

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

C.E., Appellant)

and)

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION,
Indianapolis, IN, Employer**)

**Docket No. 10-461
Issued: November 23, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 8, 2009 appellant filed a timely appeal from a September 4, 2009 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

This issue is whether appellant established an emotional condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

This case has previously been before the Board. By order dated June 29, 2004, the Board remanded the case to the Office to further develop the factual evidence by requesting that the

employing establishment respond to appellant's allegations.¹ On September 25, 2006 the Board again remanded the case for the Office to request that the employing establishment submit relevant factual information and to inform it of the consequences for failure to submit evidence under 20 C.F.R. § 10.117(b).² By decision dated November 24, 2008, the Board determined that appellant had established as compensable employment factors that his window was broken by a bullet or projectile on March 8, 1978 and that a coworker threatened to break his kneecaps.³ It further found error and abuse by the employer in investigating him for charges of wrongdoing, issuing disciplinary action, failing to provide a fitness-for-duty physician with complete information and downgrading his 1978 performance evaluation. The Board remanded the case for the Office to evaluate the medical evidence and determine whether it established an emotional condition due to the compensable employment factors. The findings of fact and conclusions of law from the prior decisions and order are hereby incorporated by reference.

The record indicates that appellant was committed to a mental health center from September 3, 1999 to January 6, 2001. In a discharge summary, Dr. Joseph DeStefano, a Board-certified psychiatrist, diagnosed resolved major depression with paranoid features and anxiety. He indicated that appellant lost his job at the employing establishment "under dubious circumstances at best, and apparently he alleges there were threats made to his family and he never really resolved that particular problem."

In a report dated March 20, 2001, Dr. Joshua Lowinsky, a Board-certified psychiatrist, noted that approximately two years before appellant had begun to experience flashbacks to incidents that occurred while he worked for the employing establishment. He related that employees had no defense against being terminated from employment, that appellant put his life in danger daily and that his children were shot at while at home.⁴ Dr. Lowinsky diagnosed post-traumatic stress disorder (PTSD), major depressive disorder and a generalized anxiety disorder. In a disability assessment of the same date, he found that appellant experienced PTSD symptoms due to his work and assessed his recovery as guarded.

On May 7, 2001 Dr. Lowinsky attributed appellant's PTSD to his work for the employing establishment and noted that both he and his children were in danger. He asserted that he was "under constant psychological pressure and stress while working as an agent." Dr. Lowinsky related that appellant experienced flashbacks and nightmares due to PTSD arising from his work for the employing establishment.

¹ Docket No. 04-961 (issued June 29, 2004). On March 26, 2001 appellant, then a 57-year-old former special agent, filed an occupational disease claim alleging that he sustained post-traumatic stress disorder due to factors of his federal employment. He alleged that on March 8, 1978, while he was conducting an investigation of a gambling suspect, a shot was fired into the window of his house at his children. Appellant also maintained that his 1978 performance appraisal was unfairly downgraded from outstanding to unsatisfactory and that he was continually interrogated by agents from March 8 to June 28, 1978.

² Docket No. 06-790 (issued September 25, 2006).

³ Docket No. 07-2261 (issued November 24, 2008).

⁴ Dr. Lowinsky submitted a similar report on March 24, 2003.

On February 5, 2002 Dr. Lowinsky related that appellant began having flashbacks to incidents that occurred during his work for the employing establishment three years ago.⁵ He found that he was disabled from work.

On January 15, 2009 the Office prepared a statement of accepted facts (SOAF) delineating the compensable and noncompensable work factors as found by the Board. It requested that Dr. Heather Downhour, a psychiatrist, provide a reasoned medical opinion regarding whether the compensable work factors contributed to appellant's condition.

By decision dated March 18, 2009, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an emotional condition due to factors of his federal employment.

On February 19, 2009 Dr. Downhour stated, "I am satisfied that [appellant's] psychiatric condition as has been long documented as severe PTSD with psychotic features, was brought on by factors relating to his employment with the [employing establishment]."

On April 20, 2009 the Office, after considering Dr. Downhour's report, issued an amended decision denying his emotional condition claim.

On June 22, 2009 appellant requested reconsideration. He asserted that his psychiatrists were not biased as they were court appointed rather than hired. Appellant questioned whether a claims examiner was qualified to discount medical opinions.

In a report dated June 17, 2009, Dr. Downhour and J. Scott Giddens, a program facilitator, related that they began treating appellant in January 2000 when he was released from a stress center following two attempts at suicide. Appellant received outpatient care from Dr. Lowinsky who diagnosed PTSD and major depression due to his work for the employing establishment. Dr. Downhour concurred with Dr. Lowinsky's finding of PTSD and major depression due to his employment. She related that for six months during 1978 appellant suffered "numerous traumatic events of every increasing severity" due to his employment that "directly caused his PTSD." Dr. Downhour noted that he did not "recall many events surrounding the coercive interrogations he was forced to endure from March 8, 1978 to June 28, 1978." She stated, "The [PTSD] with nightmares and flashbacks has focus in trauma that occurred related to his life as an [employing establishment] [a]gent. Appellant was in danger and so were his children. The stress led to family relational problems as well. Appellant was also under constant psychological pressure and stress while working as an agent." Dr. Downhour noted that appellant's condition was aggravated by pursuing his claim before the Office. She and Mr. Giddens opined that his PTSD, major depression and anxiety disorder was "directly caused by the above listed employment factors." They stated, "[Appellant's] condition is a result of the traumatic event, both as premeditated and carried out afterwards. Therefore, we believe he is entitled to his claim."

⁵ In a similar report dated March 24, 2003, Dr. Lowinsky again found appellant disabled from work due to PTSD and depression.

On July 10, 2009 the Office described the medical evidence of record to Dr. Downhour and requested that she clarify her finding that appellant's PTSD and major depression was due to his work for the employing establishment. It noted that the current reports lacked a factual foundation. The Office asked that Dr. Downhour review the four compensation employment factors and provide an opinion regarding whether his condition was due to a compensable work factor. It informed her that appellant had not contended that his day-to-day work duties caused his employment. The Office further noted that there was no evidence a bullet broke his window but rather that it was broken by an unknown projectile. It provided Dr. Downhour 30 days to submit a supplemental medical report.

On August 11, 2009 appellant asserted that the June 17, 2009 report from his psychiatrist was sufficient to establish his claim. He also maintained that the Board found that a bullet had struck his window but the Office found that he had only established that a projectile struck his window.

By decision dated September 4, 2009, the Office denied modification of its June 22, 2009 decision. It noted that Dr. Downhour had not responded to its request for a clarifying medical report. The Office determined that there was no medical evidence of record discussing his medical history between the occurrence of the compensable work factors in 1978 and his mental condition beginning in 1999 or offering an explicit opinion that the accepted work factors caused an emotional condition.

On appeal appellant argues that the medical evidence is sufficient to establish that he sustained an emotional condition causally related to factors of his federal employment. He further contends that the Office erroneously found that he was not wrongly interrogated even though the Board found that interrogations constituted a compensable work factor. Appellant further contends that the September 24, 2009 report of Dr. Downhour establishes that his emotional condition was causally related to his employment.⁶

LEGAL PRECEDENT

To establish that an emotional condition arose in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁷

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.⁸

⁶ The record does not contain a September 24, 2009 medical report from Dr. Downhour.

⁷ *D.L.*, 58 ECAB 217 (2006); *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Richard E. Konnen*, 47 ECAB 388 (1996).

ANALYSIS

On prior appeal the Board found that the employing establishment had not adequately responded to the Office's request for factual information. It thus accepted as factual and compensable appellant's allegation that a projectile or bullet broke his front window on March 8, 1978 as a result of his work duties and that a coworker threatened to break his kneecaps. The Board further determined that he had established as compensable work factors that the employing established error in investigating him from March 8 to June 28, 1978, issuing disciplinary action, failing to provide a fitness-for-duty physician with complete information and downgrading his 1978 performance appraisal.

In a report dated March 20, 2001, Dr. Lowinsky discussed appellant's history of flashbacks of work incidents beginning around two years ago. He maintained that his life was in danger daily and that his children were shot at while at home. Dr. Lowinsky diagnosed PTSD, major depression and a generalized anxiety disorder. On May 7, 2001 he attributed appellant's PTSD to his work and provided as a reason that he and his children were in danger and that he was under constant stress.

On January 15, 2009 the Office requested that Dr. Downhour review the compensable and noncompensable factors from the statements of accepted facts and provide a rationalized opinion regarding whether these factors caused or contributed to an emotional condition. On February 19, 2009 Dr. Downhour attributed appellant's severe PTSD to factors relating to his employment. In a report dated June 17, 2009, she agreed with Dr. Lowinsky's finding that the PTSD and major depression resulted from his work for the employing establishment. Dr. Downhour noted that he experienced increasingly severe events due to his employment over the course of six months in 1978 and that these events "directly caused his PTSD." She indicated that he was unable to recall some events contemporaneous with the "coercive interrogations" from March 8 to June 28, 1978 because of the emotional impact. Dr. Downhour attributed appellant's PTSD and flashbacks to trauma as an agent with the employing establishment, noting that his life and that of his children was in danger. She concluded that his PTSD, major depression and anxiety disorder were "directly caused by the above-listed employment factors."

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.⁹ The Board has reviewed the reports of Dr. Lowinsky and Dr. Downhour and finds that they provided an unequivocal opinion that appellant's PTSD arose from work factors, including interrogations and having his life and that of his children in danger. Their reports, however, lack a rationalized explanation of why the accepted work factors caused or aggravated an emotional condition. Consequently, while the medical evidence from Dr. Lowinsky and Dr. Downhour is insufficiently rationalized to meet appellant's burden of proof to establish that he sustained an emotional condition in the performance of duty, it raises an undisputed inference of causal

⁹ A.A., 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

relationship sufficient to require further development by the Office.¹⁰ Accordingly, the Board will remand the case to the Office.

The Board further notes that when the Office requested that Dr. Downhour provide a clarifying medical report, it informed her that it had not accepted as factual that a bullet broke appellant's window. The Board, however, previously found that based on the employing establishment's failure to respond with sufficient information that it was accepting appellant's allegations regarding the incident. On remand, the Office should prepare an updated statement of accepted facts and refer appellant for a second opinion examination to determine whether he sustained an emotional condition caused or aggravated by compensable employment factors. After such further development as deemed necessary, it should issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 23, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *Id.*