

United States Department of Labor  
Employees' Compensation Appeals Board

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R.G., Appellant )

and )

DEPARTMENT OF AGRICULTURE, )  
NATURAL RESOURCES CONSERVATION )  
SERVICE, Syracuse, NY, Employer )

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**Docket No. 07-499**  
**Issued: January 9, 2008**

*Appearances:*  
Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 1, 2006 denying the claim for compensation. 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 has established an emotional condition causally related to compensable work factors.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal.<sup>1</sup> The Board found that the evidence established a compensable work factor with respect to the change in appellant's work hours. An

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<sup>1</sup> Docket No. 05-1670 (issued January 9, 2006).

administrative judge in an Equal Employment Opportunity Commission (EEOC) proceeding found that the employing establishment had erred in failing to accommodate appellant's request to keep her scheduled work hours at 7:00 a.m. to 3:30 p.m. The case was remanded to the Office to prepare a statement of accepted facts and "secure a reasoned medical opinion" on causal relationship between a diagnosed condition and a compensable work factor. The history of the case is contained in the Board's prior decision and is incorporated by reference.

The Office prepared a statement of accepted facts and requested the attending psychiatrist, Dr. Anil Verma, submit a detailed medical report. By decision dated July 3, 2006, the Office denied appellant's claim for compensation. The Office indicated that Dr. Verma did not submit a medical report.

Appellant requested reconsideration and submitted a May 1, 2006 report from Dr. Verma<sup>2</sup> who stated that appellant's emotional problems began with the change of work hours on July 11, 2002 from 7:00 a.m. to a 7:30 a.m. starting time. She indicated that appellant's work hours had been set to compensate for her sleep disorder and seasonal affective disorder (SAD), which was affected by light. Dr. Verma reported that appellant had a long history of depression and SAD that occurs in winter when the days are shorter. According to her, a person suffering from SAD needs maximum exposure to light and the change in work schedule would have her traveling in the dark during the winter months. Dr. Verma concluded that the change in the work schedule caused the decline in appellant's emotional condition and she remained disabled due to depression.

By decision dated December 1, 2006, the Office denied the claim for compensation. The claims examiner initially discussed Dr. Verma's report, stating that "it fails to actually show that the claimant reacted to the accepted work factor" and statements regarding SAD were unrationalized as the period in question was July 2 to August 2, 2002, which was not during the winter. The claims examiner further noted that, as explained by the EEOC, appellant stated that she arrived at 6:00 a.m., meaning she may have occasionally traveled to work during a period of darkness or dawn. With respect to the accepted work factor, the Office claims examiner stated: "Due to the factors listed above, I must also now find that there is insufficient evidence to show that the EEOC decision is based on a full appreciation of the claimed medical conditions, the reporting of the aggravation of these and their relation to the claimant's actual early arrival time, all of which are material to a determination into the reliability and reasonableness of the medical evidence." He concluded that the "EEOC decision is now found insufficient to substantiate the evidence of a compensable work factor" and there were no compensable work factors in this case.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.<sup>3</sup> To establish her claim that she sustained an

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<sup>2</sup> The report apparently was prepared by a social worker; Dr. Verma signed the report on July 21, 2006 and stated that she concurred with the findings and recommendations.

<sup>3</sup> *Pamela R. Rice*, 38 ECAB 838 (1987).

emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>4</sup>

### ANALYSIS

The Board found in its prior decision that a compensable work factor had been established in this case. The compensable work factor was that the employing establishment erred in failing to accommodate appellant's request to keep her current work schedule. As the Board noted, appellant had filed an EEOC complaint and in a February 25, 2005 decision an administrative judge found that, based on the evidence appellant had submitted to the employing establishment regarding her medical conditions, the employing establishment had failed to properly accommodate appellant's request to continue her work schedule beginning at 7:00 a.m. The Board found that the EEOC decision was sufficient to establish a compensable work factor based on error by the employing establishment.

In its December 1, 2006 decision, the Office found that the EEOC decision was not sufficient to establish a compensable work factor as it did not have a "full appreciation" of the relevant facts. The Office appeared to base its finding on the May 1, 2006 report from Dr. Verma and appellant's arrival time at 6:00 a.m. The implication was that since Dr. Verma referred to appellant's need for exposure to light and since she was arriving at times during a period of darkness, there was no error in failing to accommodate her request. But the finding of error was based on the medical evidence submitted to the employing establishment at that time, which discussed more than a seasonal affective disorder. The administrative judge found that the medical evidence established that appellant suffered from sleep disorder, depression, thyroid condition and other chronic medical conditions. In addition, the judge was aware of appellant's arrival time at 6:00 a.m.. There is no indication that the decision was based on an inaccurate or incomplete background. The EEOC judge found that, based on the evidence presented to the employing establishment in 2002, appellant had shown that she had impairments that limited her ability to sleep, concentrate and interact with others and the employing establishment should have attempted to accommodate her requested work schedule. The failure to do so remains a compensable work factor in this case.

The case will be remanded to the Office. The Board notes that, in its prior decision, the Office was directed to develop the evidence and secure a reasoned medical report on causal relationship. Since the Office has indicated that Dr. Verma did not provide a reasoned opinion, the Office should refer appellant to a second opinion psychiatrist for a reasoned medical opinion, based on an accurate background, on the issue of whether there is causal relationship between a diagnosed condition and a compensable work factor. After such further development as the Office deems necessary, it should issue an appropriate decision.

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<sup>4</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

**CONCLUSION**

The case will be remanded for further development of the medical evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 1 and July 3, 2006 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 9, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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