U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LATONYA S. TANKARD and U.S. POSTAL SERVICE,
POST OFFICE, Hackensack, NJ

Docket No. 98-2420; Submitted on the Record;
Issued September 22, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty.

On February 20, 1997 appellant, then a 22-year-old automated clerk who was seven months pregnant, filed a traumatic injury claim, alleging that she became stressed by her supervisor on February 18, 1997. This caused her to have a headache, dizziness and upset stomach, after which she fainted and tumbled on the stairs which, in turn, caused severe headache and back pain. She stopped work that day. By letter dated March 7, 1997, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support her claim and, following further development, by decision dated May 21, 1997, denied the claim, finding that appellant's stress had not occurred in the performance of duty.

On June 19, 1997 appellant, through counsel, requested a hearing and submitted additional evidence. At the hearing held on January 29, 1998, appellant testified that on February 18, 1997 her supervisor, Horace Bonaparte, yelled and badgered her for two hours regarding her absence on February 17, 1997 for which she was absent without leave (AWOL). She became very upset which led to the claimed injury. Appellant testified that she filed a grievance which was resolved by the AWOL being changed to excused absence. She also filed an Equal Employment Opportunity (EEO) Commission complaint against Mr. Bonaparte. She had a normal delivery on June 25, 1997 and returned to work on September 2, 1997. By decision dated May 13, 1998, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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.[1] Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness 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.[2] 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.[3]

In support of her claim, appellant submitted a statement dated August 14, 1997, in which Genita Freeman-Dorsey, a coworker, advised that on February 18, 1997 she observed appellant and Mr. Bonaparte walking from the conference room and that appellant "appeared extremely upset" and was crying. Ms. Freeman-Dorsey stated that she was later told that appellant had fainted. In an undated statement, Karen Brunsons, a coworker, advised that she witnessed Mr. Bonaparte "aggravate and harass" appellant as she came out of the conference room on February 18, 1997. She further stated:

> "There was loud talking and arguing as [appellant] walked to the console to continue working. An employee tried to talk to him and tell him that he was upsetting [appellant] and he knew that she was pregnant and he said that it was none of her concerns. [Appellant] was so upset from the confrontations that she had to leave her console and go to the ladies room to calm herself down. While she was in the ladies room, I went in to make sure that she was okay. She said that she felt dizzy and lightheaded and that she had a headache. I told her to try to calm herself down and rinse off her face because she had been crying. I also told her to not let our supervisor get her so upset that it would affect her pressure and the baby. About ten minutes later we went to break. [Appellant] went outside to get some air and I went to the break room. A few minutes later some employees came in and said that something happened to [her]. They said she was sitting on the stairs, blacked out and tumbled or fell over."

Ms. Brunsons accompanied appellant to the hospital. She also testified at the hearing, further stating that the argument between appellant and Mr. Bonaparte lasted approximately 20 minutes.

The employing establishment submitted a statement dated February 18, 1997, in which Fred John Piela advised that appellant was at the top of the stairs when she called him over because she was feeling dizzy. Mr. Piela stated that he tried to help her to a bench but "she

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[2] 5 U.S.C. §§ 8101-8193.

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

couldn't make it so she sat on the steps (second from the ground)." He then went to get her water but before he returned, she had fallen to the ground and concluded, "I believe she skimmed the wall then hit the ground." In an undated statement that was received by the Office on February 28, 1997, Harry T. Leiding related that on February 18, 1997 he noticed appellant standing on the top step holding her head and crying. He indicated that after asking if he could help, he and Mr. Piela assisted her to sit on the second step. He then went inside to advise a supervisor to call for medical attention.

Mr. Bonaparte submitted several statements including a February 24, 1997 memorandum indicating that on January 20, 1997 he discussed absence policy with appellant and that on February 18, 1997 he indicated to appellant that he needed to speak with her about the need for documentation when she did not report to work because of her pregnancy, advising her that the only medical restrictions she had provided were that she could not lift over 10 pounds and could not work over 40 hours per week. He noted that appellant had been late and not reported for work a number of times since she became pregnant, explained to her the documentation needed and advised her that if she did not abide by her doctor's instructions and report to work when scheduled, he would have to start disciplinary action. Mr. Bonaparte stated that after their return to the workroom floor, appellant became upset, crying and complained in a loud voice about the "stupid rules," indicating she was "sick of them." He indicated that she kept talking, indicating her dislike at what he had told her. Mr. Bonaparte admonished her several times to lower her voice and told her she could go to the ladies room, which she did. He noted that she returned to work at 10:55 and left on break at 12:00.

In a February 13, 1998 statement, Mr. Bonaparte reiterated that he had not harassed appellant and in a statement faxed to the Office on February 19, 1998, Mr. Bonaparte further stated that appellant's leave was disapproved because she failed to follow instructions to provide medical documentation for absences during her pregnancy.

Regarding appellant's allegations, as a general rule, a claimant's reaction to administrative or personnel matters fall outside the scope of coverage of the Act.[4] Absent error or abuse on the part of the employing establishment, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.[5] Likewise, an employee's complaints about the manner in which a supervisor performs supervisory duties or the manner in which a supervisor exercises supervisory discretion fall, as a rule, outside the scope of coverage provided by the Act. This principle recognizes that a supervisor must be allowed to perform his or her duties and that in performance of these duties, employees will at times dislike actions taken. Mere disagreement or dislike of a supervisory or management action is not actionable, absent evidence of error or abuse.[6] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted

[4] *See Janet I. Jones*, 47 ECAB 345 (1996).

[5] *Gregory N. Waite*, 46 ECAB 662 (1995).

[6] *Daniel B. Arroyo*, 48 ECAB 204 (1996).

reasonably.[7] To support such a claim, a claimant must establish a factual basis by providing probative and reliable evidence.[8]

Furthermore, for harassment to give rise to a compensable disability under the Act, there must be some evidence that acts alleged or implicated by the employee did, in fact, occur. A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and should not give rise to coverage under the Act absent objective evidence that the interaction with his or her supervisor was, in fact, abusive.[9]

In this case, appellant has not submitted sufficient evidence to establish that the counseling was unwarranted[10] or constituted error or abuse by the employing establishment.[11] Likewise, while the record contains evidence that the discussion between appellant and Mr. Bonaparte was loud and that she became upset, there is no probative evidence that he acted in an abusive manner toward appellant. She, therefore, has not established a compensable employment factor and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty as alleged.[12]

The Board further finds that appellant did not establish that she sustained a traumatic injury in the performance of duty causally related to factors of employment.

An employee seeking benefits under the Act[13] has the burden of establishing the essential elements of his or her claim[14] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[15] that the claim was timely filed within the applicable time limitation period of the Act,[16] that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[17] These are essential elements of each compensation

[7] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[8] *See Barbara J. Nicholson*, 45 ECAB 843 (1994).

[9] *Daniel B. Arroyo, supra* note 6.

[10] The Board notes that the Office hearing representative requested that appellant furnish a copy of the grievance decision. This, however, was not done, nor does the record contain evidence of any resolution of appellant's EEO complaint.

[11] *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

[12] As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record regarding this aspect of her claim; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

[13] 5 U.S.C. §§ 8101-8193.

[14] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[15] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[16] 5 U.S.C. § 8122.

[17] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[18]

Causal relationship is a medical issue,[19] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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 the claimant.[20] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[21]

The record in this case establishes that on February 18, 1997 appellant was sitting on the second step from the bottom at work when she slumped and fell to the ground, skimming the wall. The relevant medical evidence includes a report indicating that appellant was admitted to the hospital on February 18, 1997 and discharged on February 19, 1997 with a discharge diagnosis of syncope.[22] Appellant's treating physician, Dr. Maurice Willer, a Board-certified surgeon, submitted a report dated February 20, 1997, in which he diagnosed post-traumatic stress disorder and myositis and advised that appellant could not work. In a March 10, 1997 report, he described appellant's history of injury, noting:

> "Her supervisor, Mr. Horace Bonaparte, began his usual sexual harassment, yelling, screaming and browbeating of this poor creature. The result was post-traumatic stress disorder accompanied by hyperventilation, anxiety, syncope, depression, nausea [and] cataplexy. The syncope combined with the cataplexy caused her to fall backwards down four steps. The result was a loss of conscious[ness], injuries to her head, neck, back, extremities and possible injury to her fetus."

Dr. Willer noted complaints of constant debilitating pain, headache, nausea, vomiting, headaches, tender points over her entire body, sleep disturbance, restless extremities syndrome, periodic extremities disturbance, difficulty mobilizing her head, neck, trunk, extremities, anxiety,

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[18] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[19] *Mary J. Briggs*, 37 ECAB 578 (1986).

[20] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 18.

[21] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[22] Appellant also submitted a note dated February 19, 1997 signed by a registered nurse and an unsigned medical report dated April 11, 1997 from Dr. David Safer. A registered nurse is not a physician as defined by the Act and a nurse's opinion is, therefore, of no probative value. 5 U.S.C. § 8101(2); *Sheila A. Johnson*, 46 ECAB 323 (1994). Likewise, an unsigned medical report is of no probative value. *See Merton J. Sills*, 39 ECAB 572 (1988).

depression, inability to relate to others, malaise, alteration of her circadian body rhythms, fear of strangers and loss of cognitive factors. Physical examination revealed diminished cognitive factors and restricted bending, stooping, sitting, rising, squatting and lying. He concluded that her prognosis was guarded as she was unable to perform her usual activities of daily living and would require extensive care and treatment. Dr. Willer diagnosed cerebral concussion, post-traumatic stress disorder, traumatic fibromyalgia, sleep disturbance, periodic restless extremities syndrome, restless leg syndrome, alteration of circadian rhythms, alteration of cognitive factors, depression, anxiety, spinal derangement and head injury.

In a March 11, 1997 report, Dr. Willer advised that appellant could return to work on April 21, 1997. In reports dated April 10 and June 1, 1997, he reiterated his findings and conclusions and advised that appellant could not return to work.

By letter dated April 11, 1997, Dr. James Silvestri requested approval for psychotherapy services.[23] He described the injury as follows:

> "Appellant reports that her boss had put her under a lot of tension. She became very upset. She blacked out and tumbled down some stairs. She was taken to the hospital. Since her fall she suffers from headaches and backaches. She has difficulty sleeping. She was especially upset because she is pregnant."

In an undated report that was received by the Office on June 2, 1997, Dr. Justin A. Willer, a Board-certified neurologist, stated that appellant was injured at work on February 18, 1997 after experiencing lightheadedness followed by a loss of consciousness and a fall down a flight of stairs. He noted that appellant reported that she was under severe stress at work due to harassment by her supervisor and that she complained of severe generalized throbbing headaches and resolved neck and low back pain. Physical examination revealed moderate weakness of the finger flexors of all four digits of both hands. Dr. Justin A. Willer opined that the syncopal episode was precipitated by stress at work, that the headaches were most like post traumatic in origin owing to the lack of a headache history prior to the absence, and that the history of neck pain and weakness in the deep finger flexors was strongly suggestive of cervical radiculopathy. He also diagnosed lumbosacral strain.

The Board finds that the medical reports from both Drs. Willer and Silvestri are of diminished probative value because none of the physicians based their opinion on an accurate history of injury. The record in this case indicates that appellant was sitting on the second step from the bottom when she slumped over. Dr. Maurice Willer provided a history that she fell

[23] It is unclear from the record whether Dr. Silvestri is a psychiatrist or a psychologist.

backwards down four steps. Dr. Silvestri advised that she "tumbled down steps," and Dr. Justin A. Willer indicated that she fell down a flight of stairs. The hospital treatment note merely provides a conclusory diagnosis of "syncope." As part of the burden of proof, the claimant must present rationalized medical evidence, based upon a specific and accurate history.[24] As the medical opinions in this case were not based on a complete and accurate factual history, appellant did not meet her burden of proof to establish that she sustained an employment-related traumatic injury.[25]

The decision of the Office of Workers' Compensation Programs dated May 13, 1998 is hereby affirmed.

Dated, Washington, DC
September 22, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[24] *See Richard A. Weiss*, 47 ECAB 182 (1995).

[25] *See Elizabeth W. Esnil*, *supra* note 11.