

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PENELOPE L. MORRIS and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, San Diego, CA

*Docket No. 98-279; Submitted on the Record;
Issued August 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has established that her dyspepsia is causally related to factors of her employment.

On July 22, 1996 appellant filed a claim for a developing stomach ulcer which she attributed to stress in attempting to improve the performance of an unacceptable subordinate employee. In response to inquiries from the Office of Workers' Compensation Programs, appellant submitted two statements describing the factors to which she attributed her condition. Appellant submitted a report on an Office form dated September 6, 1996 from Dr. Joel E. Everson, a Board-certified internist. He set forth a history of "epigastric abdominal pain when exposed to persistent work-related conflict," diagnosed dyspepsia¹ and indicated, by checking a box on the form, that this condition was caused or aggravated by an employment activity.

The Office referred appellant and a statement of accepted facts to Dr. Jamshid Tamiry, a Board-certified internist and Dr. Gary Hudak, a Board-certified psychiatrist, for a second opinion on her condition and its relation to compensable factors of her employment, as set forth in its statement of accepted facts. In a report dated April 28, 1997, Dr. Tamiry stated that a diagnosis of peptic ulcer disease was not established and that "a diagnosis of dyspepsia was more consistent with her complaints and could be the result of an aggravation by stressors she perceived in the workplace." He deferred to Dr. Hudak for an opinion on the issue of stress and its relation to appellant's employment. In a report dated May 1, 1997, Dr. Hudak diagnosed "adjustment

¹ *Dorland's Illustrated Medical Dictionary*, (25th ed. 1974) defines dyspepsia as: "impairment of the power or function of digestion; usually applied to epigastric discomfort following meals."

disorder with depressed and anxious mood, resolved” and “various somatic complaints, including headaches and gastrointestinal distress, secondary to the anxiety component of her adjustment disorder.” He concluded:

“The compensable incident about dealing with her subordinate is a normal stressor in her job, in that her position as a supervisor entails the handling of performance appraisals. When performance appraisals are not to the advantage of the employee, resistance is a naturally expected reaction or consequence. I do not believe that this stressor alone could have caused psychiatric disability. Furthermore, this employee was eventually taken out of her responsibility and work area.

“The noncompensable factors, on the other hand, are significant to precipitate a psychiatric condition, as they involve circumstances that are not expected to happen in a normal work environment. Filing a grievance suit against a superior, retaining an attorney to address the elimination of her job and her grievance, are unexpected incidents in her normal job situation and these would normally cause stress and anxiety.

“Therefore, I believe that the patient’s stress reaction arose from the noncompensable factors of employment, due to the significance of these stressors.

“Dr. Jamshid Tamiry, however, did not find any evidence of abdominal abnormalities or other objective findings from a medical standpoint at this time. He did indicate that the patient’s medical history is more consistent with dyspepsia which is related to stress and I believe that the noncompensable factors would be more sufficient to precipitate this somatic complaint.”

By decision dated July 7, 1997, the Office found: “The evidence of record fails to establish that the claimant’s psychiatric condition was causally related to factors of employment that occurred within the performance of duty.”

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.²

The Board finds that appellant has not established that her dyspepsia is causally related to factors of her employment.

² *Bruce E. Martin*, 35 ECAB 1090 (1984).

The September 6, 1996 report from Dr. Everson is insufficient to meet appellant's burden of proof, because it provides no rationale for its support of causal relation³ and because it does not contain a history of specific incidents and conditions that allegedly caused appellant's dyspepsia.⁴

In its March 26, 1997 statement of accepted facts, the Office properly separated the compensable and noncompensable incidents and conditions to which appellant attributed her condition, finding appellant's difficulties with a subordinate employee to have occurred within the performance of duty as a supervisor⁵ and the abolition of appellant's job, her transfer and her filing of grievances and retention of an attorney as noncompensable factors.⁶ The Office then referred appellant to a Board-certified internist and a Board-certified psychiatrist, who negated causal relation between the compensable employment factors and appellant's condition of dyspepsia. While Dr. Hudak may have improperly based his opinion on the lack of unusual stress in appellant's regular duties,⁷ the Office is not required to disprove appellant's claim. So long as the Office properly determines that the evidence fails to establish the requisite causal relation, its obligation under the Act has been met.⁸

³ The Board has held that, without any explanation or rationale, the checking of a box on a form is insufficient to meet appellant's burden of proof. *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

⁴ *John H. Gassner*, 33 ECAB 1943 (1982).

⁵ *Ezra D. Long*, 46 ECAB 791 (1995).

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ The Federal Employees' Compensation Act does not require the showing of unusual exertion or stress in the employment as a prerequisite for compensability. The claim is compensable if it is established that the performance of regular duties did in fact precipitate or cause the injury claimed. *James Washington, Jr.*, 42 ECAB 187 (1990).

⁸ *Meyer Klein*, 27 ECAB 304 (1976).

The decision of the Office of Workers' Compensation Programs dated July 7, 1997 is affirmed.

Dated, Washington, D.C.
August 17, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member