U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGIA L. EUARD-EYLER and U.S. POSTAL SERVICE, MAIN POST OFFICE, Warren, Ohio

Docket No. 96-2243; Submitted on the Record;
Issued October 2, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, DAVID S. GERSON

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On October 10, 1995 appellant, then a 36-year-old transitional letter carrier, filed an occupational disease claim alleging that she sustained an emotional condition which she contributed to sexual harassment from her supervisor, Lennie Simon. She alleged that for three years Mr. Simon asked appellant to have sex with him, bumped into her and grabbed her on several occasions, kissed her, asked her to wear a short skirt while assisting with a nonwork-related banquet, and told her of his sexual experiences with other people. These events began in 1990 when appellant was cleaning Mr. Simon's office and they were alone. Appellant alleged that in 1992 Mr. Simon would often meet her after she had returned from her route and ask her for a date. Appellant stated that she had seen Mr. Simon socially, including time spent at a summer cabin and working at a Waterfowl USA function, but that it was generally in the company of other people. She stated that she had filed an EEO (Equal Employment Opportunity) complaint against Mr. Simon but dropped the complaint after receiving threatening telephone calls at home. Appellant also noted that she had experienced problems with Mr. Simon concerning a work-related ankle injury in 1993.

In a report dated January 11, 1994, Dr. Doris Tan, a physician, diagnosed situational anxiety/depression and wrote "must work elsewhere beside current employment."

In a form report dated September 19, 1995, Dr. Prasad B. Guttikonda, a psychiatrist, related appellant's allegation of sexual harassment by her supervisor and diagnosed acute post-traumatic stress disorder and checked the block marked "yes" indicating that the condition was causally related to appellant's employment.

In a letter dated April 1, 1996, the Office advised Dr. Guttikonda that the Office had accepted two employment factors as compensable factors of employment as follows: (1) during the period October 9, 1990 to June 29, 1991 all personal comments and gestures made by the Postmaster towards the claimant while she was cleaning his office, and when he came to see her while she was vacuuming and cleaning alone, including asking her out on dates, discussing his sex life and making passes; and (2) in June and July 1992 the Postmaster meeting the claimant after she returned from her route and asking her for dates. The Office did not find compensable appellant's difficulties arising from her filing of the EEO complaint, difficulties arising from the paperwork involved regarding her 1993 ankle injury, and her interaction with her supervisor outside of work such as her seeing the supervisor at the summer cabin and the Waterfowl USA functions. The Office asked Dr. Guttikonda to provide a detailed medical report and his rationalized opinion as to whether appellant had any medical condition or disability causally related to the compensable factors of employment.

Dr. Guttikonda responded to the Office's letter by submitting a December 13, 1993 report in which he related appellant's complaints of sexual harassment. He related that appellant complained of sexual harassment from her supervisor involving sexual comments, rubbing up against her, and kissing her. Dr. Guttikonda diagnosed acute post-traumatic stress disorder and possible adjustment disorder. He did not provide a rationalized opinion as to the cause of appellant's condition or whether it was related to the specific employment factors found to be compensable by the Office.

By decision dated April 16, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the medical evidence of record failed to establish that she had sustained an emotional condition causally related to compensable factors of employment.

By letter dated April 22, 1996, appellant requested reconsideration of the denial of her claim but submitted no additional evidence.

By decision dated May 8, 1996, the Office denied appellant's request for further merit review of her claim.

By letter dated May 15, 1996, appellant, through her representative, requested an oral hearing before an Office hearing representative.

By decision dated June 19, 1996, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that appellant had previously requested reconsideration and was therefore not entitled to an oral hearing as a matter of right and that the issue involved in the case could equally well be addressed by the submission of additional evidence and a request for reconsideration.[1]

[1] The Board notes that appellant submitted new evidence following the Office's June 19, 1996 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c) *James C. Campbell*, 5 ECAB 35 (1952).

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[2] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.[3]

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 employment factors.[4]

Regarding appellant's allegations concerning her EEO complaint and the paperwork concerning her 1993 ankle injury, and her interaction with her supervisor in nonwork-related social activities, these situations bear insufficient relationship to appellant's regular or specially assigned duties and are not deemed compensable factors of employment.

Appellant has also alleged that harassment from her supervisor, Mr. Simon, contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[5] In the present case, the Office accepted as compensable factors of employment the personal comments and actions of Mr. Simon in 1990 and 1991 when appellant was cleaning his office and he made sexual comments and gestures and his actions in 1992 when he met appellant as she returned from her route and asked her for dates. Appellant's burden of proof is not discharged by the fact that she had established employment factors which may give rise to a compensable disability under the Act. Appellant must also submit rationalized medical evidence establishing that her claimed emotional condition is causally related to an accepted compensable employment factor.[6]

---

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[5] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[6] *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985)

In a report dated January 11, 1994, Dr. Tan diagnosed situational anxiety/depression and wrote "must work elsewhere beside current employment." However, Dr. Tan did not provide a rationalized medical opinion establishing that appellant's condition was causally related to the two factors found to be compensable by the Office. Therefore, appellant has failed to discharge her burden of proof.

In a form report dated September 19, 1995, Dr. Guttikonda, a psychiatrist, related appellant's allegation of sexual harassment by her supervisor and diagnosed acute post-traumatic stress disorder and checked the block marked "yes" indicating that the condition was causally related to appellant's employment. The Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.[7] Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.[8]

In response to the Office's request to Dr. Guttikonda that he provide an opinion as to whether appellant's condition was causally related to the two compensable factors of employment as set forth in a statement of accepted facts given to him, he merely submitted his initial report dated December 13, 1993 in which he related appellant's complaints of sexual harassment. He related that appellant complained of sexual harassment from her supervisor involving sexual comments, rubbing up against her, and kissing her. Dr. Guttikonda diagnosed acute post-traumatic stress disorder and possible adjustment disorder. However, Dr. Guttikonda did not provide any rationalized medical opinion addressing the specific compensable factors submitted to him by the Office. Therefore, appellant has not met her burden of proof.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing.

Section 8124(b)(1) of the Act[9] provides that a claimant may request an oral hearing before a review under section 8128(a) of the Act. In this case, appellant had already requested and received a reconsideration of her claim under section 8128(a) prior to her request for an oral hearing. Therefore, she was not entitled to an oral hearing as a matter of right. The Board finds that the Office did not abuse its discretion in denying appellant's request for an oral hearing on the grounds that the issue in the case could be equally well resolved through a reconsideration request and the submission of additional evidence.

[7] *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

[8] *Id.*

[9] 5 U.S.C. § 8128(a).

The decisions of the Office of Workers' Compensation Programs dated April 16, May 8 and June 19, 1996 are affirmed.

Dated, Washington, D.C.
October 2, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member