

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

THERESA L. ANDREWS, Appellant)

and)

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Monmouth, NJ,
Employer**)

**Docket No. 04-887
Issued: September 27, 2004**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 17, 2004 appellant filed an appeal of a decision of the Office of Workers' Compensation Programs' hearing representative dated September 15, 2003, denying her claim for a recurrence of disability as of August 3, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the recurrence of disability issue.

ISSUE

The issue is whether appellant has established a recurrence of disability commencing August 3, 2000, causally related to the accepted employment injuries.

FACTUAL HISTORY

Appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained an emotional condition causally related to her federal employment. In a narrative statement discussing incidents occurring at work involving a supervisor, Horace Bonaparte, appellant alleged that the supervisor created a hostile work environment. One of the incidents discussed by appellant involved a coworker's discovery of a suspicious package on

July 30, 1999. The Office accepted that the July 30, 1999 incident was a compensable work factor, and based on a January 7, 2000 report from Dr. Amy C. Aho, an attending clinical psychologist, accepted the claim for major depression and post-traumatic stress disorder. The remaining allegations were found to be noncompensable work factors.

Appellant stopped working on July 30, 1999 and returned to a light-duty position at four hours per day on February 23, 2000. She continued to work four hours per day and received compensation for wage loss for the remaining four hours per day. She stopped working on August 3, 2000 and on October 7, 2000 filed a notice of recurrence of total disability (Form CA-2a) as of August 3, 2000. In a statement accompanying the claim, appellant stated that Mr. Bonaparte had received a threatening letter and his vehicle tires slashed, and this had caused her extreme stress and fear.

By decision dated November 8, 2000, the Office denied the claim for a recurrence of total disability as of August 3, 2000. In a decision dated November 15, 2000, the Office determined that appellant's actual earnings fairly and reasonably represented her wage-earning capacity. Appellant continued to receive compensation based on loss of wage-earning capacity.

In a decision dated February 27, 2001, an Office hearing representative remanded the case for further development. The hearing representative noted that Dr. Aho had submitted an October 13, 2000 report regarding disability for work. Dr. Aho reported that appellant's supervisor had received a threat of bodily harm, that appellant's condition had worsened, and she was disabled from August 3, 2000. The hearing representative directed the Office to refer appellant to an appropriate specialist for an opinion as to the extent of any disability causally related to the employment-related condition.

The Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Solomon Miskin, a Board-certified psychiatrist. In a report dated May 31, 2001, Dr. Miskin provided a history and results on examination. Dr. Miskin concluded that appellant's "current claimed recurrent disability is attributable to a preexisting psychiatric disorder, which was aggravated by the incident dated July 30, 1999 and compounded by a reportedly adverse relationship with her immediate supervisor."

In a decision dated July 3, 2001, the Office denied the claim for a recurrence of disability. By decision dated April 12, 2002, an Office hearing representative remanded the case for further development. The hearing representative directed the Office to explain to Dr. Miskin the factor that was accepted as compensable and obtain a supplemental report that provided a reasoned opinion on the issue of a recurrence of disability.¹

In a report dated September 4, 2002, Dr. Miskin stated in pertinent part:

"Since the claimant's report of anxiety associated with the relationship involving her supervisor is noncompensable and no other compensable incidents are known

¹ The hearing representative noted that, if appellant was alleging that her condition was causally related to new employment incidents, a new claim should be filed. According to the Statement of Accepted Facts dated June 25, 2002, appellant did file a new claim.

to have interveningly occurred, there is no explanation based on compensable events for a spontaneous recurrence of the claimant's symptoms. The claimant made it clear throughout her examination on May 31, 2001 that she had marked conflicting feelings involving her new manager. She stated, 'I believe he is abusive mentally.' It would appear, in regard to the claimant's presentation on May 10, 2001 that problems involving her supervisor were clearly impacting on her psychiatric status. If these problems are eliminated as compensable causal factors, then this examiner would not have other explanations available in order to account for a spontaneous recurrence of the claimant's disability on and after August 3, 2000."

By decision dated September 20, 2002, the Office denied appellant's claim for a recurrence of total disability as of August 3, 2000. In a decision dated September 15, 2003, an Office hearing representative affirmed the September 20, 2002 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.²

ANALYSIS

Appellant returned to work at four hours per day in February 2000 and stopped working on August 3, 2000. She continued to receive compensation for four hours per day. It is her burden of proof to establish a recurrence of total disability causally related to the accepted employment injuries. Appellant did not allege a change in the nature and extent of the light-duty job requirements. The Office accepted major depression and post-traumatic stress disorder causally related to a July 30, 1999 incident involving the discovery of a suspicious package. Therefore appellant must establish that the employment injuries, resulting from the accepted compensable incident, caused total disability as of August 3, 2000. As the Office advised appellant, if she is alleging an aggravation of her condition due to new employment incidents, that is a new claim and that issue is not before the Board on this appeal.³

The attending psychologist, Dr. Aho, found that appellant was totally disabled as of August 3, 2000 but she did not relate the disability to the accepted employment injuries and the accepted incident. Dr. Aho referred to threats made against Mr. Bonaparte in April 2000, rather than the July 30, 1999 incident. She did not provide a reasoned opinion that the disability was causally related to the accepted employment injuries.

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997), providing that in emotional stress cases a new claim should always be required if new incidents are alleged.

The second opinion referral psychiatrist, Dr. Miskin, initially provided a May 31, 2001 report that discussed both the July 30, 1999 incident and an adverse relationship with the supervisor. The Office requested that Dr. Miskin clarify his opinion based on the relevant facts; namely, that the only employment factor accepted as compensable was the July 30, 1999 suspicious package incident. Dr. Miskin's September 4, 2002 report opines that there was no basis for total disability as of August 3, 2000 based on the July 30, 1999 incident. He indicated that appellant reported a difficult relationship with the supervisor, but that was not a compensable work factor. In the absence of compensable work factors with respect to the supervisor, Dr. Miskin found no other explanation to account for a recurrence of disability as of August 3, 2000.

On appeal, appellant alleges that the statement of accepted facts provided to Dr. Miskin was misleading and prejudicial, because it noted appellant's filing of a separate claim with respect to incidents involving her supervisor and the denial of that claim. The statement of accepted facts correctly indicated that the incidents with respect to Mr. Bonaparte receiving a threatening letter and having his tires slashed were not to be considered as compensable factors with respect to the recurrence of disability issue. As noted above, allegations of new employment incidents are properly pursued through the filing of a new claim. The Board finds that Dr. Miskin was provided an accurate factual background as a basis for his medical opinion.

Appellant further contended that the Office erred in framing the issue to Dr. Miskin as to whether appellant experienced a spontaneous recurrence of disability "without intervening cause" on August 3, 2000. A recurrence of disability is defined as a spontaneous change in a medical condition without an intervening injury.⁴ There is no probative evidence that Dr. Miskin was misled or otherwise was provided an inaccurate factual background in this case.

The Board finds that Dr. Miskin provided a reasoned medical report that appellant did not sustain a recurrence of disability as of August 3, 2000 causally related to the accepted employment injury. His report constituted the weight of the medical evidence and the Office properly denied the claim.

⁴ A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness." 20 C.F.R. § 10.5(x).

CONCLUSION

The weight of the medical evidence does not establish a recurrence of total disability commencing August 3, 2000 causally related to the accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 15, 2003 is affirmed.

Issued: September 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member