

**United States Department of Labor
Employees' Compensation Appeals Board**

S.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 09-21
Issued: March 9, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 1, 2008 appellant filed a timely appeal from a September 9, 2008 merit decision of the Office of Workers' Compensation Programs denying her emotional condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On September 28, 2006 appellant, then a 46-year-old distribution operations manager, filed an occupational disease claim alleging that working long hours without days off and working "revolving shifts in a high volume fast paced facility" aggravated her angioedema, hypertension, gastric ulcers, anemia, diabetes, depression and kidney disease. She stopped work on August 23, 2006 and did not return. In a statement accompanying her claim, appellant related

that she felt ill when she arrived at the airport after a business trip. Her attending physician informed her that she had experienced a near stroke or heart attack. The employing establishment provided the hours appellant worked from January 14 through April 21, 2006.

In a form report dated September 25, 2006, Dr. Ramon A. Cruz, Board-certified in family practice, diagnosed hypertension, angioedema and fatigue. He checked “yes” that the condition was related to employment because of stress and long workdays. In an accompanying narrative report of the same date, Dr. Cruz related, “[Appellant] has developed significant illnesses which are directly attributed to her very long working hours and stress with work.”

In a report dated October 11, 2006, Dr. Cruz diagnosed angioedema and stated that it was a “condition that is caused from high levels of stress -- this can come from long hours of work, working several days in a row with no time off. This causes swelling of the face and throat.” He also diagnosed anemia related to abnormal menstrual cycles caused by high levels of work stress and noted that appellant required an emergency hysterectomy and a blood transfusion. Dr. Cruz also diagnosed hypertension exacerbated by work stress, diabetes, gastric ulcers due to stress, kidney disease, leg weakness, joint pain and depression due to her numerous physical conditions.¹

In a memorandum of interview dated November 20, 2006, a manager of the employing establishment related that appellant worked an unusual schedule as she had to be present during a portion of every tour. He related that she experienced stress because she had transferred from a facility with less volume. In a memorandum of interview dated November 20, 2006, Paula Mack, a coworker, related that the distribution manager position was flexible and there was no “inherent expectation to work beyond the normal 40-hour week.” Appellant once worked 24 hours straight as the roads were hazardous. On November 20, 2006 Veronica Johnson, a coworker, indicated that all managers worked a substantial amount of hours and that appellant did not work more or less than other managers.²

In a statement received January 29, 2007, appellant generally attributed her condition to inadequate tools, support and enforcement to perform her work duties. In a January 31, 2007 response, the employing establishment noted that managers had to deal with issues such as lack of equipment and personnel.

By decision dated March 2, 2007, the Office denied appellant’s claim after finding that she did not establish any compensable employment factors. On March 11, 2007 appellant requested an oral hearing. Following a preliminary review, in a decision dated June 14, 2007 an Office hearing representative set aside the March 2, 2007 decision. She found that appellant had identified as compensable work factors that she once worked a 24-hour shift; that she worked up

¹ A hospital report dated June 20, 2006 listed diagnoses of syncope, blood loss anemia, hypertension, excessive menstruation, stomach ulcer and hyperlipidemia and noted that appellant underwent a subtotal abdominal hysterectomy.

² In a memorandum of interview dated November 7, 2006, Dr. Cruz diagnosed hypertension, gastric ulcers, anemia, fatigue, diabetes and depression. He asserted that appellant’s employment was “an exacerbating factor in her health problems, but not the sole, exclusive cause of the problems.” Dr. Cruz informed the investigator that she generally spoke about her work hours but “did not state specific hours or time frames worked.”

to 12 days consecutively during the period January through March 2006; that she worked 49 to 60 hours per week January through March 2006 and that she performed in a demanding position with myriad responsibilities. The hearing representative instructed the Office to prepare a statement of accepted facts and refer appellant for a second opinion examination.

On July 25, 2007 the Office referred appellant, together with a statement of accepted facts, to Dr. Tarakumar Reddy, a Board-certified psychiatrist, for a second opinion examination.³ In a report dated August 15, 2007, Dr. Reddy diagnosed a single episode of severe major depression and panic disorder without agoraphobia. He found that if appellant volunteered to do the work described in the factors of employment then her condition was her own responsibility but if she had to do the work then he “could understand that those factors contributed to her emotional and psychiatric condition.”

By decision dated October 26, 2007, the Office denied appellant’s claim after finding that the medical evidence did not establish that her emotional condition was causally related to the accepted compensable work factors. On October 30, 2007 appellant requested an oral hearing. In a decision dated February 5, 2008, following a preliminary record review, an Office hearing representative set aside the October 26, 2007 decision. She found that Dr. Reddy failed to sufficiently address the issue of the cause of appellant’s condition and interpreted the statement of accepted facts as providing that she might have volunteered to perform extra work. The hearing representative remanded the case for the Office to obtain clarification from Dr. Reddy regarding whether compensable work factors caused or aggravated appellant’s depression.

In a supplemental report dated March 31, 2008, Dr. Reddy opined that appellant’s work hours and increased responsibility “may have contributed to [her] emotional distress.” He asserted that marital problems, physical conditions and unemployment also contributed to her condition.

On June 17, 2008 the Office referred appellant to Dr. Melvin L. Goldin, a Board-certified psychiatrist, for a second opinion examination. In a report dated July 11, 2008, Dr. Goldin reviewed the history of injury and the statement of accepted facts (SOAF). He diagnosed a mild anxiety depressive disorder and noted that appellant had “impairment in digit recall grossly beyond that which might be consistent with her academic history or work history and her performance in the rest of the interview.” Dr. Goldin indicated that she reported “homicidal ideation directed towards her former supervisor.” In response to the question of whether appellant’s condition was caused or aggravated by the factors described in the statement of accepted facts, he stated:

“While such difficulties are unlikely to have been caused by the various stressors as reported in the SOAF, her history and examination are inconsistent and therefore will be assumed inaccurate. There is a suggestion, however, in view of her purported referential ideation about her supervisor, that it was aggravated, precipitated or accelerated by the factors of employment, even if only those in the SOAF were considered as opposed to those she reports.”

³ On July 23, 2007 Dr. Praveen Moolamalla, diagnosed panic attacks, severe depression and anxiety. He opined that she was “unable to work right not to the best of her abilities.”

When asked to identify the factors contributing to an emotional condition, he related:

“The long hours described in the SOAF, combined with [appellant’s] apparent self-esteem tightly bound up in high performance at work and previously excellent work, seems to have left her in a situation of failing her own high standards; hence, aggravation, precipitation or acceleration ‘what was probably an inborn diathesis towards anxiety -- depression,’ even in the fact of internally inconsistent history and examination.”

Dr. Goldin indicated that he was unable to ascertain her level of disability due to inconsistencies on examination.

By decision dated September 9, 2008, the Office denied appellant’s claim on the grounds that the medical evidence did not establish that her emotional condition was causally related to compensable work factors.

LEGAL PRECEDENT

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 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.⁴ 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.⁵

In cases involving emotional conditions, 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.⁶ 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.⁷

⁴ 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Id.*

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter.⁸ While the claimant has the responsibility to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁹ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹⁰

ANALYSIS

Appellant attributed her depression and aggravation of angioedema, hypertension, gastric ulcers, anemia, diabetes, and kidney disease to working long hours, working consecutive days without time off and working in a high volume facility. Where a claimed disability results from an employee's emotional reaction to her regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Act.¹¹ As appellant attributed her condition to her usual employment duties and the requirements of her employment, she has identified compensable employment factors.¹² The employing establishment confirmed that she worked extra hours from January through March 2006 and that she worked in a high volume facility with managerial responsibilities. The Office accepted as compensable employment factors that she once worked a 24-hour shift; that she worked up to 12 days consecutively during the period January through March 2006; that she worked 49 to 60 hours per week January through March 2006 and that she worked in a demanding position and had many responsibilities.

Appellant's burden of proof is not discharged by establishing compensable employment factors. She must also submit rationalized medical evidence establishing that her emotional condition or stress-related aggravation of a physical condition is causally related to the accepted employment factors.¹³ Appellant submitted medical evidence from Dr. Cruz, who opined that appellant's working long hours and the stress of her job aggravated her angioedema, hypertension, anemia and fatigue and resulted in depression. Dr. Cruz did not, however, sufficiently explain his conclusion and thus his opinion is insufficient to meet appellant's burden of proof.¹⁴

The Office referred appellant to Dr. Reddy for a second opinion examination. On August 15, 2007 he diagnosed a single episode of severe major depression and panic disorder

⁸ *Vanessa Young*, 55 ECAB 575 (2004).

⁹ *Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁰ *Melvin James*, 55 ECAB 406 (2004).

¹¹ *Robert Bartlett*, 51 ECAB 664 (2000); *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹² *Id.*

¹³ *Charles D. Gregory*, 57 ECAB 322 (2006).

¹⁴ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusions regarding causal relationship which is unsupported by medical rationale. *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

without agoraphobia. Dr. Reddy opined that if she chose to perform the work duties then her condition was not work related but that factors of employment may have contributed if she had to perform the work duties. The Office requested clarification from Dr. Reddy. In a March 31, 2008 response, he found that appellant's work duties and long hours might have contributed to her condition.

The Office properly found that Dr. Reddy's report was equivocal and referred appellant to Dr. Goldin for a second opinion examination. It is well established that proceedings under the Act are not adversarial in nature and that, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁵ Once the Office undertakes development of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.¹⁶ The Board finds that the opinion of Dr. Goldin, the Office referral physician, is speculative and insufficiently rationalized to resolve the medical issue presented. In a report dated July 11, 2008, Dr. Goldin diagnosed a mild anxiety depressive disorder. He noted that appellant's performance in his evaluation was inconsistent with her academic and work history. Dr. Goldin found that it was unlikely that her condition was caused or aggravated by the factors listed in the statement of accepted facts. He explained that there was a "suggestion, however, in view of her purported referential ideation about her supervisor, that it was aggravated, precipitated or accelerated by the factors of employment, even if only those in the SOAF were considered as opposed to those she reports." When asked to identify the factors contributing to her emotional condition, Dr. Goldin opined that the long hours that she worked combined with her need for excellent work performance "seems to have left her in a situation of failing her own high standards; hence, aggravation, precipitation or acceleration 'what was probably an inborn diathesis towards anxiety -- depression,' even in the fact of internally inconsistent history and examination." He thus appeared to implicate the compensable factors of employment at least in part as a cause of appellant's emotional condition. Dr. Goldin's opinion, however, is unclear and equivocal in nature and thus insufficient to resolve the pertinent issue developed by the Office of whether compensable factors of employment caused or contributed to any emotional condition or to any stress-related physical conditions.¹⁷ On remand, the Office should obtain a rationalized medical opinion addressing whether she sustained an emotional condition or stress-related aggravation of a physical condition caused or aggravated by the compensable employment factors. Following such further development as the Office deems necessary, it should issue a *de novo* decision.

CONCLUSION

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

¹⁵ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹⁶ *See Melvin James*, *supra* note 10.

¹⁷ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 710 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 9, 2008 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 9, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board