United States Department of Labor
Employees' Compensation Appeals Board

JOHN L. McDONALD, Appellant	)	
and	)	**Docket No. 02-744**
	)	**Issued: January 23, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Greenville, PA, Employer	)	

Appearances:
John L. McDonald, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 12, 2002 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated January 2, 2002 and February 15, 2001. Under 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 has established that he sustained a recurrence of disability on February 12, 2000 causally related to his accepted emotional condition.

FACTUAL HISTORY

On June 7, 1996 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that he sustained multiple illnesses due to stress and harassment at work. He did not stop work at that time, but later filed claims to buy back the leave that

he used in 1977.[1] The Office accepted appellant's claim, assigned file number A03-0225478, for an adjustment disorder with depressed mood.[2]

On March 6, 2000 appellant filed a notice of recurrence of disability on February 13, 2000 causally related to his accepted emotional condition. He attributed his recurrence of disability to "feelings as before compounded by pressure from [the employing establishment] with discipline." Appellant noted that he was "injured in [a] pedestrian accident" on July 1, 1999. He stated that he stopped work following the alleged recurrence on February 12, 2000; the employing establishment, however, noted that he had not worked since July 2, 1999.

In support of his claim for a recurrence of disability, appellant submitted progress notes from his attending physician, Dr. Helenna Nakama, a Board-certified psychiatrist. In a February 5, 2000 progress note, Dr. Nakama noted that appellant stated that he had been harassed at work for three years and "received a letter that he might have to go back to work [and] is depressed." Dr. Nakama related that appellant felt that his "psychological health will spiral if he returns to work."

In a progress note dated February 19, 2000, Dr. Nakama diagnosed dysthymia and major depressive disorder, moderate. She stated that appellant related that he was "[g]etting letters to go back to work but feels [that] he would be suicidal if he did because of too much stress." Dr. Nakama opined that appellant "should not return back to work because of poor mental stability" and as he would "decompensate more at work." She submitted similar progress notes dated March 4, March 18 and April 15, 2000.

In a report dated May 12, 2000, Dr. Nakama diagnosed dysthymia and major depression. She stated:

> "Currently [appellant] is not emotionally capable of returning to work because work stress would likely cause further emotional instability. His emotional disability is tangentially related to his original injury, as he continues to suffer from severe stress related to perceived work harassment culminating in depression. [The] [s]pecific work factor involved is perceived work harassment."

In a letter dated March 8, 2000, the employing establishment challenged appellant's claim. The employing establishment related that he was injured on July 1, 1999 when he was struck by a car in the performance of duty. The employing

[1] The Office did not adjudicate whether appellant was entitled to this leave buyback.

[2] The Office initially denied appellant's claim in a decision dated October 24, 1997. In a decision dated February 4, 1998, a hearing representative set aside the Office's October 24, 1997 decision and remanded the case for further development. In a report dated April 22, 1999, Dr. Peter Longstreet, a Board-certified psychiatrist, to whom the Office referred appellant for a second opinion evaluation, diagnosed an adjustment disorder due to the compensable factors of employment and found that appellant could perform his regular employment duties. Dr. Longstreet noted that appellant desired to work inside during the winter due to his chronic obstructive pulmonary disease.

establishment noted that appellant's July 1, 1999 claim was assigned file number A03-0244187. The employing establishment indicated that, on February 14, 2000, the Office informed appellant that he had received a suitable job offer in file number A03-0244187 but appellant did not resume work.

By decision dated May 31, 2000, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence did not establish that he was disabled beginning February 12, 2000 due to his accepted emotional condition. On June 6, 2000 appellant requested a hearing before an Office hearing representative, which was held on November 27, 2000. Appellant submitted a progress note dated June 10, 2000 from Dr. Nakama, who found that appellant was frustrated because of the denial of his claim with the employing establishment. She diagnosed major depressive disorder, recurrent, in remission and dysthymia and noted that working "will cause decompensation in psychiatric condition." Appellant further submitted a report dated July 31, 2000 from Dr. Ronald D. McFadden, a Board-certified psychiatrist and attending physician, who diagnosed major depressive disorder in remission, dysthymia and a personality disorder not otherwise specified. He noted that appellant "has had a great deal of work stress…."

In a report dated November 28, 2000, Dr. McFadden stated that he agreed with Dr. Nakama that "due to multiple factors returning to work at the [employing establishment] would likely lead to significant decompensation."

In a decision dated February 15, 2001, the hearing representative affirmed the Office's May 31, 2000 decision.[3]

In a report dated May 7, 2001, Dr. McFadden diagnosed major depression, dysthymia and a personality disorder. He stated:

> "[Appellant's] employment with the [employing establishment] has directly led him to his current psychiatric condition. As you are aware, [appellant] had various discipline actions taken against him over the past several years. He is currently in such a state of mind that he cannot return to work at the [employing establishment]. [Appellant] is incapable of interacting in a socially appropriate manner with peers or supervisor or the general public. In addition, his judgment and insight are so severely impaired [that] he cannot make the typical reasonable decisions required for maintaining a minimal level of safety while employed at the [employing establishment]. [Appellant] has an underlying combination of antisocial as well as paranoid personality traits….
>
> "As a result of the various interactions with [employing establishment] administration over the course of his employment, [appellant] has built an

[3] The hearing representative noted that, at the hearing, appellant had discussed additional work incidents. The hearing representative indicated that appellant would need to file a new claim if he felt that these work incidents caused an injury.

> extensive network of persecutory beliefs. [Appellant] has told me about several incidences that contribute to his current belief system. [Appellant] has given me a large amount of information related to the various claims and grievances that he has filed. I do not pretend to understand the intricacies of these matters nor is it my position to comment on whether they were just or unjust. I am simply attempting to explain [appellant's] psychiatric condition."

Dr. McFadden opined that appellant had probably had a paranoid personality since "early adulthood." He concluded that appellant could not return to work at the employing establishment as the "various interactions over the past decade had fed into and empowered his delusional belief system to the point that it is hazardous for himself and others in his workplace for him to return."

On October 2, 2001 appellant requested reconsideration of his claim. By decision dated January 2, 2002, the Office denied modification of its February 15, 2001 merit decision.

LEGAL PRECEDENT

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.[4] This burden includes the necessity of furnishing evidenced from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[5]

ANALYSIS

Appellant alleged that he sustained disability on February 12, 2000 due to his employment-related emotional condition. In accepting appellant's claim for an adjustment disorder with depressed mood, the Office found that he had established two compensable factors of employment. The Office found that, as determined by the Merit Systems Protection Board, the employing establishment had improperly terminated appellant for threatening to kill his supervisor prior to considering all factors. The Office next found that the employing establishment's denial of appellant's intermittent leave requests from 1995 to 1997 under the Family and Medical Leave Act constituted a compensable factor of employment. Appellant continued to perform his regular employment until he sustained another employment-related injury in July 1999. In order to establish a recurrence of disability, appellant must submitted rationalized medical evidence sufficient to show that he was disabled from employment beginning February 12, 2000 due to his accepted emotional condition.

[4] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[5] *Id*.

Dr. Nakama, a Board-certified psychiatrist and appellant's attending physician, indicated, in a February 5, 2000 progress note, that appellant stated that he had been harassed at work and was depressed that he might have to return to work. She further noted that appellant believed that he would psychologically decline if he resumed employment. However, Dr. Nakama reached no specific conclusions but instead merely noted appellant's opinion that he should not return to work. A physician's report is of little probative value where it is based on the claimant's beliefs concerning causal relationship rather than the doctor's independent opinion.[6] Thus, Dr. Nakama's progress note is insufficient to meet appellant's burden of proof.

In a progress note dated February 19, 2000, Dr. Nakama diagnosed dysthymia and moderate major depression. She opined that appellant "should not return back to work because of poor mental stability" and as he would "decompensate more at work." Dr. Nakama submitted similar progress notes dated March 4, March 18 and April 15, 2000. Dr. Nakama, however, did not provide any rationale for her conclusion that appellant did not have the mental stability to return to work and thus her report is of diminished probative value.[7] Further, regarding her finding that, appellant's condition would deteriorate if he resumed employment, the Board has long held that the fear of a recurrence of disability if the employee returns to work does not constitute a valid basis for compensation.[8]

In a report dated May 12, 2000, Dr. Nakama opined that appellant could not resume work because the stress would worsen his emotional problems. She found that appellant's condition was "tangentially related to his original injury" because he continued to experience stress due to harassment at work. Again, as discussed above, a physician's statement that exposure to employment factors would cause a recurrence of symptoms in the future is not a sufficient basis on which to establish a claim as the fear of a recurrence of a condition if a claimant returns to work does not constitute a basis for compensation.[9] Also, in this case the Office did not accept that appellant was harassed at work as a compensation factor of employment. Therefore, Dr. Nakama's report is insufficient to meet appellant's burden of proof.

Dr. Nakama further found, in a progress note dated June 10, 2000, that appellant was frustrated because of the denial of his claim with the employing establishment. She diagnosed recurrent major depressive disorder in remission and dysthymia and noted that working "will cause decompensation in psychiatric condition." However, the possibility

[6] *See Earl David Seal*, 49 ECAB 152 (1997).

[7] *Vicky L. Hannis*, 48 ECAB 538 (1997).

[8] *Richard Paul Nitzel*, 31 ECAB 208 (1979).

[9] *Dominic M. DeScala*, 37 ECAB 369 (1986).

of a future exacerbation if appellant returns to work is not compensable under the Act.[10] Further, Dr. Nakama provided no rationale for her opinion and, thus, it is of little probative value.[11]

Dr. McFadden, a Board-certified psychiatrist and attending physician, diagnosed major depressive disorder in remission, dysthymia and a personality disorder not otherwise specified in a report dated July 31, 2000. He noted that appellant experienced stress at work. While Dr. McFadden indicated that appellant had stress at work, he did not specifically relate the diagnosed conditions to factors of appellant's employment and, thus, his report is of diminished probative value.[12]

In a report dated November 28, 2000, Dr. McFadden indicated that his agreement with Dr. Nakama that appellant resuming work at the employing establishment would cause his condition to worsen. Dr. McFadden, however, did not address the relevant issue of whether appellant was disabled from employment beginning February 12, 2000 due to a recurrence of his emotional condition but instead found that appellant would decompensate if he resumed work. As noted above, the possibility of a future injury does not constitute an injury under the Act.[13]

Dr. McFadden further discussed, in a report dated May 7, 2001, appellant's history of receiving disciplinary actions from the employing establishment. He opined that working for the employing establishment "directly led" to appellant's psychiatric condition, which he diagnosed as major depression, dysthymia and a paranoid personality disorder. Dr. McFadden opined that appellant could not return to work at the employing establishment because interactions at work worsened his "delusional belief system." However, while Dr. McFadden found that various unidentified incidents at the employing establishment contributed to appellant's paranoid personality, he did not provide an opinion, supported by medical rationale, explaining how the specific factors of employment found compensable by the Office caused a recurrence of disability beginning February 12, 2000. Thus, his opinion is of little relevance to the issue at hand.

On appeal, appellant contends that his two separate claims for an emotional condition and a traumatic injury in 1999 were erroneously combined and denied. However, the record indicates that both of appellant's claims have been separately adjudicated. The only claim before the Board at this time is appellant's appeal of the denial of his recurrence of disability due to his accepted emotional condition in file number A03-0225478.

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[10] *Id*.

[11] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996) (medical conclusions unsupported by rationale are of diminished probative value).

[12] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[13] *Louise G. Malloy*, 45 ECAB 613 (1994).

Appellant, therefore, has failed to meet his burden of proof to establish that he sustained a recurrence of disability on February 12, 2000 causally related to his accepted emotional condition.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on February 12, 2000 causally related to his accepted emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 2, 2002 and February 15, 2001 are hereby affirmed.

Issued: January 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member