

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE M. NEWBIGGING and U.S. POSTAL SERVICE,
POST OFFICE, Buffalo, NY

*Docket No. 03-891; Submitted on the Record;
Issued July 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

This is the second appeal in this case. The Board issued a decision¹ on August 25, 2000 in which it set aside the August 6, 1998 decision of the Office of Workers' Compensation Programs and remanded for further evaluation of the evidence with respect to his claim that he sustained an employment-related emotional condition.² The Board found that appellant had established compensable employment factors with respect to working substantial overtime in the early to mid 1980s and being exposed to loud noise in the workplace from various sources, including radios. The Board found that appellant did not establish other allegations that the employing establishment engaged in improper disciplinary actions such as discussions and suspensions, improperly assigned work duties and unreasonably monitored his activities at work. It also found that he did not establish his claims that supervisors and coworkers engaged in harassment and discrimination. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand the Office referred appellant to Dr. Harold J. Levy, a Board-certified psychiatrist, for a second opinion regarding whether he sustained an emotional condition due to the two accepted employment factors. Dr. Levy provided reports dated February 15 and

¹ Docket No. 98-2592 (issued August 25, 2000).

² In November 1990, appellant, then a 45-year-old retired postal carrier, filed a claim alleging that he sustained an emotional condition as a result of a number of employment incidents and conditions. By decision dated August 11, 1994, the Office denied appellant's emotional condition claim on the grounds that he did not establish any compensable employment factors. By decisions dated February 1, 1996 and August 6, 1998, the Office affirmed its prior decision.

March 6, 2001 concerning this matter.³ By decision dated April 13, 2001, the Office denied appellant's claim on the grounds that he had not established an employment-related emotional condition. The Office based its determination on the opinion of Dr. Levy. By decision dated and finalized January 14, 2002, an Office hearing representative set aside the Office's April 13, 2001 decision and remanded the case to the Office for further development. The hearing representative determined that Dr. Levy should review a September 8, 1993 report of Dr. Yeung R. Oh and a January 28, 1997 report of Dr. Dhruvkumar Gunderia and indicate whether these reports changed his opinion on the cause of appellant's claimed condition.⁴ Dr. Levy reviewed these reports and indicated in a report dated March 27, 2002 that his opinion was unchanged. By decision dated May 9, 2002, the Office denied appellant's claim on the grounds that he had not established an employment-related emotional condition. By decision dated and finalized January 24, 2003, an Office hearing representative affirmed the Office's May 9, 2002 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially-assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁶ A claimant 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 employment factors.⁷ A claimant's burden of proof is not discharged by the fact that he has established an employment factor which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, a claimant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁸

³ The Office requested that Dr. Levy provide clarification of the opinion contained in his February 15, 2001 report.

⁴ Both Dr. Oh and Dr. Gunderia were attending Board-certified psychiatrists.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ See *William P. George*, 43 ECAB 1159, 1168 (1992).

In the present case, appellant has established compensable factors of employment with respect to working substantial overtime in the early to mid 1980s and being exposed to loud noise in the workplace from various sources, including radios. He did not establish that he was exposed to other alleged employment factors concerning administrative matters or harassment and discrimination by supervisors and coworkers.⁹ The Board has reviewed the relevant medical evidence and finds that the weight of the medical evidence is with the opinion of Dr. Levy, a Board-certified psychiatrist who served as an Office referral physician. Dr. Levy determined that appellant did not sustain an emotional condition due to the accepted employment factors.

In a report dated February 15, 2001, Dr. Levy provided a detailed discussion of appellant's factual and medical history. He diagnosed a paranoid condition with evidence of underlying self-righteousness of a paranoid type. Dr. Levy noted that this condition was accompanied by periodic acute psychotic episodes but that it was currently in moderately good remission. He stated that appellant's basic personality structure during his life has been a highly schizoid personality. Dr. Levy indicated that appellant emphasize the effects of overtime work and noise exposure on his condition but stated that, "while these probably played some minor part in developing the more acute symptoms, the fact is that his basic personality and social maladjustment have been lifelong." He indicated that appellant's paranoid perception of being persecuted was "more important to me than the issues he describes" and stated that exposure to loud noises was irrelevant to the issue of appellant's employability.¹⁰

In a supplemental report dated March 6, 2001, Dr. Levy diagnosed paranoid delusional disorder and schizoid personality and indicated, "As stated in my original report, I do not feel that this illness is the result of occupational stress." He noted that appellant experienced paranoid psychosis with many recurrent episodes which occurred outside of exposure to work stress and stated that overtime work and exposure to noise "were not the cause of paranoid psychotic breakdowns." In a report dated March 27, 2002, Dr. Levy noted that he reviewed the September 8, 1993 report of Dr. Oh and the January 28, 1997 report of Dr. Gunderia, but that these reports did not change his opinion on the cause of appellant's claimed condition.¹¹ He again emphasized that appellant's problems were due to a lifelong nonwork condition.

The Board finds that the opinion of Dr. Levy has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Levy's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹² Dr. Levy provided medical rationale for his opinion by explaining that appellant's problems were due to lifelong emotional problems which were not work related, including paranoid delusional disorder and schizoid

⁹ The Board considered and made determination regarding the claimed employment factors in the present case in its August 25, 2000 decision.

¹⁰ Dr. Levy indicated that appellant was totally disabled due to his nonwork condition.

¹¹ *Supra* note 4.

¹² See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

personality. He explained that the effect of overtime work and exposure to noise would not have been significant enough to influence appellant's emotional condition.

The Board notes that the September 8, 1993 report of Dr. Oh and the January 28, 1997 report of Dr. Gunderia are of limited probative value on the relevant issue of the present case. In his September 8, 1993 report, Dr. Oh suggested that appellant's emotional condition was affected by conflicts with supervisors, but he did not provide any opinion that it was affected by the accepted employment factors, overtime work and exposure to noise. In his January 28, 1997 report, Dr. Gunderia stated that appellant's paranoid-type schizophrenia was exacerbated by "the pressure of long hours and a disruptive environment." He noted that appellant's increased emotional problems appeared to coincide with the "increasing stress of extensive overtime" and indicated that "noise and disruption" would have further increased the pressure on appellant. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain adequate medical rationale in support of its apparent opinion on causal relationship.¹³ It remains unclear whether Dr. Gunderia actually examined appellant and his statements appear to constitute more a recitation of appellant's complaints than a clear opinion on causal relationship. Moreover, Dr. Gunderia did not provide any significant factual or medical history and his opinion is of limited probative value for this reason as well.¹⁴

For these reasons, appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

The January 24, 2003 and May 9, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 22, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

¹⁴ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).