

File Number:

D-H

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U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 50
LONDON, KY 40742-8300
Phone: (202) 693-0045

JUN 28 2006

Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a Hearing, the case file was transferred to the Branch of hearings and Review.

A Hearing was held on _____ As a result of your Hearing, it has been determined that the decision issued by the District Office should be set aside, and the case remanded to the District Office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Future correspondence should be addressed to: U.S. Department of Labor, Office of Workers' Compensation Programs:

US DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMP PROGRAMS
PO BOX 8300 DISTRICT 6
LONDON, KY 40742-8300

Sincerely,

HEARING REPRESENTATIVE

DEPT OF THE AIR FORCE
96 MSS/DPC
AFMC PRODUCT CENTERS-SYSTEMS
310 W VAN MATRE AVE, SUITE 134
ELGIN AFB, FL 32542

PAUL FELSER, ESQ
7 EAST CONGRESS ST, SUITE 400
PO BOX 10267
SAVANNAH, GA 31412

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of
Claimant; Employed by the
Case number

Hearing was held in Atlanta, GA on
decision of the District Office dated

Based on that Hearing, the
is hereby set aside for the

reasons set forth below:

The issue for determination is whether the claimant sustained a work-related injury in the performance of duty, as alleged.

The claimant is employed as a _____ for the
at _____ On _____ the claimant filed a form CA-2 "Notice of
Occupational Disease and Claim for Compensation" alleging that his federal work duties
had caused major depression and chronic cervical pain. The employer challenged the
claim. The claimant supplied numerous medical reports showing long-standing
treatment for cervical pain and depression. The claimant submitted a detailed written
statement outlining the work duties he felt caused his conditions. The employer
submitted several written statements refuting the claimant's allegations.

On _____ after developing the evidence of record, the District Office issued a
Notice of Decision with a denial of the claim. The Office made a finding that, with regard
to the claimed cervical condition, although the evidence of file supports that the claimant
worked at a computer as alleged, there was no medical evidence of record with a
diagnosis made by a qualified physician in connection with this activity.

With regard to the alleged emotional condition, the Office noted that the following
employment duties were alleged by the claimant to be causative of his condition:

- Excessive workload;
- Timeframes for completion of assignments were excessively shortened;
- Subjected to heavy and intense recurring travel;
- Required to work excessive additional hours;
- Required to take work home on weekends;
- Workload was dramatically increased to reduce the workload of another employee;
- Pressured to guarantee that a contractor would not file a protest on a particular contract;
- Performance evaluation was threatened;

- Given more work than one person was capable of performing;
- Subjected to an excessive rate of change in required regulations, policies, and management initiatives.

The District Office indicated that the claimant submitted no evidence to support the above allegations. Although the claimant was advised of the need for additional supportive evidence in an _____ letter, additional evidence to support these allegations was not received. In addition, the employer submitted numerous detailed statements which disputed the claimant's allegations. The Office determined that the evidence was insufficient to support that any of these alleged occupational conditions were factual.

The claimant disagreed with this decision and, through his attorney, requested an appeal in the form of an Oral Hearing before the Branch of Hearings and Review. Accordingly, an Oral Hearing was scheduled and held on _____. At the Hearing, the claimant was represented by Attorney Paul Felser. The employer did not send a representative to observe.

At the Hearing, Attorney Felser argued that *prima facie* evidence, sufficient to warrant further development of the claim on the part of the Office, had been submitted, in that the claimant's physician had indicated that the claimant's chronic torticollis had been exacerbated by the position of his head at work while he looked at his computer screen. He felt the Office should have written to the attending doctor and requested additional evidence or rationale in support of this statement, if that was required to complete the claim. Attorney Felser also argued that, although existing medical evidence of record didn't expressly state this, it would be logical to deduce that if the claimant's head positioning at work affected his torticollis, it also affected his cervical degenerative disc disease, noted in the medical reports of record.

The claimant was asked to describe his work duties that seemed to contribute to his cervical condition. The claimant described sitting in front of the computer screen, with his head facing forward in a static position. He stated that his neck would start to hurt after about 30 minutes of this. He tried adjusting his workstation, but it never helped. The claimant also described neck pain that would occur during meetings while sitting at a conference table and viewing projections on the wall, with his view slightly elevated. In excess of 30 minutes, this would cause pain. The claimant noted that tucking his chin would offer momentary relief. The meetings could last from 1, 2 or 3 hours. The claimant noted pain also upon turning his head to view documents, looking left or right at the document, then looking back at the computer screen.

The claimant noted difficulty controlling his neck pain. He indicated he is on strong pain medication, and the dose is regulated by his wife. The claimant stated that he has worked for the Federal Government for approximately 29 years, with 20 years as a Procurement Analyst.

With regard to the claim for an emotional condition related to work duties, Attorney Felser argued that the claimant's position of Procurement Analyst is a high-functioning, important job which requires handling sensitive information. The claimant deals with classified information, in support of the ongoing "War on Terror." The claimant is good

at his job, and his performance appraisals reflect that. Due to his competency, the claimant was assigned an increasing workload that eventually took its toll.

The claimant prepared a chronology of his increasing workload. He identified his excessive workload, and shortened timeframes for getting his work done, as the work factors that were stressful for him, and he felt had aggravated his pre-existing depression.

The claimant noted a history of depression beginning in approximately [redacted] treated with psychotropic drugs, and then subsiding for a time. He noted a suicide attempt back then.

The claimant indicated that in [redacted] to [redacted] he was working as a Procurement Analyst when his supervisor shortened time frames for reviewing acquisition documents. This was reduced from a 7-day timeliness goal, to 3 days. As some time passed, the time frame was again reduced to 1 to 2 days.

In [redacted] the claimant was assigned as the acting Chief of the Infrastructure Branch at Eglin, which covers construction and maintenance, and the supervisory position directly above him was vacant, so he was left to himself to figure out how to do things. The claimant stated he had no prior experience in this field, and he was to supervise three Supervisory Contract Specialists, who in turn each supervised six subordinate contract specialists.

Attorney Felser noted that, at that time, staffing was down to 80% of normal, and this increased workload as well. In [redacted] due to expiring military funds, the overall contracting process time frame was reduced from 4 months to 2 ½ months. During this period, the claimant had about 25 projects scattered all about Eglin AFB, which is 743 square miles.

The net effect of all this was that the claimant had to do all his regular duties on a shorter time frame, complete more work, and in order to do this, had to spend additional time at work, sometimes one to two hours per day.

He did this from [redacted] through [redacted], when he was assigned to Chief of Branch A of the Test Evaluation and Specialized Contracts Division at Eglin, when the number of employees he supervised increased to 10, plus he still had to perform his duties as a contracting officer, because he had an unlimited warrant. The workload there was high volume, and the claimant processed in excess of 600 contract actions per year, and administered technical engineering and acquisition services contracts totaling 1.5 billion dollars. The number of employees the claimant supervised increased from 10 to 14, including three trainees. The claimant indicated that usually, a Supervisor handles 6 people. The claimant was also given an oversight project which required an extra 2 hours of work per day, average. Then, when a co-worker took ill, the claimant was assigned to cover his workload.

The claimant worked in this capacity until he returned to his regular Procurement Analyst position. At that time, so much policy, procedure and regulations had changed; the claimant had to learn them all over again, and had to read a large volume of material to accomplish this. The timeliness requirement for review of acquisition documents had

been again decreased to half a day to a day, and sometimes this had to be done within hours of receipt. These shortened time frames had become the expectation. The work was stressful, dealing with classified information, and the war on terror. Phone call volume had increased.

From [redacted], the claimant was again transferred to a different department, where he would be providing support to the Technology Transition and Concept Development Division of the Capabilities of Integration Directorate, which is responsible for weapons integration in combat aircraft. There, the claimant was supposed to work a Procurement Analyst. When the claimant got there, he found he was supporting six different programs in various stages, and also was dealing with a backlog. He stated 60 percent of his time was spent in meetings, and this necessitated working extra hours, sometimes 2 to 3 per day. The claimant had scheduling conflicts, wherein 2 meetings he had to attend were occurring at the same time. He needed help. He requested a journeyman level contract specialist, but got a trainee, which further burdened him. He was overwhelmed, working an extra 3 to 4 hours per day at this point.

In [redacted] he had hit rock bottom with depression, due to this overwhelming situation at work. At that point, he was moving back to his regular job. He felt suicidal. He sought medical treatment at the insistence of his wife. He was taken out of work by his doctor for three weeks at that time. The claimant stopped work altogether on [redacted]

The claimant stated he has been under regular care by Dr. [redacted] for his emotional condition since [redacted]

At the conclusion of the Hearing, Attorney Felser requested that the record be held open for a time to provide an opportunity to obtain and submit additional information and medical reports in support of the claim. The request was granted, and the record held open for 30 days. Following the Hearing, both the claimant and the employer received a copy of the official transcript, and their comments were invited.

After the Hearing, a "Post Hearing Brief" dated [redacted], by Attorney Felser, was received to the record. In that memorandum, Attorney Felser reiterated and summarized the arguments and evidence presented at the Hearing in support of the claim. He also provided additional documents, as follows:

- [redacted] and [redacted] medical reports from Dr. [redacted]
- [redacted] cervical MRI from [redacted] showing cervical disc disease and herniated disc.
- [redacted] report by [redacted] MD
- Chronology of employment factors, prepared by the claimant
- Affidavit of [redacted] coworker to the claimant

Attorney Felser argued that the medical reports were sufficient to establish work related injuries, as alleged by the claimant. The report by [redacted] is very detailed, contains a quite detailed and accurate history of the injury, notes the claimant's pre-existing injury, and strongly opines that the claimant sustained a work-related injury due to the stresses of his job, with a contribution by his neck pain. Dr. [redacted] likewise has opined that the claimant suffers from a work-related aggravation of his pre-existing cervical condition. [redacted] affidavit supports several of the claimant's

allegations: rapid changes in policy and procedure during the time period noted by the claimant in his testimony; reduced time frames for reviewing documents; increased phone calls and e-mail that required response; 6 or more hours per day excessive computer use was required by the Procurement Analyst position; and the claimant often worked late.

The employing agency also supplied documents in which they indicated that they disagreed with the claimant's testimony on several points. Mostly, it was that the claimant had exaggerated across the board, with regard to most of his allegations. It was indicated that the claimant did not seem stressed at work, nor did he mention work-related stress until he filed his claim. In fact, the claimant had asked to be considered for these details because he was looking for a promotion. They indicated that other employees did not have difficulty with the changes in work process noted by the claimant. They indicated that the claimant took excessive time off from work for injuries that were not considered to be work-related, and often reported to work late in the morning, which meant that, overall, he did not work 1, 2 or 3 hours per day extra, as he had alleged, with consideration of all the time he took off. They noted that the claimant's performance ratings were always outstanding. They noted that both of the claimant's alleged work injuries were long standing, pre-existing problems. A statement from another procurement analyst who worked with the claimant, indicated that the changes in work process were not stressful to him, and that to his knowledge, the 3 day turn around time was consistently met by him and his coworkers.

Upon review of the evidence of file, I find that the case is not in posture for a decision at this time with regard to the issue of whether the claimant sustained a work injury in the performance of duty, as alleged. The evidence provided by the claimant is not sufficient to meet his burden of proof; however, it is sufficient to warrant further development of the claim on the part of the Office before a final decision on this issue can be reached.

A person who claims benefits under the FECA has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specified conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence based upon a complete factual and medical background showing causal relationship. The mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of causal relationship between the two. Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.¹

In this instance, the claimant has alleged that she sustained several medical conditions due to duties encountered in the course of her Federal Employment. The claimant has identified these injuries: aggravation of a pre-existing cervical condition, and aggravation of major depression, also pre-existing.

The claimant has given a very detailed and credible account of his employment duties that he found to be stressful. Although his supervisor, attempted to

¹ Steven R. Piper, 39 ECAB ___ (1987);

downplay the stressful nature of the claimant's position, and has offered some argument over certain aspects of his testimony, overall, I find the evidence establishes that many of the alleged factors of employment alleged by the claimant did in fact occur, in the manner alleged, and were sustained in the performance of duty.

The claimant has alleged that starting at a computer screen or wall projections during long meetings aggravated the painful condition in his neck. I find this allegation to be factual. This is a credible account, and if this work duty aggravated the claimant's pre-existing cervical condition, it would constitute a work-related injury in the performance of duty.

The claimant has indicated that he became overwhelmed due to increases in workload and decreases in the time allowed to do his work. It is clear the claimant's work is complicated, of a technical nature, and requires him to meet deadlines. It is also established as factual that the claimant changed positions many times over the course of several years, and had to adapt to new work duties, processes, procedures and policies, which he states added to his stress. If this aggravated his depression, it would be considered a work-related aggravation under the provisions of this program.

Furthermore, upon appeal, the claimant has submitted medical reports from qualified physicians which he unequivocally support that the claimant has suffered a work-related aggravation of a pre-existing injury to his cervical spine due to prolonged computer use, and of his pre-existing depression, due to stressful duties, as outlined above.

I find that this medical evidence is credible and stands uncontroverted by any other medical opinion of record. As such, his reports, along with the evidence of file, establish a *prima facie* claim that requires further development of the medical evidence by the Office.² The Board has held that proceedings under the FECA are not adversarial in nature nor is the Office a disinterested arbiter; that while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and has the obligation to see that justice is done.³ In this instance, given the strength of the evidence provided by the claimant thus far in support of the claim, including an uncontested medical opinion from a specialist supporting that she is suffering from medical conditions that are work-related, it would be appropriate at this time for the Office to seek an opinion from an independent medical examiner specifically addressing the issue of causal relationship, and supplying the medical rationale required by the Office for adjudication of the claim.

Because the claim is, in part, for an emotional condition, the issue of whether the claimant was injured in the performance of duty must be examined very closely. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. When an employee experiences emotional stress in carrying out his employment duties or has fear and anxiety regarding his ability to carry out his duties, and the medical evidence establishes that the disability

² While the testimony of appellant's physician was not sufficient to discharge her burden of proof, this testimony, together with the findings of fact accepted by the Office constituted a sufficient basis to require further development of the evidence. The Board noted that there was no medical evidence of record refuting causal relationship. Appellant's case was therefore remanded for further development. *Udella Billups*, 41 ECAB (Docket No. 89-1561 issued November 29, 1989).

³ *Lauramae Heard*, 42 ECAB ___ (Docket No. 91-0276, issued June 5, 1991).

resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of the employment. This is true when the employee's disability resulted from his emotional reaction to his day-to-day duties. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of his work. In contrast, a disabling condition resulting from an employee's feelings of job insecurity per se is not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act. Thus, disability is not covered when it results from an employee's fear of a reduction-in-force. Nor is disability covered when it results from such factors as an employee's frustration in not being permitted to work in a particular environment or to hold a particular position.⁴

The claimant's employer has indicated that the claimant's workload did not increase; however, this does not seem credible, especially in light of the evidence and convincing argument provided by the claimant in support of this allegation. As such, I do find it factual. Further, the claimant's reaction to this, as part of his regular assigned duties, is in the performance of duty. Similarly, the claimant's requirement to meet deadlines, and stress over difficulty meeting them, is sustained in the performance of duty. In *Lillian Cutler*, 28 ECAB 125 (1978), the Board has held that inability to perform one's work duties due to the amount or type of work assigned may be compensable. Overwork is an employment factor which may give rise to a compensable disability under the FECA.⁵

In conclusion, the claimant has submitted evidence sufficient to warrant further development of the claim before a decision concerning entitlement can be reached. Upon return of the case record to the District Office, in accordance with established Office procedures, a Statement of Accepted Facts should be prepared, and the claimant referred for a directed examination with a Board-Certified independent medical examiner in the appropriate specialty. In this instance, the claimant will most likely need two separate examinations, with an orthopedic specialist and a mental health specialist, to adequately address the spectrum of alleged physical and emotional injuries in this case.

The Statement of Accepted Facts should contain a factual history of the claimant's work injury, and clearly delineate which of the claimant's work duties are considered to be factual and in the performance of duty.

The independent medical examiners should be specifically asked to address whether the claimant's work duties caused or in some way aggravated, precipitated or accelerated any of the claimant's medical conditions, and should be specifically asked to address whether the claimant's established federal work duties aggravated the claimant's pre-existing injuries, or caused a new injury. The independent examiners should be advised that medical opinions should include rationale to support any conclusions given, and, in the case of pre-existing injuries, must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by appellant's employment as determined by medical records covering the period of employment; whether such affects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, would the symptoms or changes indicative of a temporary aggravation have

⁴ *Thomas D. McEuen*, 41 ECAB ___ (Docket No. 89-1074 issued January 10, 1990)

⁵ *Frank A. McDowell*, 44 ECAB 522 (1993.)

subsided or resolved immediately upon the claimant's removal from the employment environment and, if not, at what point would such symptoms or changes have resolved; and whether any aggravation of the claimant's underlying conditions caused by factors of his employment caused disability during or subsequent to his employment.

It should be made clear to the independent examiner that it is not necessary for the employment alone to have caused the claimant's medical condition for it to be work-related. In order for the condition to be compensable, the work needs only to have contributed to it in some meaningful way. The independent examiner should also be advised to include rationale to support any conclusions given. If the independent examiner opines that the claimant is not suffering from a work-related injury, then medical rationale should also be supplied to support this opinion.

Once the independent medical reports are received and reviewed, the Office should undertake any other development of the case it deems necessary, and issue a *de novo* decision on the issue of whether the evidence establishes that the claimant sustained a work-related injury due to the established work incidents sustained in the performance of duty.

For the reasons set forth above, the Office's decision of _____ s hereby SET ASIDE, and the case file is REMANDED to the District Office for actions consistent with this decision.

Dated: JUN 28 2006
Washington, D.C.

Hearing Representative
for
Director, Office of Workers'
Compensation Programs