

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YVONNE M. LOO and DEPARTMENT OF THE NAVY,
PEARL HARBOR NAVAL SHIPYARD, Honolulu, HI

*Docket No. 97-2886; Submitted on the Record;
Issued September 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained tension headaches and panic attacks causally related to factors of her employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established that she sustained an employment-related injury.

On September 24, 1996 appellant, then a 42-year-old electrical surveyor, filed a traumatic injury claim (Form CA-1) alleging that tension headaches and panic attacks were caused by a verbal confrontation on September 13, 1996 with a coworker regarding work assignments. She stopped work on September 18, 1996 and returned to full duty on October 8, 1996. In an attached statement, she related the circumstances of the confrontation in which she was verbally assaulted by Oscar Toves who yelled, shook his arm and pointed his finger at her. She stated that she did not feel safe in his presence. A coworker, T. Rementer, provided a statement dated September 16, 1996, in which he substantiated appellant's allegation that Mr. Toves yelled and vigorously pointed his finger at appellant. By letter dated November 20, 1996, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support her claim which was to include an opinion from her physician regarding the relationship between her diagnosed condition and employment activity. She was given 30 days in which to respond. In a December 10, 1996 decision, the Office found the September 13, 1996 incident was established but denied that appellant sustained an injury because she failed to submit medical evidence in support of her claim.¹ Appellant requested reconsideration and submitted medical evidence. By decision dated August 8, 1997, the Office denied modification of its prior decision on the grounds that the medical evidence submitted was insufficient to establish causal relationship. The instant appeal follows.

¹ The Board notes that while the Office abused its discretion in not allowing appellant the full 30 days in which to submit her evidence, this error is harmless as the Office subsequently considered all evidence submitted and issued a merit decision dated August 8, 1997, as discussed *infra*.

The relevant medical evidence includes reports from appellant's treating family practitioner, Dr. Michael Silverberg, who first saw her on September 21, 1996 and diagnosed panic disorder, tension headaches and situational depression. He reported the history of the altercation as provided by appellant and noted that the coworker seemed to trigger the panic attacks that were occurring two to five times daily. Dr. Silverberg continued to submit reports and, by report dated October 7, 1996, noted that appellant planned to return to work on October 8, 1996 in "another building away from the man who has triggered this problem."

To establish that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

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.⁴ 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.⁵ Nonetheless, proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter.

The Board finds that, while the September 13, 1996 employment incident occurred, appellant has not established that the employment incident resulted in an injury, as the record does not contain rationalized medical evidence that relates appellant's condition to the employment incident. While Dr. Silverberg diagnosed panic disorder, tension headaches and situational depression, he did not provide an explanation of how the September 13, 1996 incident caused these conditions other than to state that the coworker "seems to be triggering her panic attacks." This explanation is insufficient to meet appellant's burden of proof.⁶

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Victor J. Woodhams*, *supra* note 3.

The decision of the Office of Workers' Compensation Programs dated August 8, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 3, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member