

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES H. PERKINS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Fayetteville, NC

*Docket No. 02-851; Submitted on the Record;
Issued August 13, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to compensable factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for further review of his case under 5 U.S.C. § 8128(a) on its merits.

On November 1, 2000 appellant, then a 41-year-old nursing assistant, filed a claim alleging that on July 31, 2000 he became aware that he had developed an anxiety disorder with social phobia, causally related to factors of his employment. He stated:

"I worked on [a] locked psy[chiatric] ward soon after being d[iagnosed] with panic disorder until I was moved on August 7, 2000 this is a high stress environment. I first thought I was having heart attack during stressful incident happen [sic] on locked psy[chiatric] [ward]. I would try to avoid the stress by asking for breaks or walking into closed ward bathroom until [the] attack stopped usually 5 [to] 10 minutes later 1 [to] 2 times a month."

In support of his claim, appellant submitted a July 31, 2000 report from Dr. Lisa E. Bracey, a family practitioner, which stated:

"[Appellant] is currently being treated for an anxiety disorder. At this time we recommend that he work on the day shift only. [Appellant] should not be on the locked psychiatric ward or included in the care of psychiatric patients.

"[Appellant's] condition is aggravated by shift changes and interactions with the psychiatric patients. We suggest that he be permanently removed from the care of psychiatric patients."

Medical treatment notes from July 17 and August 28, 2000 also stated that appellant seemed to have some difficulty adjusting to having different shifts and that he was currently being treated for anxiety with phobia and it was recommended that he not work on the psychiatric ward or be involved in the care of psychiatric patients.

In an August 3, 2000 report from Dr. Lisa D. Jennings, a family practitioner, noted that appellant had “a history of hypertension with left ventricular hypertrophy, aortic regurgitation and hyperlipidemia.”

In an August 7, 2000 note to his supervisor, appellant stated: “I would like to work in a clinic or any other less stressful environment. I am willing to be as supportive as I can be with the workload on this ward. I was told that help was needed in dermatology clinic or women’s clinic or surgical clinic.”

On August 30, 2000 appellant met with the associate director of patient care services who discussed his reassignment. The associate director noted that appellant’s physician stated that he should not work in the psychiatric ward or be involved with care of psychiatric patients.

In a September 20, 2000 evaluation by Dr. Deborah Figueroa, a family practitioner, it was noted that appellant was discovered to have a leaky heart valve the preceding year and that within a couple of months, approximately February 2000, he started to develop panic attacks, which made him think he was having a heart attack and was dying. Dr. Figueroa noted that appellant considered his job extremely stressful and that the chief nurse appeared uncooperative with his problems. She noted that appellant claimed that there were personality conflicts among staff members and that he felt trapped. Dr. Figueroa diagnosed panic disorder with agoraphobia and adjustment disorder with depression and anxiety.

In an October 6, 2000 statement, appellant alleged that his treating physician told him not to work on the psychiatric ward and not to work with psychiatric patients, he claimed, however, that he still had to work with psychiatric patients on the medical/surgical unit and that he had to care for a guarded prisoner which was stressful. He also recounted a confrontation between two psychiatric patients, during which the police were called, which he felt caused him more stress and continuous attacks.

On October 12, 2000 appellant consulted the Office of Resolution Management regarding an August 29, 2000 claim of disability due to the assignment of duties and a hostile working environment. He claimed that he wanted to be reassigned for health reasons.

In a November 1, 2000 memorandum to the Office, the employing establishment noted that appellant was a nursing assistant who had worked on the in-patient psychiatric unit from 1989 to August 2000, with assignments alternating between the locked and open ward on rotating shifts.

Appellant submitted a December 29, 2000 report of contact regarding a telephone call he received in which he was threatened for alleged actions concerning another patient.

By letter dated March 28, 2001, the Office requested further information including a description of all of appellant's sources of stress. No further substantive evidence was submitted.

By decision dated May 4, 2001, the Office rejected appellant's claim finding that he had failed to implicate any compensable factor of employment in the development of his panic attack condition.

Thereafter, appellant submitted a September 28, 2000 police report regarding a conflict that arose between two psychiatric patients regarding leaving the bathroom door open.

By letter dated June 29, 2001, appellant requested reconsideration.

In a July 5, 2001 statement, appellant claimed that he was still required to work with psychiatric patients, which he had been told he should not do. He claimed that this was a hostile work environment.

In a July 13, 2001 statement, from the head nurse it was noted that appellant was reassigned to work on the medical unit on August 28, 2000 because of his complaints of being stressed on the psychiatric unit. In an additional July 13, 2001 statement the head nurse acknowledged a September 28, 2000 incident involving appellant and a patient with a psychiatric diagnosis.

By decision dated August 16, 2001, the Office denied modification of its May 4, 2001 prior decision finding that appellant had failed to implicate any compensable factors of his federal employment.

By letter dated September 24, 2001, appellant again requested reconsideration of the August 16, 2001 decision and he cited to the September 29, 2000 incident between two patients.

By decision dated November 9, 2001, the Office denied appellant's request for a further review of his case on its merits. The Office found that the evidence submitted was insufficient to warrant reopening appellant's case for a further review on its merits.

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

To establish appellant's claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized 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.¹ 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. Such an opinion of the physician must be one of

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

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 appellant.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are 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 the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. Appellant's nursing assistant duties and interaction with psychiatric patients both on and off a locked ward constitute such regular and specially assigned duties in this case. On the other hand, the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position or his failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁴ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁵

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 and which working conditions are not deemed factors of employment and may not be considered.⁶ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable.

² See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell supra* note 1.

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁵ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ See *Barbara Bush*, 38 ECAB 710 (1987).

To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁸

In this case, appellant, a nursing assistant, had been working and interacting with psychiatric patients both on and off a locked ward performing nursing assistant duties. These duties involving any working with and caring for psychiatric patients, therefore, were his regular and specially assigned duties. As such, these would be compensable factors.⁹ Appellant, however, alleged that he began to experience stress and panic attacks from performing these regular and specially assigned duties, particularly in the locked ward setting, which caused him to have to seek relief by “walking into a closed ward bathroom until attack stopped usually 5 [to] 10 minutes later 1 [to] 2 times a month.” Therefore, appellant’s episodic panic attacks and anxiety resulted from the performance of his regular and specially assigned duties, working and interacting with psychiatric patients and consequently such duties constitute compensable factors of his federal employment.

Regarding the compensable factors of employment, Dr. Lisa E. Bracey, a family practitioner, stated: “[Appellant] is currently being treated for an anxiety disorder. At this time we recommend that he work on the day shift only. He should not be on the locked psychiatric ward or included in the care of psychiatric patients. [Appellant’s] condition is aggravated by shift changes and interactions with the psychiatric patients. We suggest that he be permanently removed from the care of psychiatric patients.”

While this opinion is not fully rationalized, it identifies a specific emotional condition, anxiety disorder and it relates it to compensable work factors, working and interacting with psychiatric patients, care of psychiatric patients and working on a locked psychiatric ward and describes the nature of the relationship of the factors to appellant’s emotional condition as “aggravation.” Dr. Bracey suggested that appellant be permanently removed from the care of psychiatric patients. Although this opinion is insufficient to establish by the weight of the probative, reliable and substantial evidence that appellant’s anxiety disorder was aggravated by his duties involving psychiatric patients, it is of sufficient probative value to require further development by the Office.

Further medical treatment notes reiterate that appellant had anxiety with phobia and should not be working the psychiatric ward or be involved in the care of psychiatric patients.

After an assignment change appellant alleged that he still had to work with psychiatric patients on the medical-surgical unit and that he had to care for a guarded prisoner which was stressful. As this guarding of a prisoner was a specially assigned duty, any emotional condition or aggravation related to that would also be compensable. Appellant further recounted a

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

⁹ *Lillian Cutler*, 28 ECAB 125 (1976).

confrontation between two psychiatric patients, as documented by the police record, which he felt caused him more stress and continuous panic attacks. If appellant was present and performing his nursing assistant duties, *i.e.*, helping a patient to use the bathroom, when this confrontation between two psychiatric patients occurred, this could also be a compensable factor of his employment.

Proceedings under the Act are not adversary 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.¹⁰ This holds true in emotional condition claims as well as in initial traumatic injury and occupational illness claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained an emotional condition or an aggravation of an emotional condition, causally related to his federal employment nursing assistant duties, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship, that is sufficient to require further development of the case record by the Office.¹¹ Additionally, there is no opposing medical evidence in the record.

Therefore, the case must be remanded to the Office for the creation of a statement of accepted facts and specific questions to be addressed, to be followed by a referral to a appropriate medical specialist, for a reasoned opinion as to whether the performance of appellant's regular and specially assigned nursing assistant duties involving care and interaction with psychiatric patients caused or aggravated appellant's claimed emotional condition.

As this remand is the disposition of the case, the issue of denial of a merit review becomes moot.

¹⁰ *William J. Cantrell*, 34 ECAB 1223 (1983).

¹¹ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Programs dated November 9, August 16 and May 4, 2001 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
August 13, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member