U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY M. FAITH and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, Va.

Docket No. 96-1217; Submitted on the Record;
Issued February 4, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability was causally related to the accepted work injury.

The Board has reviewed the case file and finds that appellant has failed to establish that her recurrence of disability on or after July 2, 1995 was causally related to the 1992 accepted condition of post-traumatic stress disorder (PTSD).

Under the Federal Employees Compensation Act,[1] an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[2] As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition[3] and supports that conclusion with sound medical reasoning.[4]

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the clinical findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

[3] *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

[4] *Lourdes Davila*, 45 ECAB 139, 142 (1993).

employee's condition and the original injury, any work limitations or restrictions and the prognosis.[5]

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[6] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[7]

In this case, appellant, then a 30-year-old mail clerk, filed a notice of occupational disease on December 1, 1992, claiming stress from constant harassment by two supervisors, J.R. Jahangir and Jeff Gallihugh. Appellant also filed a grievance against Mr. Jahangir for issuing a seven-day suspension, which was reduced to a letter of warning in a settlement agreement and an Equal Employment Opportunity (EEO) complaint against the two supervisors for sexual harassment.

The EEO complaint was settled on February 3, 1993. The terms were that appellant would receive 80 hours of back wages and 40 hours of overtime pay, that appellant would not be directly supervised by Mr. Jahangir or Mr. Gallihugh as long as she provided medical documentation from her treating physician and that she would work the day shift, instead of the night shift, until she was released by her physician.

The Office accepted appellant's claim for PTSD and major depression, which resolved as of March 1, 1993. On April 21, 1993 appellant filed a notice of recurrence of disability, claiming that additional stress at work had caused weight loss, increased fatigue, headaches and "mental incompatibility."

On July 15, 1993 the Office informed appellant that the information submitted with her recurrence claim was insufficient and that she needed to submit factual "bridging" information as well as rationalized medical opinion on the causal relationship between her current condition and the accepted September 30, 1992 injury. Appellant responded by submitting medical reports from her treating psychiatrist, Dr. Martin H. Stein, a Board-certified psychiatrist and neurologist and claimed 276 hours of leave from April 13 to June 11, 1993.

After referring the medical records to the Office medical adviser, the Office accepted a major depressive episode and paid appropriate compensation. The Office noted on August 9, 1993 that Mr. Gallihugh no longer worked at the Merrifield facility and that appellant had been reassigned to another postal facility, effective June 3, 1993.

On July 3, 1995 appellant filed a second notice of recurrence of disability, claiming that on July 2, 1995 she was sent back to Merrifield on her original night shift, which Mr. Jahangir

[5] 20 C.F.R. § 10.121(b).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[7] *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

also worked. The employing establishment stated that appellant worked one night and never was in contact with Mr. Jahangir.

In response to the Office's September 28, 1995 request for further information, the employing establishment stated that appellant had volunteered to work overtime on the night shift a total of 63 times in the past 2 years and that her overtime work coincided with the working hours of Mr. Jahangir, a total of 58 times. Thus, the employing establishment noted, appellant voluntarily placed herself on the night shift and reported no problems working.

The employing establishment pointed out that the EEO settlement agreement stated that appellant would not be directly supervised by the two men, but did not preclude all night work, and appellant was initially assigned to the night shift. The employing establishment added that appellant presented no medical evidence from September 1993 until June 16, 1995 when appellant was informed she would be returning to night-shift work.

Appellant stated, in a letter dated October 16, 1995, that she had received no assurance before being reassigned on June 15, 1995[8] that Mr. Jahangir would not be her direct supervisor if she returned to the night shift at Merrifield. She also stated that her overtime supervisor at night had made certain that she had no contact with Mr. Jahangir. Appellant added that since she had returned to the night shift, this supervisor came into her work area "at his leisure" and had at times been in direct charge of her work, a situation which was traumatically emotional.

On November 9, 1995 the Office denied the claim on the grounds that the medical evidence was insufficient to establish a causal relationship between the claimed recurrence of disability and the initial work injury.

The Board finds that Dr. Stein's form reports dated April 3, June 19 and July 14, 1995 provide insufficient medical rationale for his conclusion that all work on the night shift is restricted and that appellant cannot work the same shift as Mr. Jahangir. Therefore, these reports have no probative value regarding the pertinent issue of whether appellant had a recurrence of disability.[9]

In a narrative report dated June 19, 1995, Dr. Stein stated that assigning appellant to the night shift was "medically inappropriate and in contempt of the EEO settlement agreement." Dr. Stein indicated that appellant told him she would be directly supervised by Mr. Jahangir and stated that she could not work nights as long as Mr. Jahangir was working the same shift. The physician added that appellant had lost a considerable amount of weight and was unable to eat or sleep well because of her distress over the employing establishment's action.

[8] In a letter dated June 15, 1995, the employing establishment informed appellant that she would return to her previously assigned night shift because, "whatever schedule change" appellant had had in the past had apparently expired, "and no further extension [had] been approved by an official authority."

[9] *See Jose Hernandez*, 47 ECAB ___ (Docket No. 94-1089, issued January 23, 1996) (finding that the medical opinions submitted by appellant failed to address directly whether the claimed recurrence was causally related to the accepted injury).

In a second report dated June 26, 1995, Dr. Stein stated that appellant was limited in taking supervision from one who had sexually harassed her in the past and that management's demands that she be assigned to the same night shift as the supervisor whom the EEO agreement says she should avoid have created a hostile work environment.

The Board finds that these reports are insufficient to establish the required causal connection between appellant's emotional disability after July 2, 1995 and the accepted work injury in 1992.[10] First, the EEO agreement specified only that appellant would not be directly supervised by Mr. Jahangir and that she would remain on the day shift until released by her treating physician. The agreement did not state that appellant could never be assigned to the night shift, which was her initial assignment and from which she was reassigned.

Second, the record contains no evidence, other than appellant's assertion, that Mr. Jahangir is directly supervising appellant on the night shift. While he is listed as a relief supervisor in June 1995, appellant has produced no corroborating evidence to support her statements that she had been under his direct supervision at that time or that he had caused her duress.

Third, Dr. Stein has provided no medical rationale for his conclusion that it is "medically inappropriate " for appellant to work the same shift as Mr. Jahangir.[11] Dr. Stein stated in a letter dated November 7, 1994 that appellant should remain on the day shift to avoid contact with Mr. Jahangir but offered no medical rationale for this conclusion. In fact, appellant volunteered to work overtime on the night shift, knowing that Mr. Jahangir worked the same shift.

Finally, as the employing establishment noted, there is no medical evidence establishing that appellant cannot work at night. Despite the November 7, 1994 report from Dr. Stein, appellant has provided no medical documentation that working nights would aggravate the accepted PTSD. The facts that appellant has lost weight, is not sleeping well and would prefer to remain on the day shift do not constitute medical evidence that any disability she may have is causally related to the initial work injury in 1992.

[10] *See Jean Culliton*, 47 ECAB ___ (Docket No. 94-1326, issued August 26, 1996) (finding that a physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician).

[11] *See Arlonia B. Taylor*, 44 ECAB 591, 596 (1993) (finding that medical conclusions unsupported by rationale are of little probative value); *Margarette B. Rogler*, 43 ECAB 1034, 1039 (1992) (finding that a physician's opinion that provides no medical rationale for its conclusion on causation is of diminished probative value).

The November 9, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 4, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member