

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

DOREEN C. ORTIZ, Appellant

and

**DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
Jacksonville, FL, Employer**

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**Docket No. 05-703
Issued: July 6, 2005**

Appearances:
Doreen C. Ortiz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On January 28, 2005 appellant filed a timely appeal of the December 29, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim for employment-related hypertension and anxiety. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant established that her claimed hypertension and anxiety disorder were due to her accepted February 20, 2003 employment exposure.

FACTUAL HISTORY

This case was previously on appeal before the Board.¹ On February 26, 2003 appellant, then a 45-year-old claims examiner, filed a traumatic injury claim for high blood pressure, dizziness and chest pains, which she attributed to a February 20, 2003 telephone conversation

¹ Docket No. 04-1035 (July 27, 2004). The Board's decision is incorporated herein by reference.

with a medical service provider. Her blood pressure had reportedly reached 170/110. Appellant stopped working on February 20, 2003 and returned to her regular duties on March 11, 2003.

In a statement dated February 25, 2003, appellant indicated that she was working the telephone bank on February 20, 2003 when she received a call at 12:00 p.m. from a medical service provider, Tracey, who was already irate from the hold time, which was reportedly 20 minutes. While she began researching the relevant billing records, Tracey advised appellant of prior instances when she had spoken with employing establishment personnel who had not followed through with return telephone calls. Appellant described Tracey's tone as rude, abrupt and belligerent. After she informed Tracey that year 2000 billing records were not available online, Tracey allegedly started cursing and told appellant that she and her colleagues were worthless human beings. Appellant asked Tracey to calm down and then placed her on hold momentarily so that she could locate any relevant information from previous calls. Her search was unsuccessful and when appellant advised Tracey about the lack of information, Tracey allegedly called appellant a liar and accused her of being lazy. She also allegedly called appellant a "human piece of shit" and asked to speak to a supervisor. When appellant told her that the supervisor would call her back, Tracey allegedly responded "bullshit." She refused to hang up until a supervisor came to the telephone and appellant reportedly just listened while Tracey rambled on making condescending remarks and using abusive language such as "you are stupid and a piece of crap..." She ultimately terminated the call because of Tracey's refusal to hang up. Appellant then reported the incident to her supervisor, who immediately contacted Tracey.

Julie Hill, a supervisory claims examiner, indicated that at approximately 12:30 p.m. on February 20, 2003 appellant came to her to report a telephone call she had just taken while working the telephone bank. The medical services provider had "cussed her out" and greatly offended appellant and she wanted Ms. Hill to contact the provider's supervisor. Ms. Hill then accessed a computer-generated message appellant had sent regarding the call. According to Ms. Hill, appellant's message indicated that the caller said she was a "useless human being," a "liar," a "piece of crap" and a "worthless piece of s--t."² Ms. Hill contacted Tracey and noted that she was upset and somewhat argumentative regarding nonpayment of various medical claims. Tracey reportedly expressed frustration with the Office's bill-paying system and a lack of understanding of the fee schedule coding requirements. After discussing Tracey's particular billing concerns, Ms. Hill inquired about the prior telephone conversation with appellant. Ms. Hill advised Tracey that appellant accused her of using profanity and calling her names. Tracey reportedly stated that the allegation was "bologna" and she adamantly denied using any profanity. Additionally, Tracey stated that she told appellant "this is crap" in reference to the employing establishment's repeated nonpayment of medical bills, but she denied calling her a "piece of crap." Appellant was present during Ms. Hill's telephone conversation with Tracey and when it ended Ms. Hill informed her that Tracey denied cursing at her or calling her any name. Appellant reportedly insisted that Tracey was lying.

² The record includes a copy of the February 20, 2003 report of telephone call (CA-110), which corroborates the quoted remarks in Ms. Hill's statement.

The relevant medical evidence included March 2 and April 3, 2003 reports from Dr. Manuel B. Portalatin, a Board-certified family practitioner, who examined appellant on February 20, 2003 and diagnosed anxiety disorder with high blood pressure. He attributed her condition to stress at work due to a telephone call with a provider on February 20, 2003. Dr. Portalatin indicated that appellant was totally disabled from February 20 to March 10, 2003. Dr. Raul Soto-Acosta, a Board-certified psychiatrist, examined her on February 21, 2003 and diagnosed major depressive disorder and anxiety disorder. He noted that appellant reported being stressed out and anxious over a February 20, 2003 job incident when she was badgered by a provider over the telephone. The caller reportedly cursed at her, using profanity, which appellant found extremely offensive.

When the matter was previously on appeal, the Board found that appellant established a compensable employment factor. Specifically, the Board found that she “established that she had a [February 20, 2003] telephone conversation with a provider, Tracey, who was angry and argumentative.” However, the Board found that “the provider’s use of profanity during appellant’s telephone call [was] not established.” The Board explained that as this “tense and argumentative telephone call” was a part of her performance of her regular duties, appellant established a compensable factor of employment. The previous denial of the claim was nonetheless upheld because the Board found that the medical evidence was insufficient to establish that the February 20, 2003 telephone call caused appellant’s medical condition.

On October 1, 2004 appellant requested reconsideration. She submitted a September 11, 2004 report from Dr. Portalatin, who explained that appellant’s previous work absence was related to the psychological turmoil created by the events of February 20, 2003. Dr. Portalatin further indicated that allowing appellant to continue working with elevated blood pressure may have resulted in unnecessary risk to her well-being and possible escalation of the blood pressure. He also noted that she had two previous episodes of elevated blood pressure associated with back discomfort. In contrast, Dr. Portalatin explained that appellant’s recent persistent blood pressure elevation, hypertension, was directly related or at a minimum aggravated by the stressful situation at work that occurred during a February 20, 2003 conversation with a client that “used profane language.”

By decision dated December 29, 2004, the Office denied modification of the prior decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as

³ 5 U.S.C. § 8101 *et seq.*

alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.⁵

ANALYSIS

In its July 27, 2004 decision, the Board specifically addressed the inadequacy of the prior medical evidence submitted by Dr. Portalatin and Dr. Soto-Acosta. That decision is incorporated herein and the Board need not revisit the prior analysis. Dr. Portalatin's September 11, 2004 report was the only evidence submitted since the Board last considered the issue of whether appellant established that her claimed condition was causally related to the accepted February 20, 2003 employment incident. As noted, the Board previously found that she "established that she had a [February 20, 2003] telephone conversation with a provider, Tracey, who was angry and argumentative." However, while appellant was involved in a "tense and argumentative telephone call," the Board found that "the provider's use of profanity during appellant's telephone call [was] not established."

Dr. Portalatin indicated in his September 11, 2004 report that appellant's hypertension was directly related or at a minimum aggravated by the stressful situation at work during a February 20, 2003 conversation. However, his only reference to the substance of that telephone conversation was that the caller "used profane language." Because the record does not establish that Tracey used profanity when she and appellant spoke on February 20, 2003, Dr. Portalatin's reliance on this unproven allegation undermines the probative value of his opinion on causal relationship. In the absence of a complete and accurate factual background, his opinion on causal relationship cannot be considered rationalized.⁶ Accordingly, the medical evidence of record fails to establish that appellant's claimed medical conditions are causally related to the February 20, 2003 employment incident.

⁴ 20 C.F.R. § 10.115(e), (f) (1999); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁵ See *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁶ See *Victor J. Woodhams*, *supra* note 4. Dr. Portalatin did not provide any details of the February 20, 2003 telephone conversation in either of his two prior reports. In his initial report dated March 2, 2003, he noted only that appellant's anxiety was the result of stress at work "due to telephone call with provider." The April 3, 2003 report did not specifically reference the February 20, 2003 telephone conversation.

CONCLUSION

Appellant failed to establish that the February 20, 2003 accepted employment incident either caused or contributed to her claimed hypertension and anxiety disorder.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member