United States Department of Labor
Employees' Compensation Appeals Board

DAN F. LITCHOCK, Appellant	)	
and	)	**Docket No. 03-2208**
	)	**Issued: May 7, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Newburgh, NY, Employer	)	

Appearances:
Martin C. Prinner, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 5, 2003 appellant filed a timely appeal of the May 30, 2003 merit decision of the Office of Workers' Compensation Programs, which denied 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.

ISSUE

The issue is whether appellant sustained an emotional disability arising from an of April 28, 1999 incident.

FACTUAL HISTORY

On April 10, 1998 appellant, then a 38-year-old clerk, filed an occupational disease claim alleging that he developed chest pains as a result of receiving a disciplinary action from his supervisor. After initially denying the claim, by decision dated June 8, 1999, the Office accepted

the conditions of adjustment disorder with anxiety and post-traumatic stress disorder.[1] Appellant stopped work on April 13, 1998 and returned to work on December 8, 1998 and she received appropriate compensation benefits from April 13 to December 8, 1998.

On June 15, 1999 appellant filed a Form CA-2a, claim for recurrence of disability commencing June 14, 1999. Appellant alleged that confidential medical information including a sealed white envelope was improperly maintained in his personnel file, which was kept in a file cabinet and was accessible to other employees. Appellant alleged that his medical documentation was improperly disclosed to a union representative, Jeanette Pignatelli, on May 16, 1999, without his authorization. Appellant alleged that on June 10, 1999 he developed anxiety, adjustment disorder and post-traumatic stress disorder when he reviewed his personnel file on April 28, 1999 and found disciplinary information from April 10 and July 6, 1998, which were improperly maintained in his file.

In a letter dated August 4, 1999, the Office informed appellant that his claim for recurrence of disability would be developed as an occupational disease claim based on his new allegations. In a letter dated October 1, 1999, the Office advised that appellant's claim for emotional conditions for injuries sustained on April 10, 1998 and June 10, 1999, would be combined.

Appellant submitted statement's dated June 11, July 22 and August 27, 1999, which reiterated his allegations that the employing establishment maintained illegal disciplinary records and confidential medical information related to his compensation claim in his personnel file. Ken Wyatt, a union steward, Ms. Pignatelli and Edmund Cubas, an employing establishment manager, agreed that there were documents and records in the file which should have been purged. On May 7, 1999 appellant filed a grievance with respect to the medical and disciplinary records in his file and a settlement agreement was reached whereby his personnel file was purged of all discipline records on September 1, 1999. The employing establishment contended that Mr. Cubas acted reasonably in the administration of the personnel matters.

In reports dated June 11 to July 1, 1999, Dr. Amelia M. Martinko, a Board-certified internist, advised that on June 10, 1999 she treated appellant for stress and admitted him on June 11, 1999 due to chest pains. In attending physicians reports dated June 14 to September 8, 1999, Dr. Surjit S. Dinsa, a psychiatrist, diagnosed adjustment disorder and post-traumatic stress disorder resulting from continued stress, poor interpersonal relationships with supervisors, conflicts at work which caused depression, anxiety, functional impairment and chest pain.

In a decision dated September 24, 1999, the Office denied appellant's claim on the grounds that the evidence of record submitted failed to demonstrate a causal relationship between the April 1999 event identified and the claimed emotional condition, which caused disability after June 10, 1999. The Office accepted as a compensable factor that the employing

[1] The Office accepted the following incidents as compensable: (1) appellant was issued a notice of suspension on January 27, 1998, which erroneously took into consideration a previous letter of warning dated January 30, 1997; and (2) appellant was issued a notice of suspension dated April 10, 1998, that took into consideration a previous notice of suspension dated January 27, 1998, which was in error and any subsequent disciplinary action which considered an erroneous administrative action was also in error.

establishment improperly retained discipline records from April 10 and July 6, 1998, which should have been purged from his file pursuant to the grievance decision of December 7, 1998; however, appellant did not submit sufficient rationalized medical evidence to establishing this factor caused an emotional condition resulting in his disability on or after June 10, 1999.

By a letter dated October 1, 1999, appellant requested a review of the written record by an Office hearing representative. Appellant submitted reports from Dr. Dinsa dated September 20, 1999 to January 31, 2000, which noted that he experienced an acute exacerbation of his adjustment disorder and post-traumatic stress disorder on June 10, 1999 when he learned that personnel records were being maintained and disclosed to coworkers in his workplace.

By decision dated February 4, 2000, an Office hearing representative set aside the September 24, 1999 decision. The hearing representative noted that the reports from Dr. Dinsa diagnosing post-traumatic stress disorder and adjustment disorder as a result of appellant reviewing the contents of his personnel file on April 28, 1999 lacked rationale and did not explain how this event could satisfy the definition of post-traumatic stress disorder or be considered as life threatening.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians.[2]

Appellant submitted various medical records from Dr. Dinsa dated July 1, 1999 to December 28, 2000, which noted that he experienced an acute exacerbation of somatic chest pain and major depression related to the post-traumatic stress disorder caused by the retention and disclosure of disciplinary and other confidential records causing functional impairment and depression.

On December 21, 2000 the Office referred appellant to Dr. Jeffrey H. Newton, a Board-certified psychiatrist and neurologist. In a report dated February 6, 2001, Dr. Newton advised that appellant's discovery on April 28, 1999 that disciplinary documents were left in his personnel file was not the cause or precipitator of the conditions diagnosed by Dr. Dinsa on June 14, 1999 nor would the incident have exacerbated any conditions which may have already existed. The physician opined that appellant continued to work for six weeks after the April 28, 1999 discovery of such records in his personnel file and that this was not the type of event which would cause or precipitate a post-traumatic stress disorder.

In a decision dated March 2, 2001, the Office denied appellant's claim for compensation on the grounds that the weight of the medical evidence as represented by the second opinion

[2] This included referring appellant to a physician in December 2000, when the first referral physician did not provide the clarification requested by the Office. When the second opinion physician's statement of clarification or elaboration is not forthcoming to the Office, or if the physician is unable to clarify or elaborate on the original report, or if the physician's report is vague, speculative or lacks rationale, the Office must refer the employee to another medical specialist for a rationalized medical opinion on the issue in question. *See Margaret M. Gilmore*, 47 ECAB 718 (1996); *Terrence R. Stath*, 45 ECAB 412 (1994); *Nathan L. Harrell*, 41 ECAB 402 (1990); *John I. Lattany*, 37 ECAB 129 (1985).

physician, Dr. Newton, established that appellant's condition was not causally related to factors of his federal employment.

In a letter dated April 2, 2001, appellant requested an oral hearing before an Office hearing representative. The hearing was held on August 24, 2001. Appellant submitted reports from Dr. Dinsa dated March 29 to October 1, 2001. On September 7, 2001 Dr. Dinsa noted that he disagreed with Dr. Newton's findings with regard to appellant's emotional condition and advised that appellant had a chronic post-traumatic stress disorder as a result of stress from ongoing work conditions, depression, anxiety, mental deterioration, which culminated in his hospitalization on June 11, 1999. Dr. Dinsa opined that appellant's chronic post-traumatic stress disorder was the result of the actions of the employees of the employing establishment and the concomitant building depression, agitation and psychosis is life threatening.

In a decision dated February 8, 2002, the hearing representative determined that a conflict of medical opinion was created between Dr. Dinsa, who indicated that appellant sustained an aggravation of his post-traumatic stress disorder due to the April 28, 1999 incident and was permanently disabled and Dr. Newton, who determined that appellant did not sustain any aggravation of a post-traumatic stress disorder as a result of the event of April 28, 1999. The hearing representative also requested that the statement of accepted facts be amended.[3]

To resolve the conflict appellant was referred to a referee physician, Dr. Gregory T. Lombardo, a Board-certified psychiatrist and neurologist. In a medical report dated May 13, 2002, Dr. Lombardo reviewed the medical records provided to him and examined appellant. He noted a history of appellant's accepted work-related injury. Dr. Lombardo diagnosed major depression, panic attacks and agoraphobia and indicated that appellant had an 18-year history of increasing difficulties with management, coworkers and the labor union, which has caused increasing stress, fear of loss of employment and psychiatric symptoms. Dr. Lombardo indicated that he did not believe the accepted factor of April 1998 fell within the definition of a life threatening event to establish a post-traumatic stress disorder and that fear of cardiac illness would not be considered life threatening. He noted that, although post-traumatic stress disorder, adjustment disorder and depression may be delayed in their initial onset, aggravations of the condition do not exhibit a delay between the stressor and the worsening of the symptoms and would be expected to begin at the time of insult. Dr. Lombardo advised that appellant's statements were inconsistent in that he initially indicated that his chest pain began on April 10, 1999 and later advised that his symptoms had begun prior to that time. It was noted that appellant's psychiatrist referred him for a stress test weeks before being seen by Dr. Martinko on June 10, 1999 and that his appointment with Dr. Martinko was delayed. Dr. Lombardo advised that there was no reference to appellant's condition deteriorating, distress over the discovery of documents in his personnel file, or chest pains until Dr. Dinsa's June 14, 1999 report. He

[3] The statement of facts was amended as follows: (1) that the claimant work continuously, beginning December 8, 1998; (2) that on April 29, 1999 the claimant learned that records, which he thought were previously purged, remained in his personnel file; (3) that on April 29, 1999 he continued to work despite having learned about the records; (4) that on June 8, 1999 appellant was notified that his then-only workers' compensation claim had been accepted; (5) that on June 10, 1999 appellant's request was granted and he was allowed to view his personnel folder, which no longer contained the records that had been purged; and (6) that on June 14, 1999 he stopped work and filed a new claim.

concluded that, with a reasonable degree of medical certainty, the recurrence of symptoms appellant experienced on June 10, 1999 were not causally related to the accepted April 29, 1999 factor nor was there any evidence of record that appellant's symptoms on June 10, 1999 occurred as a culmination of a deterioration that had begun around April 29, 1999.

In a decision dated August 29, 2002,[4] the Office denied appellant's claim on the grounds that the weight of the medical evidence established that his disability commencing June 10, 1999 was not causally related to the accepted April 28, 1999 factor.

By letter dated July 3, 2002, appellant requested a review of the written record by an Office hearing representative.[5]

In a decision dated May 30, 2003, the Office hearing representative affirmed the August 29, 2002 decision.

LEGAL PRECEDENT

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.[6] 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.[7]

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 employment factors.[8] 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.[9]

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[4] A June 3, 2002 decision was lost in transit and reissued on August 29, 2002.

[5] In a letter dated March 11, 2003, appellant through his attorney requested payment for various medical procedures performed June 10, 1999 through the present. In a decision dated April 30, 2003, the Office denied appellant's request for payment of medical bills occurring June 10, 1999 to June 6, 2003, on the grounds that the medical bills were not causally related to the accepted conditions and not authorized by the Office prior to being performed.

[6] 5 U.S.C. §§ 8101-8193.

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

[8] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[9] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.[10] If a claimant does implicate 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.[11]

ANALYSIS

Appellant's allegation that confidential medical information was improperly maintained in his personnel file relates to administrative or personnel matters unrelated to his employee's regular or specially assigned work duties and does not fall within the coverage of the Act.[12] Although the handling of personnel files is generally related to the employment, it is an administrative function of the employer and not a duty of the employee.[13] However, the Board has also found that an administrative or personnel matter will be considered an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[14] The evidence is insufficient to establish that confidential medical document were erroneously kept in appellant's personnel file. Appellant submitted a letter dated May 17, 1999 from Ms. Pignatelli, a union steward, who noted that she met with Mr. Cubas to review appellant's file and stated that there was "medical information" which did not belong in the file. She advised that Mr. Cubas placed the documents in an envelope and sent them certified mail to the Westchester medical unit. Ms. Pignatelli did not identify the documents but merely objected to them being in the personnel file. The employing establishment noted, in a letter dated September 16, 1999, that the material in appellant's file was an administrative medical report generated as a result of his request for light duty and/or family medical leave due to a medical condition and the administrative medical report was not restricted medical information. The employing establishment contended that Mr. Cubas acted reasonably in the administration of the personnel matters. Appellant has not provided sufficient evidence to substantiate such actions were in error, abusive or unreasonable in nature. The Board has held that, where the evidence demonstrates that the employing establishment has neither erred nor acted abusively, coverage under the Act will not be

[10] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[11] *Id.*

[12] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[13] *Id.*

[14] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

afforded.[15] Appellant has not established a compensable factor pertaining to the issuance or removal of the medical records.

Appellant alleged that the employing establishment erred by disclosing his medical documentation to Ms. Pignatelli on May 16, 1999 without his authorization. The record does not substantiate appellant's claim of error. The employing establishment indicated that Ms. Pignatelli was a representative of appellant in the grievance process and viewed appellant's personnel file and the documents therein as his representative and the personnel file was provided to the union representative pursuant to federal law.[16] Ms. Pignatelli advised that she met with Mr. Cubas to review appellant's personnel file and discovered that there was medical information which did not belong in the file and Mr. Cubas placed the documents in an envelope and sent them to the Westchester medical unit. There is no evidence of record that the employing establishment erred or acted abusively in disclosing appellant's personnel file and its contents to his union in its representative.

The Office found that appellant established a compensable factor of employment with respect to appellant's reviewing his personnel file on April 28, 1999 and finding improperly retained discipline records from April 10 and July 6, 1998, which should have been purged from the file pursuant to a grievance decision of December 7, 1998. Appellant'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, appellant 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.[17]

The Office reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Dinsa, who disagreed with Dr. Newton, the Office referral physician, concerning whether appellant had an aggravation of post-traumatic stress disorder as a result of the work incident of April 29, 1999, which caused disability after June 10, 1999. The Office referred appellant to Dr. Lombardo to resolve the conflict. He diagnosed major depression, panic attacks and agoraphobia and indicated that appellant had an 18-year history of increasing difficulties with management, coworkers and labor union, which has caused increasing stress, fear of loss of employment and psychiatric symptoms from which he now suffers. Dr. Lombardo indicated that he did not believe the event of April 1998 was "life threatening" in terms of post-traumatic stress disorder and advised that the work incident of April 1998, was only the latest in a series of incidents that had been going on for several years and the notice of suspension was only the latest in the number of disciplinary warnings and, therefore, could not be accepted as an event beyond normal circumstances, which would result in post-traumatic stress disorder. He concluded that with a reasonable degree of

[15] *Michael Thomas Plante*, 44 ECAB 510 (1993); *Effie O. Morris*, *supra* note 9.

[16] *See Sammy N. Cash*, 46 ECAB 419 (1995); *see also* 5 U.S.C. § 7114(b) provides that the employing agency shall provide to an authorized representative information, which is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.

[17] *See William P. George*, 43 ECAB 1159, 1167 (1992).

medical certainty that the recurrence of symptoms appellant experienced on June 10, 1999 were not causally related to the accepted on April 29, 1999 factor nor was there any evidence in the medical record that appellant's symptoms on June 10, 1999 occurred as a culmination of a deterioration that had begun around April 29, 1999. Additionally, the physician advised that there is no reference to appellant's condition deteriorating, distress over the discovery of documents in his personnel file, or chest pains until Dr. Dinsa's June 14, 1999 report nearly six weeks after the work incident and it would be expected that post-traumatic stress disorder, adjustment disorder and depression would have began at the time of the original insult of April 29, 1999, which was not the case.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[18] The Board finds that the opinion of Dr. Lombardo was based upon a proper factual and medical background and was sufficiently well rationalized to be given special weight. Under the circumstances of this case, his opinion constitutes the weight of the medical evidence.

Appellant submitted various reports from Dr. Dinsa dated December 17, 2001 to April 2, 2002, which diagnosed major depression and post-traumatic stress disorder due to the retainage and disclosure of appellant's medical condition and disciplinary documents in his personnel file and opined that appellant was totally disabled from work. However, these reports merely reiterated Dr. Dinsa's medical opinion and are insufficient to overcome that of Dr. Lombardo or to create a new medical conflict.[19]

The Board finds that the Office properly relied on Dr. Lombardo's May 13, 2003 opinion as the basis for denying appellant's claim. Dr. Lombardo's opinion is sufficiently well rationalized and based upon a proper factual background. He examined appellant reviewed the medical records and reported an accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiners May 13, 2003 findings.[20]

CONCLUSION

The Board further finds that appellant has not established that he sustained an emotional condition causally related to factors of his federal employment.[21]

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[18] *Aubrey Belnavis*, 37 ECAB 206 (1985).

[19] *See Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

[20] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[21] The Board notes that on April 30, 2003 the Office issued a decision, which denied payment for certain medical procedures on and after June 30, 1999 as not causally related to appellant's accepted work-related injury. However, appellant nor his attorney indicated that they wished the Board review this decision.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member