

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

C.W., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Greensboro, NC, Employer)

**Docket No. 08-2557
Issued: August 11, 2009**

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument April 7, 2009

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 22, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs decisions dated December 7, 2007, July 24 and September 4, 2008. Pursuant to 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 her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 48-year-old professional specialist trainee, filed a claim for benefits based on an emotional condition on October 19, 2007. She alleged that she developed chest pain and shortness of breath due to factors of her employment on October 18, 2007.

In an October 19, 2007 report, Dr. Robyn Sanders, a specialist in internal medicine, stated that she was treating appellant for stress and indicated that she would be unable to work for 16 days.

On October 31, 2007 the employing establishment controverted appellant's claim. It stated that the conditions she claimed appeared to be personal and unrelated to employment factors. The employing establishment further stated that appellant did not list any employment factors that contributed to these conditions, that the medical documentation she submitted did not causally relate her condition to specific work factors or list a diagnosis.

By letter dated November 5, 2007, the Office requested that appellant submit additional medical evidence in support of her claim, including a comprehensive medical report describing how the claimed incident on October 18, 2007 resulted in the diagnosed condition and provide factual evidence, which would establish that she had developed an emotional condition caused by factors of her employment.

In an October 23, 2007 statement received by the Office on December 7, 2007, appellant stated that she had developed an emotional condition because the employing establishment had allegedly misled her about a new program to which she had been assigned. Appellant asserted that she had relocated from Long Island, N.Y., to Greensboro, N.C., to begin a new assignment based on statements from the employing establishment which assured her that she would receive appropriate training for the position. She stated; however, that when she arrived at her new station in May 2006 the program she began working on was not the one which management had advertised. Appellant alleged that the Personnel Storage Table (PST) program was supposed to train her in various levels of human resources, but when she began her job she was placed in a classroom with trainers who knew nothing about the employing establishment. According to her, she did not learn anything and did not understand the process in which she was supposed to be involved. Appellant also alleged that management told her she would not be answering telephones in her new job for at least two years; however, despite this assurance, she was placed in a cubicle answering telephones with limited training, using a script answering questions from employees about subjects with which she was unfamiliar. She asserted that she had to deal with outstanding problems which existed prior to her arrival, a job for which she was given little assistance or guidance. Appellant asserted that this confusion regarding management's program objectives and the blurring of her job duties resulted in anxiety and high blood pressure.

Appellant stated that her workload and the pressure of her work increased because management added additional districts into her human resources section even though she had not been sufficiently trained at her PST position in the first place and lacked assistance in completing all of her required tasks. She further alleged that, about four months into the program, management gave her a schedule for shift rotations which would change every three months. This caused appellant difficulty sleeping, and disrupted her eating patterns, she continued to experience elevated blood pressure. Shortly thereafter, she stated that management imposed a mandatory overtime requirement, including weekends, because her workload had grown to the point where she could no longer complete her assignments within normal work hours. Finally, appellant stated that about six months into the program she was reassigned to another process and another location. She stated that she was provided minimal training to deal with an excessive workload which entailed inputting numerous disability retirement cases, answering

telephones and processing disability claims with deadlines, all of these issues aggravated her problems with stress, anxiety, sleeplessness, poor eating habits and elevated blood pressure. Appellant's problems culminated on October 18, 2007, when she began experiencing severe chest pains and shortness of breath and was taken by ambulance to High Point Regional Hospital. She stated that she did not have any work-related problems until she was placed into this environment and that her job-related stress was destroying her health.

In a report dated November 16, 2007, Dr. Rapinder Kaur, Board-certified in psychiatry and neurology, stated that appellant was experiencing major stress, high blood pressure, sleeplessness, crying, low appetite, weight loss and feelings of emptiness and unworthiness because she relocated to the Greensboro area in May 2006 and discovered that her job was not what she had been told or what she had expected. He related appellant's complaints that management did not provide her with sufficient training to perform her new position and constantly changed her schedule. Dr. Kaur stated that appellant was stressed out and depressed to the extent that she experienced chest pain when she went near the worksite; he noted that she required hospitalization on November 12, 2007. He diagnosed major depressive disorder, single episode, moderately severe without psychotic features, hypertension, with multiple stressors. Dr. Kaur recommended that appellant undergo counseling.

By decision dated December 7, 2007, the Office denied appellant's claim.

By letter dated May 20, 2008, appellant requested reconsideration.

Dr. Kaur submitted a May 2, 2008 report in which he essentially reiterated his previous findings and conclusions. He opined that the multiple stressors at her workplace both caused and exacerbated appellant's depression.

By decision dated July 24, 2008, the Office denied modification of the December 7, 2007 decision.

By letter dated August 25, 2008, appellant requested reconsideration.

In an addendum to Dr. Kaur's May 2, 2008 report, received by the Office on August 29, 2008, he stated that his diagnosis of major depressive disorder, single episode moderately severe was directly related to appellant's employment at the employing establishment.

By decision dated September 4, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable

employment factors are causally related to the claimed emotional condition.¹ There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.²

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.³ On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.⁴

ANALYSIS

The Board finds that appellant has established two factors of employment, which may have resulted in a compensable emotional condition; *i.e.*, the employer's failure to clarify and fully inform her about the duties and consequences of her transfer to the Greensboro, N.C., worksite. The Board has held that allegations relating to administrative or personnel matters that are unrelated to the employee's regular or specially assigned work duties do not fall within the coverage of the Act.⁵ However, the Board has also found that an administrative or personnel matter will be considered to be 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 it acted reasonably.⁶ Appellant has alleged that management was not supposed to assign her to answer telephone inquiries, did not sufficiently train her for her new position, and provided confusing guidelines regarding its program objectives and her job duties during her transition to the new job. As the employing establishment has not submitted any statements or documentation which rebutted her allegations that it misrepresented and did not clarify her work duties at the new job site, the Board finds that she has established a factor of employment in this regard.

In addition, appellant alleged that she sustained stress in the performance of her duties at the new worksite because management began changing her work schedule every three months, gave her an excessive workload, did not provide her with adequate assistance to help her meet her deadlines and imposed a mandatory overtime requirement which included having her work

¹ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

² See *Ruth C. Borden*, 43 ECAB 146 (1991).

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Id.*

⁵ 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).

⁶ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

weekends. The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.⁷ As she has related that her emotional condition was aggravated by the requirements of her work at her new worksite, she has established a second compensable factor of employment.

Appellant noted that she became so stressed due to her increasingly excessive work demands that she had to be hospitalized on October 18, 2007. The reports from Dr. Kaur indicated that she was experiencing increasing anxiety, hypertension, professional self-doubt, feelings of hopelessness and crying spells related to stress at work since being transferred to the new position in May 2006. He noted that appellant felt overwhelmed, extremely stressed and very concerned about maintaining her job status. Dr. Kaur diagnosed major depressive disorder, single episode, moderately severe directly related to appellant's employment at the employing establishment, he also noted that appellant required hospitalization on November 12, 2007. The Board therefore finds that appellant has established a second compensable factor of employment under *Cutler*. Accordingly, appellant has established a *prima facie* claim for compensation. The Board further finds that the reports from Dr. Kaur are sufficient to raise an inference of causal relationship between her emotional condition and her accepted employment factors to require further development of the medical evidence, as they attribute an aggravation of her condition, in part, to the work requirements of her position. For this reason, the case will be remanded to the Office for further development of the claim.⁸

On remand, therefore, the Office should further develop the medical evidence as is appropriate. After such development of the case record as it deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁷ See *Lillian Cutler*, *supra* note 4.

⁸ In light of the Board's decision to set aside the December 7, 2007 Office decision of the hearing representative, it need not consider the September 4, 2008 nonmerit decision. However, the Board notes that the Office did not consider Dr. Kauri's November 16, 2007 report, submitted by appellant with her request for reconsideration, in its December 7, 2007 decision, though it gave it cursory consideration in its July 24, 2008 decision. This report provided an extensive, thorough review of the evolution of appellant's emotional condition and constituted probative evidence of how this condition may have been aggravated or contributed to by her work environment. The Board therefore instructs the Office, on remand, to consider this report along with any other medical evidence adduced prior to the issuance of its *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 7, 2007 is set aside and the case is remanded for further action in accordance with this decision.

Issued: August 11, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board