U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS W. SIMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Pasadena, Calif.

Docket No. 96-1098; Submitted on the Record;
Issued August 4, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant established that he sustained an emotional condition in the performance of duty; and (2) whether he sustained a recurrence of disability causally related to his July 20, 1985 work injury.

On February 14, 1994 appellant, then a 41-year-old distribution clerk working in a light-duty position,[1] filed a notice of recurrence of disability,[2] claiming that his back condition flared up because of traffic delays caused by freeway damage from the January 17, 1994 earthquake, which also resulted in a reassignment of his work station. Appellant added that he experienced disabling back pain, with sciatic involvement, from sitting in traffic while going to and from work. Appellant was released to full-time duty on February 15, 1994, but continued to complain of back pain.

In support of his claim, appellant submitted a March 21, 1994 report from his treating physician, Dr. Stanley Steinberg, Board-certified in family practice, who stated that in December 1993 appellant had experienced acute exacerbation involving his lumbar spine, caused by inclement weather. Dr. Steinberg noted that appellant had been treated in February 1994 for acute low back symptoms resulting from prolonged sitting and driving following a recent earthquake. Dr. Steinberg suggested that appellant be transferred to an office closer to his home. Also, appellant's hours of work had been changed to early morning to avoid rush-hour traffic, but the cold weather at that time had aggravated his back. Dr. Steinberg recommended that appellant's hours be changed to afternoon and evening.

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[1] On July 20, 1985 appellant was attacked by a dog while delivering mail and twisted his back in trying to escape. His claim was accepted for lumbar strain and lumbar disc displacement with myelopathy. Appellant accepted a light-duty position on December 8, 1986 and returned to full duty on July 30, 1990. Subsequently, appellant received a schedule award of $7,918.56 for a 3 percent loss of use of each leg.

[2] Appellant stated that a recurrence notice was not necessary because his claim was "only a flare-up" of his original injury, which was an on-going condition.

In addition, Dr. Steinberg explained that appellant had never recovered fully from his initial injury; his condition had plateaued on October 8, 1986 when he was found to be permanent and stationary, but he had continued to suffer from neck, back and bilateral leg pain on a chronic and sometimes acute level. Dr. Steinberg emphasized that appellant's condition was ongoing and that appellant would experience periodic exacerbation of his symptoms due to increased activity, exposure to cold and damp weather, and emotional stress.

On July 26, 1994, the Office of Workers' Compensation Programs denied appellant's claim (A13-773988) on the grounds that the medical evidence failed to establish an increased level of disability directly related to the July 20, 1985 work injury without the effect of intervening non-work factors. The Office noted that the exacerbation of appellant's back condition was caused by his commuting requirements and suggested that if he believed that work factors were involved, he should file a notice of occupational disease because the exacerbation apparently occurred over more than one day.

On August 23, 1994 appellant requested an oral hearing, questioned which notice of claim form he should use, and asked that his claim file be transferred to the Chicago, Illinois office because he had moved.[3]

On September 16, 1994 appellant requested reconsideration and submitted an August 29, 1994 letter from Dr. Steinberg, who stated that there was a direct causal relationship between the January 1994 exacerbation and appellant's 1985 work injury. He added that the residuals of the 1985 injury were exacerbated by the commuting requirements and early morning weather conditions in early 1994 and that the required activity caused the old injury to flare up and temporarily resulted in increased disability—without the residuals, appellant would have been able to perform the activities required.

On May 5, 1995 the Office denied appellant's request on the grounds that he had failed to establish that his disability during January and February 1994 recurred without intervening cause.[4] The Office noted that appellant should file a new claim if he believed that the intervening cause resulted from work factors.

On August 10, 1995 appellant filed a notice of occupational disease, claiming that on January 27, 1994 as he was returning to his home from work-related training in San Diego, California he experienced discomfort in his back because of traffic delays, which were caused by the January 17, 1994 earthquake. Appellant added that his workstation was subsequently changed because of earthquake damage, and he had to sit in traffic for long periods of time, causing an acute exacerbation of his preexisting back condition "with sciatic involvement."

[3] Appellant apparently moved to Chicago, Illinois at some time in 1994 after he was removed from his federal position in August 1994. Following an appeal to the Merit Systems Protection Board, appellant was reinstated on February 6, 1995.

[4] This decision was returned as undeliverable, and was subsequently dated September 6, 1995.

Appellant also claimed an acute stress disorder caused by his supervisor's "untrue" remarks in letters dated February 14 and March 11 and 28, 1994 regarding his compensation claims and his removal from federal employment.

On August 11, 1995 appellant filed a second notice of recurrence of disability, claiming that he woke up on August 9, 1995 with pain in his lower back radiating down to both legs. Appellant explained that the incident was a spontaneous return of disability "due to a previous injury without intervening cause." On September 6, 1995 the Office accepted appellant's claim for a recurrence of disability and determined that he was entitled to 24 hours of compensation on August 8-11, 1995.

On October 13, 1995 the Office requested that appellant submit further factual information regarding his back problem and his stress claim, as well as a rationalized medical opinion explaining how work factors caused both conditions. The Office also asked appellant to explain why he waited for more than year after its July 26, 1994 decision before filing his occupational disease claim. On October 30, 1995 the Office informed appellant that his claims for compensation between September 1 and October 23, 1995 must be handled as a recurrence of disability and requested that he file a CA-2a form.

Appellant responded with a personal statement regarding his supervisor's alleged lies and a chronological listing of events from January 17, 1994, when the earthquake hit, through March 7, 1994. Appellant claimed 72.79 hours of compensation for leave taken during this time.

On November 6, 1995 appellant requested reconsideration of the September 6, 1995 decision on the grounds that the January exacerbation of his back pain occurred without any intervening cause and submitted a November 5, 1995 letter from Dr. Steinberg to this effect. Appellant was released to regular duties and hours as of November 20, 1995.

On December 18, 1995 the Office denied appellant's claims for intermittent disability compensation from September 7 through November 20, 1995 on the grounds that the medical evidence failed to establish that his current condition was causally related to the July 1985 work injury. The Office noted that a November 7, 1995 fitness-for-duty report from Dr. David Heskiaoff, a Board-certified orthopedic surgeon, concluded that appellant could work eight hours a day and that his subjective complaints were not supported by any objective physical findings. The Office added that the form reports from Dr. Michael Gitter, a general practitioner, provided no objective findings or rationale for restricting appellant to four hours' work per day.

Appellant again requested reconsideration and submitted a November 20, 1995 narrative report from Dr. Gitter, who concluded that absent the trauma appellant sustained to his neck and back on July 20, 1985, he would not have had the injury residuals causing periodic exacerbation of his back condition.

On February 7, 1996 the Office denied the claim on the grounds that appellant failed to establish that his psychological or physical condition was sustained in the performance of duty. The Office noted that appellant had failed to submit any medical evidence showing that his back

pain had been exacerbated by prolonged driving or that he had a psychological condition caused by work factors.[5]

The Board finds that appellant has failed to establish that he sustained an emotional condition caused by compensable work factors.

Under the Federal Employees' Compensation Act,[6] appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.[7]

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.[8] There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employing establishment is covered.[9] However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,[10] and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.[11]

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.[12] However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.[13]

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[5] The record indicates that appellant requested an oral hearing on both claims on February 14, 1996 as well as a copy of the file.

[6] 5 U.S.C. §§ 8101-8193 (1974).

[7] *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

[8] *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[9] *Jose L. Gonzalez-Garced*, 46 ECAB 559, 563 (1995).

[10] *Sharon J. McIntosh*, 47 ECAB ___ (Docket No. 94-1777, issued August 28, 1996).

[11] *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

[12] *Margreate Lublin*, 44 ECAB 945, 956 (1993).

[13] *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.[14] Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents which appellant believes caused or adversely affected the condition for which he claims compensation.[15] If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.[16]

In this case, appellant alleged that statements by his supervisor were "for the most part half truths and outright lies." For example, appellant noted that, contrary to his supervisor's statement, he had not gone to Tijuana, Mexico after the training session in January 1994 but had returned home on January 27, 1994. Appellant stated that he was filing a claim before the Equal Employment Opportunity Commission for his supervisor's defamatory remarks and harassing actions, which caused the stress appellant experienced.

The record reveals that appellant was investigated by postal inspectors for falsification of official travel forms, was removed from his federal position, and was subsequently reinstated. This investigation, which involved appellant's supervisor, is an administrative matter.

While administrative and personnel matters are generally related to employment, they are functions of the employer and not duties of the employee. Thus, the Board has held that an employee's reaction to administrative actions are not compensable unless the evidence demonstrates error or abuse on the part of the employing establishment in its administrative capacity.[17]

Here, appellant has submitted no evidence showing that the employing establishment erred or acted abusively in conducting its investigation. Appellant was reinstated to his job, but nothing in the record indicates error or abuse on the part of his supervisor in questioning appellant's requests for mileage and bus usage reimbursement.[18] Further, the medical documents submitted by appellant, showing his treatment for depression in Chicago, confirmed appellant's statements that he felt harassed by his supervisor, but provided no specific work factors that could have caused appellant's stress. Therefore, the Board finds that appellant had failed to meet his burden of proof in establishing that his stress condition was caused by compensable work factors.

The Board also finds that appellant has failed to establish that he sustained a recurrence of disability in early 1994 and September-October 1995 was causally related to the July 20, 1985 work injury.

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[14] *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

[15] *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

[16] *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

[17] *Sharon J. McIntosh*, *supra* note 10.

[18] *See Mary L. Brooks*, 46 ECAB 266, 274 (1994) (finding that subsequent modification of personnel actions does not, in and of itself, establish error or abuse on the part of the employing establishment).

Under the Act, an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[19] As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,[20] and supports that conclusion with sound medical reasoning.[21]

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.[22]

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.[23] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[24] Further, neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.[25]

In this case, Dr. Steinberg attributed appellant's acute flare-up of his back condition in January/February 1994 to inclement weather and prolonged sitting while involved in traffic delays caused by the recent earthquake. Dr. Steinberg concluded that absent the initial back injury, appellant would have been able to withstand the physical rigors of appellant's lengthy commute.

As a general rule, off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work, are not compensable as they do not arise out of and in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.[26] In *Estelle M. Kasprzak*,[27] the

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[19] *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

[20] *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

[21] *Lourdes Davila*, 45 ECAB 139, 142 (1993).

[22] 20 C.F.R. § 10.121(b).

[23] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[24] *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

[25] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[26] *Mary Keszler*, 38 ECAB 735, 741 (1987).

Board enumerated four recognized exceptions, which it characterized as "off-premises" situations: (1) where the employment requires the employee to travel on the highways; (2) where the employer contracts to and does furnish transportation to and from work; (3) where the employee is subject to emergency calls as in the case of firemen; and (4) where the employee uses the highway to do something incidental to his employment with the knowledge and approval of the employer.

In this case, the record reveals no evidence that any of the exceptions noted above could apply. The January 17, 1994 earthquake damage resulted in the closure of some highways and buildings, including appellant's workplace and usual commuting routes, in the Santa Clarita Valley. The employing establishment changed appellant's workplace and hours several times to try to accommodate his concerns of prolonged commuting and cold, damp weather, but these circumstances occurred while appellant was going to and coming from work. He was not required to travel on the highways or to respond to emergency calls as part of his job, he was not furnished transportation to do his job, and he was not using the highway at the orders of his supervisor.

Appellant was not sitting in traffic, and thus exacerbating his back condition, because the employing establishment had ordered him to do so. The fact that appellant's normal duty post and hours of work had to be changed because of earthquake damage does not convert his journey to and from work into a compensable work factor. This case is distinguishable from one in which the employee reports to work at his usual time and place and is then told to report to another duty station to work.

The Board finds that the cold weather and traffic delays were common hazards, experienced by all employees who were going to and coming from work and thus cannot be defined as work factors.[28] Therefore, appellant was not engaged in the performance of duty while going to and coming from work in early 1994, and any resultant disability during that time is not compensable.

The Board also finds that appellant is not entitled to disability compensation during September-November 1995. Dr. Gitter discussed the lengthy history of appellant's repeated exacerbation of his back symptoms since the 1985 work injury and recommended that appellant work for only four hours a day after he had complained of increasing pain.

Noting appellant's original diagnoses of preexisting lumbar scoliosis, residuals of lumbosacral strain syndrome, possible sciatic nerve stretch injury, and chronic myofascial pain syndrome, Dr. Gitter concluded that, absent the July 1985 trauma, appellant would not have had the residuals that have caused periodic exacerbation of his symptoms. Dr. Gitter explained that appellant "probably sustained tearing of the tissues in his back" during the dog attack, that scar tissue resulted as the torn tissue healed, and that the mechanism of scar tissue pressure against

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[27] 27 ECAB 339, 342 (1976).

[28] *See Sallie B. Wynecoff*, 39 ECAB 186, 191 (1987) (finding the appellant was subject to the "going and coming rule" when she fell after leaving the employing establishment's premises).

adjacent soft tissue, to addition to pressure from appellant's degenerative disc disease, produced an inflammatory response in the lower back, resulting in muscle tightness and pain.

Dr. Gitter's medical opinion is not sufficiently rationalized to meet appellant's burden of proof in establishing that his disability in 1995 was causally related to the work injury ten years earlier. While Dr. Gitter detailed appellant's treatment through those years, he provided no clinical findings to demonstrate that appellant was unable to work for eight hours during September-November 1995. Appellant's subjective complaints of increased pain are only a symptom and are medically insufficient to establish disability.[29]

Further, Dr. Gitter's conclusion that appellant would experience periodic exacerbation of his back condition, thus limiting his ability to work, does not establish that work factors caused any disability in 1995 causally related to the initial injury.[30] In sum, appellant has failed to submit medical evidence establishing that the claimed recurrence of disability was caused, precipitated, accelerated, or aggravated by the 1985 work injury.[31] Therefore, the Board finds that the Office properly denied his claim.

[29] *See John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

[30] *See William A. Kandel*, 43 ECAB 1011, 1022 (1992) (finding that a physician's warning that appellant's return to work could cause increased cardiac problems was not evidence of present disability).

[31] *See Rosie M. Price*, 34 ECAB 292, 294 (1982) (finding that the mere occurrence of an episode of pain during the work day is not proof of an injury having occurred at work; nor does such an occurrence raise an inference of causal relationship); *Max Haber*, 19 ECAB 243, 247 (1967) (same).

The February 7, 1996, December 18 and May 5, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 4, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member