

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHELLE J. DRUM and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 99-2355; Submitted on the Record;
Issued December 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

This is appellant's second appeal before the Board on this issue. In a prior appeal the Board affirmed a July 11, 1996 decision, of an Office of Workers' Compensation Programs' hearing representative which had determined that the medical evidence of record was insufficient to support that appellant's diagnosed emotional conditions were causally related to the compensable employment factor that she had implicated.¹ The facts and circumstances of this case are thoroughly detailed in the hearing representative's decision, which was affirmed by the Board.

By letter dated June 1, 1999, appellant through her representative, requested reconsideration of the July 11, 1996 Office decision.

In support appellant submitted an April 15, 1999 letter, written by Maria E. Chimbdis, a clinical social worker, to appellant's representative, which was cosigned by Daniel E. Schweid, a Board-certified psychiatrist, which stated:

"[Appellant] has a history of job instability with only short-term success. She seems to be able to get jobs fairly easily, but for one reason or another, she tends to lose the jobs. Usually there is some sort of interpersonal stress or misunderstanding and she feels either harassed or discriminated against. This is not a paranoid disorder, but there is much distrust.

"Her complaints about the [employing establishment] may have some merit because she believes she was requested to do another employee's work in

¹ Docket No. 96-2621 (issued July 22, 1998).

addition to her own because others were either lazy or unwilling. The theme of 'unfairness' is equally applicable to the [employing establishment] job, but the stressors may have been real in this case. She becomes more depressed and the somatoform aspects of her 'fibromyalgia' condition were intensified. She has continued to dwell on the problem with the [employing establishment] obsessively, and this has hampered her adjustments in other situations and may have prevented her from returning to the [employing establishment] when she thought she could get another job at the [employing establishment].

"There is little doubt that she experienced much stress which resulted in the decompensation of her ability to adapt to the working conditions that were imposed on her at the [employing establishment]."

By decision dated June 21, 1999, the Office denied appellant's request for modification of the July 11, 1996 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that the letter to appellant's representative had diminished probative value as it was merely a narrative written by a nonphysician which contained no evidence that any participation, examination, evaluation or testing by a physician had been accomplished in support of the letter's observations and conclusions.

The Board finds that appellant has failed to establish that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

To establish her claim that she has 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

Generally speaking, when an employee experiences an emotional reaction to his regular or specially assigned employment duties or to a requirement imposed by his employment or has fear or anxiety regarding his ability to carry out his duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the

² See *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *Id.*

coverage of the Federal Employees' Compensation Act.⁴ Conversely, if the employee's emotional reaction stems from employment matters which are not related to his regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.⁵ Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."⁶

When working conditions are alleged as factors in causing 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.⁷ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁸ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.⁹

In the instant case, appellant implicated a compensable factor of employment in the development of her emotional condition, that of overwork. However, the medical evidence of record is insufficient to establish that she developed any emotional condition due to this accepted employment factor.

In support of her request for reconsideration, appellant submitted a narrative from a clinical social worker. The Board has held that a social worker with a degree in psychology is not considered to be a "physician" under the Act and that a report from such, therefore, has no probative value on the issue of causal relation.¹⁰ The report submitted was cosigned by a physician, but the nature and content of the letter makes it clear that the signatory physician did not interview, examine, evaluate nor test appellant, but merely cosigned a completed letter after the fact. This fact diminishes the probative value of the report.¹¹

⁴ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁵ *Id.*

⁶ *See Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

⁷ *See Barbara Bush*, 38 ECAB 710 (1987).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁹ *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁰ *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

¹¹ *See generally Dean E. Pierce*, 40 ECAB 1249 (1989) (the medical opinion of a physician who has had the opportunity to personally examine a claimant has greater probative value than a physician who has not performed a

The Board also notes that the report was based upon a factual history not substantiated by the case record. The social worker opined that appellant's complaints regarding the employing establishment "may have some merit" because appellant believed that she had to do the work of others who were lazy or unwilling and that "unfairness" was applicable to the job, such that the stressors "may have been real." The record, however, contains no factual evidence to support these contentions. The Board has frequently explained that mere perceptions are not compensable and that medical opinions based upon an inaccurate factual or medical history are of diminished probative value.¹² Further, the Board notes that this letter on causal relation is speculative, in that her complaints "may have some merit," stressors "may have been real," and this "may have prevented" appellant from returning to work and notes that opinions on causal relation cannot be speculative or equivocal, but must be one of reasonable medical certainty.¹³

The letter also links appellant's disability for work to intensified somatoform aspects of her fibromyalgia, but the Board notes that no such fibromyalgia condition has been accepted by the Office as being employment related. Consequently, disability due to its exacerbation would not be compensable under the Act.

Additionally, the Board notes that nowhere in the letter does the author attribute appellant's emotional conditions to the compensable employment factor of overwork. As this letter does not support that appellant developed a disabling emotional condition, causally related to the employment factor which has been identified as being compensable, it is irrelevant to the case.

As no further probative and rationalized medical opinion evidence has been presented, appellant has failed to meet her burden of proof to establish her claim.

personal examination).

¹² See generally *Ruth C. Borden*, 43 ECAB 146 (1991); see also *Billie C. Rae*, 43 ECAB 192 (1991).

¹³ See *Norman E. Underwood*, 43 ECAB 719 (1992).

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 21, 1999 is hereby affirmed.

Dated, Washington, DC
December 13, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member