

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTY A. THOMPSON and U.S. POSTAL SERVICE,  
POST OFFICE, Liberty, MO

*Docket No. 99-744; Submitted on the Record;  
Issued October 17, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met her burden of proof to establish that aggravation of migraine headaches, myalgias, chronic fatigue, sleep disorder and depression are causally related to her federal employment.

On October 4, 1996 appellant, then a 55-year-old letter carrier who had been working limited duty because of work-related carpal tunnel syndrome and knee injury,<sup>1</sup> filed an occupational disease claim, alleging that factors of her federal employment caused aggravation of migraine headaches, depression and chronic pain. She did not stop work. By letter dated November 6, 1996, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support her claim. In a December 9, 1996 decision, the Office denied the claim on the grounds that appellant had submitted nothing in support of her claim. On December 10, 1996 the Office received a packet of evidence submitted by appellant.

On January 6, 1997 appellant requested review of the written record by the Branch of Hearings and Review of the Office, and submitted additional evidence. In a March 27, 1997 decision, an Office hearing representative affirmed the prior decision. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference.

By letter dated June 19, 1997, the Office accepted that appellant sustained employment-related right shoulder tendinitis.<sup>2</sup> On March 20, 1998 appellant requested reconsideration and

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<sup>1</sup> The Board notes that appellant has three appeals before the Board: (1) Docket No. 98-1454, adjudicated by the Office under file number A11-138879, in which appellant is claiming that her disability from June 29 to November 24, 1995 was caused by an employment-related bilateral carpal tunnel syndrome; (2) Docket No. 98-2078, adjudicated by the Office under file number A11-87984, in which she is claiming that a fractured wrist sustained at home on June 29, 1995 was a consequence of a July 26, 1991 employment-related knee injury; and (3) the instant claim, adjudicated by the Office under claim number A11-153000.

<sup>2</sup> This claim was adjudicated by the Office under file number 110153404.

submitted additional evidence. In a decision dated June 10, 1998, the Office denied modification. On October 7, 1998 appellant requested reconsideration and submitted additional evidence. By decision dated October 22, 1998, the Office again denied modification of the prior decision. The instant appeal follows.

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

In addition to alleging that employment factors caused migraine headaches, various myalgias, chronic fatigue and a sleep disorder due to the shift she was required to work, appellant also submitted evidence including a diary of events from 1991 to 1996, partial trial transcripts of a nonjury trial held in January 1993 regarding claims filed with the Equal Employment Opportunity Commission (EEOC), two EEOC decisions dated May 8 and August 19, 1996, and evidence regarding grievances filed by appellant, documentation of disciplinary actions taken by the employing establishment and allegations that she was unfairly treated by the employing establishment.

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.<sup>3</sup>

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.<sup>4</sup> 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>5</sup>

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.<sup>6</sup> This burden includes the submission of a detailed

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<sup>3</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>7</sup>

In the present case, appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. Regarding her allegations that the employing establishment engaged in improper disciplinary actions, wrongly denied leave, improperly assigned work duties, wrongly failed to investigate various incidents, required that she attend fitness-for-duty examinations and unreasonably monitored her activities at work, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>8</sup> Although these are generally related to the employment, they are administrative functions of the employer and not duties of the employee.<sup>9</sup> While the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment, in determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> In this case, appellant has not established that the Office erred or acted abusively. Thus, she has not established that these are compensable employment factors under the Act.

Appellant further alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination. While she provided testimony before the EEOC by Wilda Halley, a coworker, and a statement dated May 20, 1997 from Mary Greenblatt, a coworker, these statements were general in nature and did not substantiate appellant's specific allegations.<sup>11</sup> The Board has held that a claim based on verbal altercations or harassment by a supervisor must be supported by the record,<sup>12</sup> and in the instant case the statements were insufficient to establish that the actions actually occurred.<sup>13</sup> Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Regarding her allegations regarding being provided an improper work chair and the fact that the employing establishment would not provide her with a radio headphone, the record contains a great deal of contradictory information regarding the type chair required but indicates that the employing establishment supplied her with the specific chair she requested. Furthermore, there is nothing in the record to indicate that the employing establishment

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<sup>7</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>8</sup> See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>9</sup> *Id.*

<sup>10</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

<sup>11</sup> See *Jose I. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>12</sup> See *Bonnie Goodman*, 50 ECAB \_\_\_\_ (Docket No. 97-353, issued November 13, 1998).

<sup>13</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

committed error in not providing her with a headphone as the record does not indicate that it was likely to cure or give relief to an employment-related condition.<sup>14</sup>

Regarding the findings by the EEOC that appellant's supervisor unnecessarily provided information regarding her medical condition on an application for employment and that she was not notified that a position for which she had applied had been reposted, the Board has held that findings of other federal agencies are not dispositive with regard to questions arising under the Act.<sup>15</sup> The findings and conclusions of an administrative judge for the EEOC are not determinative on whether the claimant has established harassment or discrimination in a claim under the Act. Rather, under the Act, the issue is whether the claimant has submitted evidence sufficient to establish an injury in the performance of duty. The fact that appellant's supervisor wrote comments regarding her medical condition when questioned regarding a job application and that the postmaster did not inform her that a position had been reposted, do not constitute compensable employment factors.

The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act,<sup>16</sup> and that being required to work beyond one's physical limitations may constitute a compensable employment factor if substantiated by the record.<sup>17</sup> In this case, appellant noted that when she returned to work on June 29, 1995 following surgery for employment-related carpal tunnel syndrome she was ordered to work outside her medical restrictions. She further indicated that she fell at home that evening and fractured her right wrist, and enumerated perceived problems when she returned to work on September 1, 1995. She specifically alleged that on September 8, 1995 she was told to clean the ladies' restroom, then scrubbed the ladies' room floor and called in sick the next day. The record contains a telephone memorandum dated November 22, 1995, in which Don Walsh of the employing establishment discussing the above incident with the Office. He stated that appellant was specifically told that she should not wash the floor but did so anyway. The evidence does not establish that appellant was required to work outside her physical limitations.

Regarding appellant's allegation that her migraine headaches are employment related, under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>18</sup> The medical evidence relevant to appellant's headaches includes reports dating from 1975 to 1995 from Drs. Dewey K. Ziegler, Marilyn M. Ryner and Charles D. Donohoe, who are Board-certified neurologists, which document that appellant had a history of migraine headaches. In a report dated August 24, 1998, Dr. Nabih I. Abdou, who is Board-certified in allergy and immunology, diagnosed severe fibromyalgia syndrome with chronic fatigue that was

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<sup>14</sup> 5 U.S.C. § 8103(a); see *Peggy J. Reed*, 46 ECAB 139 (1994).

<sup>15</sup> See *Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>16</sup> See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

<sup>17</sup> *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

<sup>18</sup> See *Gary R. Sieber*, 46 ECAB 215 (1994).

associated with mood disorder which resulted in poor energy level, pain, migraine headaches and poor memory and concentration. He, too, did not discuss a cause of her condition.

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and the identified factors. The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.<sup>19</sup> None of the physicians listed above provided an opinion regarding the cause of appellant's migraine headaches. She, therefore, did not provide the necessary rationalized medical opinion describing how employment factors caused her headaches and, thus, did not meet her burden of proof to establish that this condition was employment related.

Regarding appellant's allegation that employment factors caused her chronic fatigue and chronic pain, the relevant medical evidence includes a March 3, 1998 treatment note, in which Dr. Donohoe advised that appellant had developed a variety of myalgias. In the August 28, 1998 report from Dr. Abdou discussed above, he merely provides a diagnosis of pain with no discussion of the cause. Likewise, while Dr. Abdou also diagnosed chronic fatigue, again he did not provide an opinion regarding the cause. As none of the medical reports provide an opinion regarding the cause of appellant's chronic pain and fatigue, she did not meet her burden of proof to establish that these conditions are employment related.

Finally, regarding appellant's allegation that working the 4:00 a.m. shift caused a sleep disorder, she submitted an October 24, 1995 report from Dr. Rosalyn Pompushko, a psychiatrist, who diagnosed major depressive disorder. Dr. Pompushko noted that appellant had been consistently assigned to the 4:00 a.m. shift since 1986 and advised this shift did not allow her to have a regular night's sleep. The doctor advised that this was a "significant contributing factor which exacerbates her depression." Dr. Wendy L. Fluegel, who is Board-certified in internal medicine and pulmonary disease, provided a report dated October 31, 1997, in which she advised that sleep deprivation made all appellant's problems worse.

While compensability does not arise with frustration over not being able to work in a particular environment, but rather arises from performance of regular or specially assigned duties,<sup>20</sup> in this case the Board finds that appellant's working the night shift constitutes a compensable employment factor as this allegation relates to the performance of her regular or specially assigned duties and, therefore, arises out of her employment.<sup>21</sup> The case will, therefore, be remanded to the Office for further development.<sup>22</sup> On remand the Office should prepare an appropriate statement of accepted facts which provides a complete and proper frame of reference for a physician and further develop the medical evidence to resolve the issue of

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<sup>19</sup> *Lourdes Harris*, 45 ECAB 545 (1994).

<sup>20</sup> *See Lillian Cutler*, *supra* note 5.

<sup>21</sup> *See Charles J. Jenkins*, *supra* note 16.

<sup>22</sup> When the claimant has established a compensable factor of employment, the Office should base its decision on an analysis of the medical evidence; *see Abe E. Scott*, 45 ECAB 164 (1993).

whether appellant sustained an emotional condition due to her employment. After such development as the Office deems necessary, it should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated October 22 and June 20, 1998 are hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC  
October 17, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member