

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE M. HACKNEY and U.S. POSTAL SERVICE,
POST OFFICE, Hobart, Ind.

*Docket No. 98-909; Submitted on the Record;
Issued March 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof in establishing that she sustained an emotional condition in the performance of duty causally related to factors of employment.

The facts in this case indicate that on July 17, 1995 appellant, then a 48-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that employment factors that occurred on July 6, 1995 caused chest pains and a panic attack.¹ She stopped work that day. In attached statements, appellant indicated that she was forced to return to work on July 6, 1995 outside her medical restrictions and that in her absence a new telephone system had been installed for which she was given limited instruction upon her return. As answering the telephone was part of her job, this contributed to the panic attack on July 6, 1995. Additional factors included that her desk had been moved and her things misplaced and that the drive to work, being greeted by coworkers and finding another employee parked in her handicapped slot caused stress. She concluded that the cumulative effect of these factors aggravated a preexisting condition.

By decision dated November 14, 1995, the Office denied the claim, finding that appellant failed to establish fact of injury. Appellant requested a review of the written record and submitted additional evidence. In a May 20, 1996 decision, an Office hearing representative affirmed the previous decision as modified, finding that appellant's frustration regarding the new telephone system was a compensable employment factor. Appellant requested reconsideration

¹ On that date appellant returned to work after an 11-month absence. She had been off work since August 1994 and had filed an emotional condition claim regarding that absence, adjudicated by the Office of Workers' Compensation Programs under file number A9-393137 and by the Board under Docket No. 98-289. The Board notes that appellant has a third appeal before the Board, Docket No. 96-1078, adjudicated by the Office under claim number A9-160624, in which she is alleging that her emotional condition is a consequence of her accepted ankle injury that occurred on May 21, 1975. This claim was later expanded to include an accepted condition of agoraphobia. The instant case was adjudicated by the Office under claim number A9-404796.

and submitted additional medical evidence. In a November 13, 1996 decision, the Office denied modification of the prior decision, finding the medical evidence insufficient to establish causal relationship. The instant appeal follows.

The relevant medical evidence included a March 30, 1995 report, from appellant's treatment psychologist, Dr. Bernard Leonelli, in which he diagnosed post-traumatic stress disorder, simple phobia (fear of adverse weather conditions), major depression and panic disorder with agoraphobia. He requested a schedule accommodation for appellant, noting that she had difficulty driving in congestion and in adverse weather conditions. He advised that she work from 6:00 a.m. to 2:00 p.m. and only for five hours per day for the first two weeks. An employing establishment physician, Dr. R.B. Patel, advised that it would be reasonable to accommodate appellant regarding the recommended hours, "if administratively feasible." In a July 12, 1995 attending physician's report, Dr. Leonelli, noted that appellant's illness had been present since 1975 and that symptoms of anxiety impaired her performance on July 6, 1995. He checked the "yes" box, indicating that her condition was employment related, advising that her current condition was due to "environmental stimuli [that] elicited symptomatology" and advised that she could not work.² In a September 17, 1996 report, Dr. Farzana Khan, a psychiatrist, advised that she concurred with Dr. Leonelli's diagnoses of major depressive disorder, post-traumatic stress disorder and panic disorder with agoraphobia and opined that appellant's return to duty outside medical restrictions and insufficient training in use of the new telephone system resulted in anxiety which "contributed to a stressful situation that kept increasing in intensity until it was intolerable."

The Board finds that this case is not in posture for a decision.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁴

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness

² The record also contains additional reports from Dr. Leonelli regarding appellant's condition prior to the instant claim.

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Federal Employees' Compensation Act.⁵ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁶ Nonetheless, proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While a claimant has the burden to establish entitlement of compensation benefits, the Office shares responsibility in the development of the evidence. It has responsibility to see that justice is done.⁷

Initially, the Board finds that the Office properly found that lack of instruction in the new telephone system was a compensable employment factor.⁸ The record contains a November 30, 1995 statement, by Larry Hakes, a coworker, who indicated that he was asked to give appellant a "quick run through" of the new telephone system and showed her as much as possible in two to three minutes. In a November 29, 1995 statement, Debbie Bianchi, a coworker, advised that appellant's desk had been moved, her materials rearranged and that the new telephone system was "more technical to use" than the old one.

Regarding appellant's other allegations, lack of handicapped parking⁹ or frustration in not being permitted to work in a particular environment¹⁰ are generally not compensable factors of employment. In the instant case, however, in separate claims filed by appellant and adjudicated under Office file numbers A9-160624 and A9-393137,¹¹ the Office accepted that appellant sustained employment-related agoraphobia. While the Office found that the agoraphobia ceased on July 21, 1984, in his July 12, 1995 report, Dr. Leonelli advised that symptoms of anxiety impaired appellant's performance on July 6, 1995. Likewise, Dr. Khan indicated that appellant's anxiety was employment related. While this evidence is not sufficient to meet appellant's burden of proof, it raises an uncontroverted inference of causal relationship between appellant's current condition and the accepted employment injury, agoraphobia. It is, therefore, sufficient to require further development of the case by the Office.¹²

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Gary L. Fowler*, 45 ECAB 365 (1994).

⁸ *See generally Donna J. DiBernardo*, 47 ECAB 700 (1996).

⁹ *See Beverly Diffin*, 48 ECAB ____ (Docket No. 94-2435, issued October 3, 1996).

¹⁰ *See Frederick D. Richardson*, 45 ECAB 454 (1994).

¹¹ *Supra* note 1.

¹² *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that, for ease of adjudication, the Office may wish to consolidate the instant case with its case files numbered A9-160624 and A9-393137; *see FECA Bulletin No. 97-10* (issued February 15, 1997).

Upon remand, the Office should further develop the medical evidence by referring appellant and an updated statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's emotional condition on and after July 6, 1995 was causally related to employment.¹³

The decision of the Office of Workers' Compensation Programs dated November 13, 1996 is hereby set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
March 19, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(6) (June 1995). (A claim for an emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted.)