

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHIRIN S. MARSHALL and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 03-1127; Submitted on the Record;  
Issued July 6, 2004*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on July 18, 2001 causally related to her August 26, 2000 employment injury; and (2) whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On August 26, 2000 appellant, then a 31-year-old rural carrier, filed a claim for her right shoulder and back which she attributed to the performance of her federal job duties. The Office of Workers' Compensation Programs accepted appellant's claim for a sacroiliac strain, thoracic sprain and right rotator cuff sprain. The Office subsequently accepted the condition of bilateral rotator cuff sprains. Appellant received appropriate compensation for her accepted conditions.

On May 2, 2001 appellant's attending physician, Dr. Jeffrey D. Cooper, Board-certified in physical medicine and rehabilitation, released appellant to full-time limited-duty work. Physical restrictions were provided. The employing establishment offered appellant a full-time limited-duty job as a modified rural carrier, which appellant accepted on May 18, 2001. Appellant, however, did not return to work but sought medical treatment from Dr. Erick Grana, Board-certified in physical medicine and rehabilitation. He advised that she was totally disabled for the following two weeks.<sup>1</sup> On May 23, 2001 Dr. Cooper advised that appellant could return to work six hours a day with restrictions. On June 12, 2001 Dr. Grana released appellant to limited-duty work at four hours per day. On June 13, 2001 appellant signed the employing establishment's modified-duty job assignment indicating that she would be following Dr. Grana's medical directions for the number of hours worked in the modified position. On June 18, 2001 Dr. Grana released appellant to work for five hours a day. The record indicates that appellant returned to work on June 13, 2001 for four hours daily in the modified-duty capacity and increased her time to five hours daily on June 27, 2001.

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<sup>1</sup> In a letter dated June 22, 2001, the Office advised appellant that it recognized Dr. Cooper as her attending physician of record.

On July 18, 2001 appellant went to the emergency room where she was diagnosed as having an acute anxiety attack. Appellant stopped work on July 18, 2001 and has not returned.

In a July 19, 2001 report, Dr. Walter Afield, a Board-certified psychiatrist, noted appellant's work injury of August 26, 2000 and subsequent limited-duty work status. Dr. Afield noted that appellant described herself as a hard worker who out produced everyone, even on light duty, as she liked to work. He related that appellant got along well with her supervisors until approximately one week prior, when they began to give her a hard time. According to appellant, the supervisors followed her around the building when she took her break. Dr. Afield related that on July 18, 2001 when appellant took her break, her supervisor questioned her whereabouts as they did not know where she was and appellant felt that she was verbally attacked and being called a liar. He advised that appellant began to experience flashbacks of her childhood experiences during the war in Persia, where she grew up. Dr. Afield diagnosed acute anxiety reaction, severe depression, and post-traumatic stress disorder. He opined that appellant's problems were all work related. Dr. Afield advised that the stress started in the work situation as the work incidents stirred up past memories. He further advised that appellant was totally disabled from work for at least one month. In subsequent reports, Dr. Afield continued to indicate that appellant has a disabling post-traumatic stress disorder.

On September 18, 2001 appellant completed a Form CA-7, claim for compensation for the period July 18 to October 31, 2001. By letter dated December 6, 2001, the Office advised appellant that she was not entitled to compensation based on her emotional condition and requested medical evidence relating the period of disability to her accepted physical conditions. Progress notes concerning appellant's emotional condition were submitted.

In an effort to determine the extent of appellant's work-related residuals due to the August 26, 2000 work injury, the Office referred appellant for a second opinion evaluation with Dr. Michael Slomka, a Board-certified orthopedist, and Dr. Bala Rao, a Board-certified psychiatrist. A statement of accepted facts dated October 10, 2001 and a list of questions was provided with the medical record.

In a January 10, 2002 report, Dr. Rao advised that he reviewed appellant's medical records and statement of accepted facts. He provided a detailed report of his examination, including a history of the work injury and diagnosed an adjustment disorder with mixed anxiety and depressed mood. Dr. Rao opined that appellant was experiencing symptoms of mild anxiety and depression secondary to the adjustment to financial pressures and her work-related issues. He stated that appellant appeared very angry and felt that the employing establishment had been unfair to her. Dr. Rao stated that appellant claimed that the only reason she did not want to work at the employing establishment was because she has been dealt with unfairly and did not want to get another job until her issues with the employing establishment were resolved. In response to the Office's questions, he opined that appellant's psychiatric diagnosis were not related to her August 26, 2000 work injury. Dr. Rao stated that her issue was with her supervisors. Appellant felt that she has been dealt with unfairly and been discriminated against and she perceived that was a major issue in her emotional condition. From a psychiatric viewpoint, Dr. Rao opined that appellant was able to work in her limited-duty job as a modified rural carrier as described in the statement of accepted facts. He reiterated that the only reason appellant was not working was because she wanted to resolve her case with the employing establishment.

In a January 17, 2002 report, Dr. Slomka provided a history of injury, together with the results of objective tests and his examination of appellant. He diagnosed a full thickness tear of the rotator cuff on the right side and a partial thickness tear of the rotator cuff on the left side and opined that these conditions were causally related to her August 26, 2000 work injury. He opined that appellant had reached maximum medical improvement, provided that surgery was not pursued for the right shoulder. Dr. Slomka opined that appellant could work eight hours a day with permanent restrictions. Dr. Slomka did not find any continuing disability with respect to appellant's accepted thoracic and sacroiliac sprains.

Progress notes concerning appellant's emotional condition were continually submitted.

By decision dated April 10, 2002, the Office denied appellant's claim for a work-related emotional condition on the grounds that the evidence failed to establish that her emotional condition was due to a compensable factor of employment.<sup>2</sup> The Office denied her claim for wage loss for total disability commencing July 18, 2001, finding that the weight of the medical opinion evidence rested with the opinion of Dr. Rao, the Office referral physician, who found that there was no evidence that the work stoppage was causally related to her August 26, 2000 work injury and appellant was not totally disabled from returning to work.<sup>3</sup>

On April 19, 2002 appellant, through her attorney, requested an oral hearing. An oral hearing was held on December 4, 2002. Evidence in the form of witness statements, progress notes and statements by the employing establishment dated January 6 and 9, 2003 denying appellant's allegations were submitted. No new medical reports with regard to appellant's accepted orthopedic conditions were submitted. By decision dated March 3, 2003, the Office hearing representative affirmed the April 10, 2002 decision, finding that appellant had not met her burden of proof in establishing a causal relationship between her emotional condition and her disability to the accepted conditions resulting from the August 26, 2000 work injury.

In this case, the Office accepted the conditions of sprain sacroiliac region, sprain thoracic region and bilateral rotator cuff tear as resulting from appellant's injury of August 26, 2000. For appellant to receive compensation for her emotional condition and for her claimed disability beginning July 18, 2001, she must establish either that the disability for which she claims compensation is causally related to the accepted injury or that her emotional condition resulted from compensable work factors and gave rise to her disability.

The Board finds that appellant has not met her burden of proof to establish that she had a recurrence of disability on July 18, 2001 causally related to her August 26, 2000 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative

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<sup>2</sup> The Office specifically found that there was no evidence of record to support appellant's assertion that she was treated unfairly, verbally attacked and discriminated against nor any evidence to establish that the employing establishment erred or acted abusively.

<sup>3</sup> The Office noted that appellant's entitlement to medical treatment for her work-related bilateral shoulder condition was not affected.

evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>4</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>5</sup>

The Office found that the weight of the evidence was represented by the January 10, 2002 report from the second opinion psychiatrist, Dr. Rao. He specifically opined that appellant's emotional condition was not causally related to her August 26, 2000 work injury and she was capable of returning to work at the employing establishment. Dr. Rao's report was based on an accurate history of injury, her medical record as well as a statement of accepted facts, and provided a well-rationalized comprehensive explanation advising that appellant could perform her job at the employing establishment and her emotional condition was not causally related to her August 26, 2000 work injury. Although Dr. Afield's medical reports state that appellant suffered from "job-related stress" and was totally disabled due to her emotional condition, he did not relate appellant's work stoppage or emotional condition to the August 26, 2000 work injury or to compensable factors of her federal employment. The Board notes that appellant was working in a modified rural carrier position prior to her work stoppage and, in his January 17, 2002 medical report, Dr. Slomka, a second opinion orthopedist, opined that appellant was capable of working eight hours a day with permanent restrictions. The Board notes that, although the Office subsequently accepted a partial thickness tear of the rotator cuff on the left side, based on Dr. Slomka's report, there is no medical evidence that appellant's accepted physical condition caused her to stop work as of July 18, 2001. Appellant has failed to discharge her burden of proof to establish a recurrence of disability.

The Board further finds that the case is not in posture for decision concerning whether appellant's emotional condition is due to a compensable factor of employment.

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 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.<sup>6</sup> 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.<sup>7</sup>

As a general rule, an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such

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<sup>4</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee.<sup>8</sup> However, the Board has also held that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with appellant.<sup>9</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup>

A claimant's own feeling or perception that a form of criticism or disagreement is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact abusive. This recognizes that a supervisor in general must be allowed to perform his or her duty and that, in the performance of such duties, employees will at times dislike actions taken. However, mere disagreement or dislike of a supervisor's management style or actions taken by the supervisor will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>11</sup>

The Board notes that appellant, in testimony before the Office hearing representative, alleged several "abusive" statements her supervisors made and she submitted evidence consisting, of statements from witnesses. The Office hearing representative, although noting such evidence, never made any findings of fact regarding whether the allegations were established compensable factors of employment. The Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>12</sup>

As the Office hearing representative failed to fully adjudicate such evidence which was properly before him and as the Office had previously made findings pertaining to appellant's emotional condition claim, the Board finds that the Office's failure to consider this evidence was improper. For this reason, the case will be remanded to the Office to enable it to properly consider all the relevant evidence pertaining to appellant's emotional condition claim. Following such further development as the Office deems necessary, it shall issue an appropriate *de novo* decision on the merits.

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<sup>8</sup> See *Michael L. Malone*, 46 ECAB 957 (1995); *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>9</sup> See *Elizabeth Pinero*, 46 ECAB 123 (1994).

<sup>10</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

<sup>11</sup> *Constance I. Galbreath*, 4 ECAB 401 (1998).

<sup>12</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

The decision of the Office of Workers' Compensation Programs dated March 3, 2003 is affirmed with regard to the recurrence of disability issue, and set aside with regard to the emotional condition claim and remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC  
July 6, 2004

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member