

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

R.L., Appellant

and

DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Auburn, WA, Employer

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**Docket No. 11-115
Issued: June 14, 2011**

Appearances:
John E. Goodwin, Esq., for the appellant
No appearance, for the Director

Oral Argument March 9, 2011

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 18, 2010 appellant filed a timely appeal from the July 14, 2010 merit decision of the Office of Workers' Compensation Programs denying his emotional condition claim. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On June 3, 2009 appellant, then a 47-year-old airway transportation system specialist, filed an occupational disease claim alleging that he sustained an emotional condition due to various incidents and conditions at work, including harassment and conflicts with coworkers. In

¹ 5 U.S.C. § 8101 *et seq.*

particular, he implicated two encounters in 2007 with a coworker, Pat Weiderhold.² Appellant submitted factual and medical documents in support of his claim.

In an October 19, 2009 decision, the Office denied appellant's emotional condition claim finding that he did not establish any compensable employment factors. It did not consider the medical evidence of record.

In a March 17, 2010 report, Bruce J. Tapper, Ph.D., an attending clinical psychologist, determined that appellant sustained post-traumatic stress syndrome and major depressive disorder due to long-term harassment by Mr. Weiderhold as well as two occasions in 2007 when Mr. Weiderhold threatened and/or assaulted appellant.

In a May 13, 2010 decision, an Office hearing representative set aside the October 19, 2009 decision and accepted that appellant established two employment factors: a January 18, 2007 incident when Mr. Weiderhold coughed in appellant's face and stated that he hoped appellant got sick and a September 6, 2007 incident when a confrontation took place involving shoving between Mr. Weiderhold and appellant. The Office found that the March 17, 2010 report of Dr. Tapper was generally sufficient to support a *prima facie* case that appellant sustained an emotional condition due to the accepted employment factors. The Office hearing representative remanded the case to the Office for referral of appellant to an appropriate specialist for examination and evaluation regarding whether he sustained an employment condition due to an accepted employment factor.

The Office referred appellant to Dr. Douglas P. Robinson, a Board-certified psychiatrist, for evaluation of his emotional condition. In the statement of accepted facts, it characterized the accepted employment factors as follows:

“On January 18, 2007, the claimant's co-worker [Mr. Weiderhold] coughed in his face and advised him that he hoped he got sick. The supervisor verified that the incident happened as alleged and that he verbally reprimanded the co-worker for his behavior. On September 6, 2007, a confrontational incident between the claimant and a co-worker [Mr. Weiderhold], in the form of a shoving, took place. That this incident occurred is supported by the agency's investigative summary dated November 6, 2009.”³

In a June 29, 2010 report, Dr. Robinson provided an extensive factual and medical history and reported the findings of his examination of appellant. He diagnosed major

² Appellant identified the incidents as occurring on January 18 and September 6, 2007.

³ In a second grouping, the Office listed incidents which occurred that were not factors of employment. These matters related to performance rewards, leave procedures and training. In a third grouping, it listed incidents alleged to have occurred that the evidence had not established. The nonestablished incidents involved claimed harassment by supervisors or coworkers (not related to the accepted January 18 and September 6, 2007 incidents) and the perceived failure of management to address appellant's concerns in the workplace.

depression, single episode and panic disorder with agoraphobia. Referencing the statement of accepted acts, he provided an explanation of the cause of these conditions:

“In my opinion, the psychiatric condition is not a result of the first group of work factors. The first group was part of the issue, but was not independently sufficient to produce the conditions. No single event or two events would have caused the symptoms that he describes. Rather, it is cumulative effect of all of the experiences, particularly those in the third group, that is, the progressive perception of helplessness, having nowhere to turn to resolve his concerns, and perceived indifference on the part of those whose assistance he requested. Although several of the events in and of themselves would have been upsetting, they would not produce the psychiatric conditions identified absent his perception of inability to resolve the issue. Therefore, the majority of the cause lies in the third group of factors.”

* * *

“I am not aware of any underlying conditions or preexisting conditions that were quiescent or minimally symptomatic. The effects of the work factors continue to manifest. His condition has not returned to baseline.”

* * *

“There are no conditions solely related to the first group of work factors that disable him from employment.”

In a July 14, 2010 decision, the Office affirmed its May 13, 2010 decision noting that the medical evidence, including the June 29, 2010 report of Dr. Robinson, did not show that appellant sustained an emotional condition due to a compensable employment factor.

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 Act.⁴ 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.⁵

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

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.⁶ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.⁷

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.⁸ 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.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of 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 the claimant.¹⁰

In *Beth P. Chaput*,¹¹ the Board set aside and remanded the case to the Office stating, "It is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence revealed that [a work factor] ... contributed in any way to [the employee's] condition, such condition would be considered employment related for the purpose of compensation benefits under the [Act]."¹²

⁶ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁷ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁸ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁹ *Id.*

¹⁰ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹¹ 37 ECAB 158 (1985).

¹² *See also Glenn C Chasteen*, 42 ECAB 493 (1991); *Arnold Gustafson*, 41 ECAB 131 (1989).

ANALYSIS

In the present case, the Office accepted two employment factors: a January 18, 2007 incident when a coworker, Mr. Weiderhold, coughed in appellant's face and stated that he hoped appellant got sick and a September 6, 2007 incident when a confrontation took place involving shoving between Mr. Weiderhold and appellant.

The Office referred appellant to Dr. Robinson, a Board-certified psychiatrist, for evaluation of his emotional condition. The Board finds that the June 29, 2010 report of Dr. Robinson provides an opinion that employment factors contributed, at least in part, to two diagnosed conditions -- major depression, single episode and panic disorder with agoraphobia.

Board precedent provides that it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence revealed that a work factor contributed in any way to appellant's condition, such condition would be considered employment related.¹³ Dr. Robinson provided a clear opinion that accepted employment factors contributed to the diagnosed emotional conditions. He stated that the "first group" of factors listed in the statement of accepted facts, *i.e.*, the accepted January 18, 2007 and September 6, 2007 incidents, were "part of the issue" contributing to appellant's emotional condition, but were not independently sufficient to produce the conditions. Dr. Robinson also noted that some incidents not accepted as employment factors constituted the majority of the cause of the diagnosed conditions, thereby noting that the accepted factors represented the minority of the cause of the diagnosed conditions. He further stated, "There are no conditions solely related to the first group of [accepted] work factors that disable him from employment."

The evidence establishes that the diagnosed conditions of major depression, single episode, and panic disorder with agoraphobia are work related and covered under the Act; however, the record does not contain a clear medical opinion regarding any periods of disability related to these accepted conditions. The case will be remanded to the Office for further development of this matter. After such development as deemed necessary, the Office shall issue an appropriate decision regarding appellant's entitlement to compensation in this regard.¹⁴

CONCLUSION

The Board finds that appellant met his burden of proof to establish that he sustained emotional conditions in the performance of duty. The case is remanded to the Office to determine any periods of disability due to the accepted conditions.

¹³ See *supra* notes 10 and 11.

¹⁴ The Board notes that appellant would be entitled to medical benefits related to treatment for the accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2010 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded to the Office for proceedings consistent with this decision of the Board.

Issued: June 14, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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