U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUTH BAUCOM and U.S. POSTAL SERVICE,
CLAYTON POST OFFICE, Clayton, NC

Docket No. 01-1470; Submitted on the Record;
Issued September 24, 2002

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an injury in the performance of duty on October 29, 1999; and (2) whether appellant established that she sustained an emotional condition in the performance of duty.

On November 2, 1999 appellant, then a 49-year-old window distribution clerk, filed a traumatic injury claim assigned number 06-0741986 alleging that on October 29, 1999 she hit her head and experienced pain in her right leg and lower back. She stated that she did not remember what happened, but that she did not feel well. Appellant stopped work on October 29, 1999. On the reverse of the claim form, Denise Guakler, appellant's supervisor, indicated that appellant passed out for unknown reasons.[1]

By decision dated January 20, 2000, the Office of Workers' Compensation Programs found that appellant's fall at work was idiopathic in nature and, therefore, did not occur in the performance of duty. In a January 23, 2000 letter, appellant requested an oral hearing before an Office representative.

Appellant submitted narrative statements alleging that she sustained an emotional condition caused by factors of her federal employment. In support of her allegations, appellant submitted factual and medical evidence. In response, the employing establishment submitted evidence controverting appellant's allegations.

In a decision dated August 31, 2000, the hearing representative found the evidence of record insufficient to establish that appellant sustained an emotional condition in the performance of duty. By letter dated November 10, 2000, appellant, through her counsel, requested reconsideration of the hearing representative's decision.

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[1] The employing establishment indicated that appellant previously passed out at work on September 29, 1999 and that appellant filed a claim assigned number 06-738936 for a cervical sprain.

By decision dated April 24, 2001, the Office denied appellant's request for modification based on a merit review of the claim.

The Board has reviewed the case record in this appeal and finds that appellant sustained an injury in the performance of duty on October 29, 1999.

It is a well-settled principle of workers' compensation law and the Board has so held, that an injury resulting from an idiopathic fall -- where a personal, nonoccupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface and there is no intervention or contribution by any hazard or special condition of employment -- is not within coverage of the Federal Employees Compensation Act. Such an injury does not arise out of a risk connected with the employment and, is therefore, not compensable. However, as the Board has made equally clear, the fact that the cause of a particular fall cannot be ascertained or that the reason it occurred cannot be explained, does not establish that it was due to an idiopathic condition. This follows from the general rule that an injury occurring on the industrial premises during working hours is compensable unless the injury is established to be within an exception to such general rule.[2] If the record does not establish that the particular fall was due to an idiopathic condition, it must be considered as merely an unexplained fall, one which is distinguishable from a fall in which it is definitely proved that a physical condition preexisted the fall and caused the fall.[3]

In this case, the medical evidence does not establish that appellant's fall on October 29, 1999 was due to a personal, nonoccupational pathology. Appellant submitted several reports and treatment notes from various physicians in support of her claim. Hospital emergency treatment notes dated October 29 and November 30, 1999 and laboratory test results dated October 29 and November 2 and 29, 1999 indicated that appellant was treated on the date of the fall and that she experienced an syncope episode. These treatment notes and test results did not address the cause of appellant's syncope episode on October 29, 1999.

An undated duty status report by Dr. Charles S. Wehbie, a Board-certified internist, provided a history that on October 29, 1999 appellant passed out at the window and became unconscious when she hit her head on the floor. He diagnosed several conditions including, syncope due to appellant's injury. In his November 13, 1999 and January 17, 2000 duty status reports, Dr. Wehbie reiterated the history of the October 29, 1999 incident and diagnoses due to the injury. His December 30, 1999 report revealed the diagnosis of insulin dependent diabetes mellitus, hypertension, hyperlipidemia, recurrent migraines and lumbar disc disease. Dr. Wehbie noted that in an effort to achieve tighter control on appellant's diabetes and to prevent long-term complications, insulin was started a year or two prior and had been gradually increased. He further noted that due to this more rigorous schedule, appellant was more prone to symptomatic episodes of low blood sugar if she was not allowed to snack on a regular schedule. Dr. Wehbie also noted that appellant had several episodes, which were attributable to hypoglycemia while at work. He stated that appellant blamed this on schedule inflexibility regarding her need to have a diabetic snack. Dr. Wehbie further stated that there had been increased anxiety subsequently in

[2] *Fay Leiter*, 35 ECAB 176 (1983).

[3] *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

the workplace culminating in late October when appellant suffered a syncopal episode. He also stated that emergency medical service was summoned and that appellant was not hypoglycemic. Dr. Wehbie noted that appellant apparently struck her head and she was amnestic to some of the events, so he was not sure whether the syncope preceded the head trauma. He concluded by noting appellant's medical treatment. Although Dr. Wehbie noted appellant's syncope episode, he did not offer an explanation as to the etiology of appellant's fall on October 29, 1999 in any of the above reports.

In November 3, 1999 treatment notes, Dr. Patricia K. Naslund, a Board-certified psychiatrist and neurologist, noted her findings of syncope, confusion paphasia and right hemiparsis. She diagnosed transient ischemic attack, hypoglycemia and a seizure that completely resolved. Dr. Naslund, in her November 9, 1999 duty status report, indicated that on October 29, 1999 appellant passed out at a window unit while waiting on a customer and she hit her head on the floor. She diagnosed a concussion due to appellant's injury. Dr. Naslund, however, did not provide an explanation in either her treatment notes or report as to what caused appellant to pass out while she was at work.

Dr. Wehbie's February 8, 1999 note indicated that appellant was under his care for insulin dependent diabetes and that in addition to taking her medications and insulin on a strict schedule, it was crucial for appellant's health that she eat on a fixed schedule. In an October 25, 1999 note, Dr. Wehbie stated that appellant was unable to work on October 19, 20, 21 and 25, 1999 due to illness and that appellant could return to work on October 26, 1999. Dr. Wehbie's notes are of little probative value because they predate the October 29, 1999 incident and thus, they failed to address the cause of appellant's fall on that date.

Dr. Naslund's November 8, 1999 report specifically indicated that appellant's fall on October 29, 1999 was unexplained. In her report, Dr. Naslund provided a history that appellant presented to the emergency room approximately two weeks prior after a syncopal episode. She noted that appellant fell backwards and hit the back of her head while working. Dr. Naslund further noted that appellant was apparently unconscious for several minutes and awakened complaining of a headache. She indicated appellant's medical treatment and her findings on physical examination. Dr. Naslund opined that appellant "had an episode of syncope which is currently unexplained." She noted that a cardiac workup was unrevealing, that she discussed with appellant and her husband that syncopal episodes were very rarely due to neurologic causes, that it did not appear that appellant had a seizure and that appellant's electroencephalography and cartotid dopplers were normal.

Medical treatment notes dated October 25, 1999 indicated that appellant experienced job stress regarding the accommodation of her diabetes mellitus. These treatment notes did not provide an explanation as to how appellant's fall on October 29, 1999 was caused by job stress.

Similarly, in his May 24, 2000 letter, Dr. Wehbie failed to provide an explanation for his opinion that increased workplace stress contributed to appellant's syncope. Dr. Wehbie noted that appellant had hypertension, insulin dependent diabetes, peripheral neuropathy, lumbar disc disease, gastritis and gastric polyps, migraine headaches, elevated cholesterol and nonocculsive coronary artery disease. He further noted that appellant suffered several bouts of hypoglycemia the prior year at work because she was not allowed snacks to accommodate her insulin schedule.

Dr. Wehbie stated that this provoked increasing anxiety and apprehension in the workplace. He further stated that appellant later suffered a syncopal episode with closed head trauma complicated by hemipareis and expressive speech difficulties. Dr. Wehbie noted that appellant's sugar was normal at the time of his examination.

In response to questions posed by appellant's counsel, Dr. Wehbie submitted a March 29, 2000 letter indicating that appellant had insulin dependent diabetes, elevated cholesterol, hypertension, migraine headaches, gastritis and lumbar disc disease based on endoscopic, radiologic and laboratory tests. He stated that appellant's inability to snack at an appropriate time for her insulin resulted in hypoglycemia, which caused her fall on September 29, 1999. Dr. Wehbie noted that the October 29, 1999 incident was a similar spell resulting in increased anxiety for appellant. He stated that this incident was not based on emergency medical services' determination of blood sugars directly related to hypoglycemia. Dr. Wehbie also stated that it was difficult to know the exact etiology of appellant's fall, subsequent closed head injury, loss of consciousness and right-sided weakness and speech impairment. He further stated that possibilities included a transient ischemic attack, fall with post-concussion syndrome, complicated migraine and arrhythmia. Dr. Wehbie concluded that regardless, stress from appellant's job environment was a contributing factor. His opinion is speculative as to the cause of appellant's syncope episode. In addition, Dr. Wehbie did not explain how appellant's fall was caused by her job stress.[4]

Similarly, Dr. Naslund's opinion, in her June 8, 2000 letter, regarding the cause of appellant's syncope episode is speculative. In response to questions posed by appellant's counsel, Dr. Naslund stated that appellant had a syncopal episode on October 29, 1999 and that it was likely due to vasovagal syncope, which was often stress or anxiety related. She further stated that she did not know of any other consequences of the above-mentioned syncopal episode while noting that appellant had a history of diabetes, stomach polyps, migraines and back pain. Dr. Naslund's opinion that appellant's fall on October 29, 1999 was "likely" due to anxiety and stress is speculative and it is not sufficiently rationalized.[5]

In a letter dated May 15, 2000, Dr. Wehbie stated that appellant's work-related health problems hinged on not being allowed to schedule meals or snacks around her insulin doses. He further stated that if one is not allowed caloric intake three to four hours after short acting insulin, there is a risk of precipitating hypoglycemia. Dr. Wehbie noted that on two occasions appellant suffered from severe hypoglycemia during times she reportedly was not allowed to snack. He opined that although the exact cause of appellant's head trauma, syncope, speech difficulty and right hemiparesis may never be known, he suspected that precipitating factors probably were either anxiety over having further very frightening attacks of low blood sugar precipitating a vasovagal syncope attack and head injury or an attack of cerebral ischemia in a woman with many risk factors for vascular disease. Dr. Wehbie's opinion that appellant's syncope was "probably" due to either anxiety over having further syncope attacks and head

[4] *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

[5] *Id.*

injury or an attack of cerebral ischemia, is speculative and it is not sufficiently rationalized as the Board has held that fear of future injury is not a basis for compensation.[6]

Inasmuch as there is no probative rationalized medical evidence of record sufficient to establish that appellant's fall on October 29, 1999 was due to a personal nonoccupational pathology, the fall remains an unexplained fall while appellant was engaged in activities incidental to her employment and is compensable.

The Board will reverse the January 20, 2000 decision denying compensability of the incident and will remand the case to the Office to determine the nature and extent of any disability causally related to the October 29, 1999 fall.

The Board further finds that appellant has failed to establish that she sustained an emotional condition in the performance of duty.

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 illness has some connection with the employment, but nevertheless does not come within the coverage of the Federal Employees' Compensation Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.[7]

Perceptions and feelings alone are not compensable. 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 factors of her federal employment.[8] To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[9]

In this case, appellant alleged that the employing establishment did not allow her to have lunch and take breaks at designated times to accommodate her diabetes condition. She stated that her coworker, Doug Phillips, who worked at the window with her did not leave for lunch or break at his designated time and that he would consistently return late from lunch and break.

[6] *See Mary A. Geary*, 43 ECAB 300 (1991); *Paul A. Clark*, 43 ECAB 940 (1992).

[7] *Lillian Cutler*, 28 ECAB 125 (1976).

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

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

Appellant also stated that although Ms. Guakler, her supervisor, knew that she had to eat at certain times during the day due to her diabetes, Ms. Guakler did not do anything about Mr. Phillips' late return from lunch and break, which caused her to have low blood sugar problems. She also alleged that Ms. Guakler requested medical documentation to support her request to stop working at the window. Appellant's allegations regarding the scheduling of lunch and breaks and Ms. Guakler request for medical documentation[10] involve administrative or personnel matters. While administrative and personnel matters are generally related to employment, these matters are functions of the employer and not duties of the employee. Thus, the Board has held that an employee's reactions to administrative actions are not compensable unless the evidence demonstrates error or abuse on the part of the employing establishment in its administrative capacity.[11]

Appellant submitted a February 15, 2000 statement of Karen Ellis, a rural carrier, indicating that during the latter part of September 1999, she and Vickie Beasley, another rural carrier, called an ambulance when Ms. Beasley found appellant passed out on the floor in the restroom. Ms. Ellis stated that appellant told her that she was having difficulty in getting relieved for lunch in a timely manner and she knew that this put appellant under a lot of stress. Ms. Ellis noted that about one month later appellant fainted while serving a customer at her counter and that appellant was taken to the hospital. Similarly, a February 28, 2000 statement from Jessie R. Smith, a letter carrier, revealed that appellant told her about the difficulties she had in getting relieved for lunch in a timely manner. Ms. Smith stated that she was under the impression that this situation caused a great deal of anxiety for appellant. An undated statement from Linda Wheeler, a rural carrier, indicated that she talked to appellant about her diabetes and that she was aware of appellant's problems with being allowed to maintain a necessary eating schedule. In an undated statement, Ms. Beasley described the day she found appellant on the floor in the restroom in September 1999 and appellant's problems with eating at specific times due to Mr. Phillip's late return from lunch and break. Ms. Beasley indicated that subsequent to the September 1999 incident, she was told that appellant passed out while working the window.

In response to appellant's allegation that the employing establishment did not establish a schedule that accommodated her diabetes, Ms. Guakler indicated in a July 6, 2000 statement:

> "I accommodated [appellant] with two lunch breaks per day. I changed the lunch schedule of the senior clerk to better accommodate [appellant]. I encouraged [appellant] to keep any snacks she needed available at the window unit at all times. I told [appellant] that any time her relief was not back at the window at the time she was supposed to leave, to page me so I could get her assistance. I did everything I could to accommodate [appellant's] needs due to her health condition."

Ms. Guakler noted that the requirements of working the front window did not always allow a clerk to leave at a specific time everyday and suggested that appellant stop working at the window because she was not able to leave at a specified time. She noted appellant's reaction

[10] *Thomas D. McEuen*, 41 ECAB 389 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[11] *Sharon J. McIntosh*, 47 ECAB 754 (1996).

that she was being punished and explained that there was no malice and no intent to threaten or punish appellant. Ms. Guakler concluded that she and Calvin Bagley, the Postmaster, tried to accommodate appellant, but that it never seemed to be enough and that she specifically told appellant to call her to the window if she needed help.

Appellant acknowledged that Ms. Guakler changed Mr. Phillips' schedule to accommodate her need to eat at certain times during the day.

Although appellant submitted statements indicating her difficulties in eating at certain times during the day, Ms. Guakler and appellant's own statements establish that the employing establishment did not err or act abusively in scheduling her lunch and breaks to accommodate her diabetes condition. In addition, there is no evidence of record establishing that Ms. Guakler erred or acted abusively in requiring appellant to provide medical documentation to support her request to stop working at the window. The Board finds that since there is no evidence of error or abuse by the employing establishment appellant has failed to establish a compensable factor of employment under the Act.

Appellant alleged that the change in Mr. Phillips' schedule for lunch and break and his late return from them made it difficult for her to work with him. She also alleged that Mr. Phillips did everything he could to aggravate the situation and due to his relationship outside of work with Mr. Bagley and Ms. Guakler, they did not try to correct the situation. Appellant related that Mr. Phillips failed to count her money at the end of the day. She stated that after closing the window Mr. Phillips performed other tasks to keep from verifying her money. She noted that she had counted his money and their money has to be verified by someone other than themselves before sending it to Raleigh. Appellant further noted that the truck transporting the money was waiting and she had to send her money without it being counted.

Actions of an employee's coworker or supervisor, which the employee characterizes as harassment may constitute a compensable factor of employment.[12] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur.[13] Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.[14] An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.[15] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting her allegations with probative and reliable evidence.[16]

[12] *Sylvester Blaze*, 42 ECAB 654 (1991).

[13] *Shelia Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

[14] *See Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Sylvester Blaze*, 42 ECAB 654 (1991).

[15] *William P. George*, 43 ECAB 1159 (1992).

[16] *See Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

Appellant related that when Ms. Guakler asked Mr. Phillips why he did not count her money, Mr. Phillips stated that "he forgot about it because he had taken some medicine for the pain in his hand." The record does not substantiate appellant's allegation that she was harassed by Mr. Phillip's failure to count her money. Appellant has not submitted any witness statements corroborating this incident. Therefore, the Board finds that appellant has failed to establish that harassment actually occurred.

As appellant has not established any compensable factors of her federal employment that she implicates in causing or contributing to the development of her emotional condition, appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.[17]

The April 24, 2001 and August 31, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed. The Office's January 20, 2000 decision is hereby reversed and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
September 24, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[17] As appellant has not submitted the necessary evidence to substantiate a compensable factor of employment, the medical evidence need not be reviewed in this case. *Garry M. Carlo*, 47 ECAB 299, 305 (1997).