

On August 13, 2003 appellant, then a 48-year-old claims examiner, filed an occupational disease claim alleging that factors of her federal employment had aggravated her Sjogren's syndrome. She stated that when she first started her new position she experienced major stressors, such as witnessing the World Trade Center event and having an excessive volume of

work referencing the World Trade Center cases and Anthrax cases. Appellant further stated that she was relocated to various sections in the office within a three- to four-month time frame. She noted that September 11, 2001 was the date of injury and that she first realized the aggravation of her medical condition was caused by or contributed to her work factors on March 20, 2003. Appellant did not submit any information in support of her claim.

By letter dated August 22, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested that she submit additional medical and factual evidence supportive of her claim within 30 days. This included a comprehensive medical report from her treating physician which described her symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of treatment; and the physician's opinion with medical rationale on the cause of her conditions and how exposure or incidents in her federal employment contributed to or precipitated her current conditions.

In a September 16, 2003 statement, appellant advised that she used the computer, calculator and telephone on a daily basis to perform her job. She stated that when she started experiencing pain the employing establishment accommodated her physician's requests for a trackball to perform her job on the computer and a later request for a telephone headset. Appellant stated that she had experienced anxiety from watching the attack on the Twin Towers from the training room at work and anxiety from walking home from work on the day of the blackout.¹ With regard to the day of the blackout, she stated that she was walking from the fax machine at 4:10 p.m., when the lights suddenly went out. Appellant stated that they had to evacuate as they did on September 11, 2001 and it felt as if September 11, 2001 was reenacted, as no one knew what caused the blackout, how to get home, no transportation, etc. She stated that this was the second time she had to walk across the Manhattan Bridge to Brooklyn and the second time she had encountered a very stressful event.

In a December 16, 2002 letter, Dr. Bernadette Sheridan, a family physician, diagnosed a systemic Lupus Erythematosus flare up. She advised that appellant's condition had flared up over the last month and she was having difficulty with fine motor movements in the hands and gross motor movements in the shoulders. Dr. Sheridan requested that appellant be accommodated at her work environment with ergonomic tools such as a trackball mouse for her computer.

In a March 20, 2003 note, Dr. Peter D. Gorevic, a Board-certified internist, noted that appellant was being evaluated for certain diseases and that her current treatment of medications might limit her ability to function at work until her conditions come under better control. In an August 4, 2003 letter, he stated that she had been under his care since January 2003, for connective tissue disease and was found to have Primary Sjogren's syndrome, which had necessitated her taking sick leave from July 16 to 25, 2003 and which remained active. Dr. Gorevic noted that it was medically necessary to see appellant for the next four to six months or until her chronic medical complaints were under control. He advised that Sjogren's syndrome was a chronic condition for which, presently, there was no cure. Common complaints include dryness of the eyes and mouth, muscle weakness, inflammation of joints (arthritis), enlargement

¹ A blackout is mentioned but no date is provided by appellant as to where this blackout occurred.

of lymph nodes and chronic fatigue. Dr. Gorevic further advised that this condition could be significantly aggravated by stress and associated with chronic depression. He stated that appellant had asked him to minimize this factor in her workplace and had indicated that it should be possible to relocate her to an area with the least stress in order to minimize pain and relapses. An April 21, 2003 chart note, various laboratory testing, including a November 4, 2002 chest x-ray and a January 11, 2003 bilateral mammogram, a copy of a textbook and literature discussing Sjogren's syndrome, a March 7, 2003 physician's note advising that appellant underwent oral and maxillofacial surgery on that date, letters concerning her request for a reasonable accommodation, which essentially noted that the employing establishment would provide appellant with a written decision, a prescription note dated August 13, 2003 and copies of medical bills were also submitted.

In a September 27, 2003 letter, Cheri D. Cook, appellant's supervisor, advised that appellant answers telephones in the telephone bank no more than one three and a half-hour period every two weeks and averages about three return calls a day. She stated that on December 16, 2002 appellant submitted a report from her physician about being accommodated with ergonomic tools such as a trackball mouse for the computer and she had her trackball within a couple days of her request. Ms. Cook advised that appellant had never indicated to her that she was still having stress-related problems due to the World Trade Center event, she had not requested services from the Employee Assistance Program or had submitted any psychiatric reports. She stated that appellant's workload did not increase because of the World Trade Center claims. Appellant was a trainee at the time and was assigned cases based on the level of difficulty and the level of her experience. Ms. Cook further stated that, since the office is specialized, examiners are rotated in and out of the units so they can be exposed to all aspects of claims work. Appellant started in the initial adjudication unit and was there for approximately three months. She was then assigned to one of the two post-entitlement units and was there until October 2003, when she was reassigned to the other post-entitlement unit. Appellant was not rotated to another type of unit because it was felt that she was not ready to tackle the other type of work at that time. Ms. Cook stated that, while appellant was in two different post-entitlement units, she essentially did the same type of work for a year and a half. She further advised that the office had been refurnished and all claims examiners have brand new workstations that have been approved by an Office of the Assistant Secretary for Administration and Management safety and health manager.

By decision dated October 27, 2003, the Office denied appellant's claim for compensation. The Office found that the evidence of record was insufficient to support that an injury was sustained as alleged and that the work factors, events and incidents cited were either not substantiated in fact or were insufficiently detailed to relate them to assigned duties and to be considered compensable as occurring in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.² To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.³

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. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁴

ANALYSIS

In the present case, appellant alleged that factors of her federal employment had aggravated her Sjogren's syndrome. The Office found that the documentation and medical evidence she submitted were either not substantiated in fact or were insufficiently detailed to relate them to assigned duties and to be considered compensable as occurring in the performance of duty. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant alleged that she experienced anxiety from watching the attack on the Twin Towers from the training room at work. Although she alleged that she experienced anxiety from watching the World Trade Center event, appellant has not provided any corroborating evidence, such as witness statements to establish her whereabouts on the day in question; or medical reports concerning her reaction to the World Trade Center event. A claimant must support his or her allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.⁵

Appellant indicated that she experienced anxiety on the day of the blackout when she had to walk across the Manhattan Bridge to Brooklyn, but provided no details or medical reports concerning her reaction to blackout other than mentioning that the lights went out, that it felt like September 11, 2001 was reenacted and that she had to walk home as there was no transportation available. The fear or possibility of injury is not compensable.⁶ Moreover, as a general rule, off-

² Gary J. Watling, 52 ECAB 278 (2001); Kathryn A. Tuel-Gillem, 52 ECAB 451 (2001).

³ See Gary J. Watling, *supra* note 2.

⁴ Dennis J. Balough, 52 ECAB 232 (2001); Felix Flecha, 52 ECAB 268 (2001).

⁵ Roger Williams, 52 ECAB 468 (2001).

⁶ See Carlos A Marrero, 50 ECAB 117 (1998); Mary A. Geary, 43 ECAB 300 (1991).

premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, are not compensable as they do not arise out of and in the course of employment, but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers.⁷ Thus, while appellant might have been frustrated by the inconvenience of having to walk home during the blackout, the journey home would have been part of the nonemployment hazard of the journey itself, which was shared by all travelers that day and any injury or anxiety appellant would have sustained would not have arisen out of or in the course of her federal employment.⁸

Accordingly, appellant has not established a compensable factor of employment under the Act, with respect to her claims of anxiety due to either the World Trade Center event or the blackout.

Appellant's allegations that she had an excessive volume of work dealing with World Trade Center and Anthrax cases and that she was relocated to various sections in the workplace within a three- to four-month time frame relate to her disagreement with the work offered her. The assignment of work is an administrative or personnel matter of the employing establishment and not the duty of the employee.⁹ As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰

With regard to the type of cases appellant was assigned, the employing establishment advised that she was a trainee at the time and was assigned cases based on the level of difficulty and experience. The employing establishment indicated that appellant's workload did not increase because of the World Trade Center claims. Although she may have been assigned more cases dealing with the World Trade Center and Anthrax than she would have liked, there is no evidence that the employing establishment erred or acted abusively in assigning such cases to appellant. Thus, appellant has not established a compensable employment factor.

With regard to the section to which appellant was assigned, the employing establishment advised that all examiners were rotated in and out of the units. She started in the initial adjudication unit and, after three months was assigned to the post-entitlement unit, which had two sections. The employing establishment indicated that appellant performed post-entitlement functions for a year and a half. An employee's complaints over the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of the

⁷ *Randi H. Goldin*, 47 ECAB 708 (1996).

⁸ *See Michael K. Gallagher*, 48 ECAB 610 (1997).

⁹ *Janet D. Yates*, 49 ECAB 240, 244 (1998).

¹⁰ *Martha L. Watson*, 46 ECAB 407 (1995).

Act.¹¹ There is no evidence that the employing establishment has erred or acted abusively in either assigning appellant to various sections or keeping her in the post-entitlement unit for a year and a half. Thus, she has not established a compensable employment factor.

Although the medical evidence supports that appellant has Sjorgrens syndrome, a condition which could be significantly aggravated by stress and associated with chronic depression, there is no indication that her medical condition was aggravated by any employment factors. In his August 4, 2003 letter, Dr. Gorevic noted that appellant had asked him to address the need to adjust her work situation to minimize stress in the workplace. He noted that she had indicated that it would be possible to relocate her to an area with the least stress. Dr. Gorevic merely reiterated appellant's request for a change in position, he did not offer any opinion on her work situation or cite any specific work factors or events which he believed would aggravate her medical condition. As noted above, appellant has not established a compensable factor with regard to the section in which she was currently assigned.

CONCLUSION

Appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 31, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Marguerite J. Toland*, 52 ECAB 294 (2001).