower extremity edema and cellulitis.

In a February 5, 2007 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim. It requested a detailed description of appellant's job requirements and overtime work. The Office emphasized the need for a rationalized report from his attending physician explaining how and why the identified work factors would cause or accelerate the claimed conditions. Appellant was afforded 30 days in which to submit such evidence.

In a February 8, 2007 letter, the employing establishment noted its awareness of appellant's asthma as of November 9, 1999, depression on April 18, 2001, cellulitis on July 8, 2001 and peripheral edema on September 21, 2001. Appellant also sustained multiple contusions and a fracture of the left lower leg in a September 8, 2002 workplace fall. His "position require[d] a substantial amount of standing." Beginning on October 19, 2005, appellant was assigned to temporary, sedentary duty to accommodate work restrictions. Based on payroll records, the employing establishment calculated that, from October 1, 1998 and September 30, 2005, appellant worked an average of nine hours overtime each week. Appellant did not work overtime from October 1, 2005 to September 30, 2006. The employing establishment also accommodated periodic medical restrictions against overtime work.

By decision dated June 5, 2007 and issued June 6, 2007, the Office denied appellant's claim on the grounds that causal relationship was not established. It found that appellant's account of prolonged standing, overtime work and toxic exposures were too "vague" and "global" to be factual. The Office further found that appellant submitted insufficient rationalized medical evidence explaining how and why the identified work factors would cause or contribute to the claimed physical and emotional conditions.

In an October 11, 2007 letter, appellant requested reconsideration. He asserted that the evidence submitted established that his job required prolonged standing. Appellant submitted additional medical evidence.

In a July 24, 2007 report, Dr. John B. Dorsey, an attending Board-certified orthopedic surgeon, related appellant's account of exposure to mold, dust, dust mites and noxious substances while working in warehouses and construction zones. He reviewed medical records. On examination, Dr. Dorsey found that appellant weighed 292 pounds and walked with difficulty. He observed "swelling and stasis changes in both lower extremities with pitting edema." Dr. Dorsey diagnosed chronic edema of the lower extremities, hypertension, COPD with asthma, depression, Type 2 diabetes, sleep apnea, kidney stones and migraine headaches. He opined that prolonged weight bearing at work "aggravated the idiopathic edematous condition in the lower extremities, and his exposure over the years has aggravated his underlying" diabetes, hypertension and COPD. Dr. Dorsey stated that appellant's skin changes appeared permanent, including discoloration and stasis edema.

In a September 4, 2007 report, Dr. Dorsey stated that appellant had "disabling edema in the lower extremities secondary to obesity, diabetes, vascular disease" and prescription medications. He opined that prolonged standing, walking and long hours checking on passengers "certainty aggravated" appellant's underlying lower extremity edema.

By decision dated December 12, 2007, the Office denied modification of the June 5, 2007 decision. The Office found that appellant failed to corroborate the identified employment factors or provide sufficient medical rationale to establish causal relationship.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

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 or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying 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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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. The opinion of the physician 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 the claimant.⁴

ANALYSIS -- ISSUE 1

Appellant claimed that he sustained asthma, COPD, hypertension and bilateral lower extremity edema in the performance of duty due to prolonged standing at work and overtime work. Dr. Oppenheim, an attending Board-certified family practitioner and Dr. Dorsey, an attending Board-certified orthopedic surgeon, diagnosed asthma, COPD, hypertension and edema. Appellant has thus met the first element of his burden of proof by establishing the presence of the claimed conditions. The Office found that appellant did not meet the second element of his burden of proof as he did not establish as factual that he worked overtime, performed prolonged standing or was exposed to airborne irritants. The Board finds that the employing establishment's statement and position description establish as factual that appellant's position required prolonged standing and that he worked an average nine hours of overtime each workweek from October 1998 to September 2005. However, he submitted insufficient evidence to establish workplace exposures to noxious or irritating substances. To meet the third element, appellant must submit sufficient medical evidence to establish the claimed causal relationship between the diagnosed asthma, COPD, hypertension and edema and the accepted work factors of prolonged standing and overtime work.

Both Dr. Oppenheim and Dr. Dorsey supported a causal relationship between prolonged standing and peripheral edema. Dr. Oppenheim opined on December 8, 2006 "that standing for any period of time" or "any consistent period of time" at work "markedly increase[d] the lower extremity edema" and exacerbated the edema and cellulitis. In his June 24, 2007 report, Dr. Dorsey explained that prolonged weight bearing at work "aggravated the idiopathic edematous condition in the lower extremities," causing permanent skin discoloration and stasis edema. He reiterated on September 4, 2007 that, while medication, obesity, diabetes and vascular disease contributed to the edema, prolonged standing, walking and overtime work "certainly aggravated" appellant's underlying edema. Both physicians based their opinions on detailed clinical examinations and a detailed medical history.

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

Although Dr. Oppenheim's and Dr. Dorsey's opinions are not sufficiently rationalized⁵ to meet appellant's burden of proof in establishing his claim, they stand uncontested in the record and are, therefore, sufficient to require further development of the case by the Office.⁶ However, the Office did not undertake further development of this aspect of the claim, such as requesting that Dr. Oppenheim or Dr. Dorsey submit a supplemental report to clarify his opinion regarding any causal relationship between the accepted work factors and the claimed conditions. The Board finds that under the circumstances of this case, Dr. Oppenheim's and Dr. Dorsey's opinions are sufficient to warrant further development.

Proceedings under the 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.⁷ The Board will remand the case to the Office for further development regarding Dr. Dorsey's and Dr. Oppenheim's opinion that prolonged standing at work caused or aggravated peripheral edema. The Office should request that the physicians submit reports explaining the pathophysiologic mechanisms whereby standing would cause or aggravate appellant's edema, cellulitis and skin changes. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

Regarding appellant's claims for asthma, COPD and hypertension, Dr. Oppenheim did not offer medical rationale regarding the causation of these conditions. Dr. Dorsey stated that prolonged standing at work over a period of years aggravated preexisting diabetes, hypertension and COPD. But Dr. Dorsey did not explain how and why prolonged standing would cause or aggravated these conditions. Therefore, the physicians' opinions are insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship for these conditions.⁸

LEGAL PRECEDENT -- ISSUE 2

The Act provides for payment of compensation for personal injuries sustained while in the performance of duty.⁹ Where disability results from an employee's reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.¹⁰ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹¹

⁵ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

⁶ *John J. Caralone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

⁷ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁹ 5 U.S.C. § 8102(a).

¹⁰ 5 U.S.C. §§ 8101-8193. *Lillian Cutler*, 28 ECAB 125 (1976).

¹¹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

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.¹²

In cases involving emotional conditions, the Board has held that 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 and are to be considered by a physician when providing an opinion on causal relationship.¹³ If a claimant implicates 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.¹⁴

The Board has held that overwork may be a compensable factor of employment if a claimant submits sufficient evidence to substantiate this allegation.¹⁵ Also, in certain circumstances, working overtime is sufficiently related to regular or specially assigned duties to constitute a compensable employment factor.¹⁶

ANALYSIS -- ISSUE 2

Appellant claimed that he sustained anxiety and depression in the performance of duty due to overtime work. The employing establishment confirmed that appellant worked an average of nine hours overtime each week from October 1, 1998 to September 30, 2005. The nature of appellant's job required overtime work. The Board therefore finds that he has established overwork as a compensable factor of employment.¹⁷

The Office, however, found that appellant did not establish overtime work as factual. As it did not recognize any compensable employment factors, it did not review the medical evidence regarding the claimed emotional conditions. As appellant has established a compensable factor of employment, the case will be remanded to the Office for development of the medical evidence and issuance of an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture regarding whether appellant sustained an emotional condition or lower extremity edema in the performance of duty. The case will be remanded for further development and issuance of appropriate decisions on these issues. The

¹² *Effie O. Morris*, 44 ECAB 470 (1993).

¹³ *See Norma L. Blank*, 43 ECAB 384 (1992).

¹⁴ *Marlon Vera*, 54 ECAB 834 (2003).

¹⁵ *Bobbie D. Daly*, 53 ECAB 691 (2002).

¹⁶ *Ezra D. Long*, 46 ECAB 791 (1995).

¹⁷ *Id.*

Board further finds that appellant has not established that he sustained hypertension, asthma or COPD in the performance of duty. Appellant submitted insufficient rationalized medical evidence to establish the causal relationship asserted.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 12 and June 5, 2007 are affirmed in part and set aside in part. The case is remanded for further action consistent with this opinion.

Issued: September 10, 2008
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