

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARCIA LEAVERTON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Muskogee, OK

*Docket No. 01-736; Submitted on the Record;
Issued February 1, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition, leading to hypertension, stroke and acute ischemia syndrome, in the performance of duty as alleged.

On May 31, 2000 appellant, then a 46-year-old licensed practical nurse, filed a notice alleging that she had sustained a maladjustment disorder, stress, hypertension, a January 12, 2000 cerebrovascular accident (stroke) and acute ischemia syndrome in the performance of duty on or before January 12, 2000. She attributed these conditions to being forced to work outside of medical restrictions related to an accepted May 1996 right shoulder injury,¹ to not being provided with official job descriptions for her light-duty assignments,² and to a general pattern of harassment by her supervisors.³ Appellant stopped work on June 6, 2000 and did not return.

The Office initially denied appellant's claim in a July 12, 2000 decision on the grounds that fact of injury was not established. Appellant requested reconsideration in a July 18, 2000 letter. By decision dated July 25, 2000, the Office modified its July 12, 2000 decision, finding that appellant had established as factual the employment factor of not being provided a position description. However, the Office concluded that this was an administrative matter and therefore not compensable. Appellant again requested reconsideration in an August 21, 2000 letter. By

¹ Appellant alleged that she was forced to do work outside of her medical restrictions, causing emotional stress leading to hypertension, stroke and ischemia. She particularly alleged that the AB-4 medical clerk position forced her to use her right upper extremity in contravention of her work limitations.

² Appellant also alleged that February 2 and 3, 2000 meetings regarding the development and implementation of her light-duty assignment constituted harassment, in that the location of the meeting was changed, a union representative was called in and a secretary was rude to her. In a July 26, 2000 statement of accepted facts, the Office of Workers' Compensation Programs accepted that appellant had been given a position description not through official channels and it was the same as she told the employing establishment she could not perform in 1997.

³ The Office accepted claim No. 16-278546 for a May 1996 right shoulder injury, requiring surgery on December 20, 1996 and August 22, 1997. This claim is not before the Board on the present appeal.

decision dated October 16, 2000, the Office denied modification on the grounds that appellant submitted insufficient evidence to establish any compensable factors of employment.

The Board finds that the case is not in posture for a decision as appellant has alleged overwork as a compensable factor of employment.

An emotional condition arising from appellant's performance of day-to-day or specially assigned duties is compensable pursuant to the Federal Employees' Compensation Act.⁴ Thus, if an employee develops an emotional condition while trying to meet the requirements of a position, such emotional condition is generally compensable.⁵ The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.⁶ Appellants allegations relate, in part, to such potential compensable factors as overwork and a claimed inability to perform aspects of her light-duty assignment.⁷

Appellant specifically alleged that she was made to work beyond her medical restrictions in her assignments in March 1997, 1998 and 1999.

Prior to the May 1996 injury, appellant was assigned to the nursing service in a "medical clerk typing (ward secretary) position." Following her return to work in August 1996, appellant was temporarily detailed to "a medical clerk position" with medical restrictions prohibiting use of her right upper extremity for any activity. This detail was renewed on March 10, 1997.

Appellant submitted medical evidence substantiating that her assigned duties were outside of her medical restrictions in March 1997. In a March 28, 1997 report, Dr. Jonathan Spivack, an attending neurologist, noted that the employing establishment had not complied with his restrictions in appellant's medical clerk assignment. Dr. Spivack specified that appellant was "not, under any circumstances, to use her right arm for any type of work or movement." He repeated these restrictions in an April 7, 1997 report.⁸

Appellant also submitted sufficient factual and medical evidence to substantiate a period of overwork from November 26, 1997 through March 1998 due to a work detail and staffing shortages.

In a November 25, 1997 letter, Dr. Dala Jarolim, acting chief of staff, detailed appellant and other employees to perform chart audits, involving carrying files from room to room and other filing duties for a 90-day period.⁹

⁴ *Clara T. Norga*, 46 ECAB 473 (1995).

⁵ *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

⁶ *Diane C. Bernard*, 45 ECAB 223, 227 (1993); *Madge Price Derby*, 5 ECAB 283, 285 (1953).

⁷ *Cf. Lorraine E. Schroeder*, 44 ECAB 323 (1992); *Minnie L. Bryson*, 44 ECAB 713 (1993); *Dodge Osborne*, 44 ECAB 849 (1993).

⁸ In an August 8, 1997 report, Dr. Karl F. Sauer, an attending orthopedic surgeon, commented that as appellant had a poor surgical result, she could not perform any work with her right upper extremity.

⁹ A December 30, 1997 employing establishment memorandum noted that appellant had been "temporarily

In a March 11, 1998 memorandum, Venice Frazier, an employing establishment supervisor, contacted Freida Nan Haynes, a senior nursing supervisor, as she was concerned about appellant's duties being outside of her medical limitations. Ms. Frazier observed that "[f]ollowing [appellant's] stint on AB-4 on Monday she was experiencing such muscle spasms that had her literally in tears.... She has admissions and input that entails getting that information into the computer as well as the other necessary computer materials, as well as a folder full of social work information to input. What can we do so that she does not over tax her good arm?" Ms. Haynes replied by March 12, 1998 memorandum, explaining that "[w]e were in dire need for [appellant's] services Monday due to ward clerk call ins."

Appellant submitted evidence substantiating that the duties assigned to appellant due to staff shortages were in contravention of her medical restrictions and overwork. In a March 18, 1998 report, Dr. Daniel W. Carlisle, an attending orthopedic surgeon, noted that appellant "was forced by her employer to ... do more intensive activities with her right upper extremity," including "opening file drawers and removing doctor's orders from a clipboard which required the use of both upper extremities. She was near the point of tears by the time she finished these activities." Dr. Carlisle noted "her examination [was] remarkable for an exacerbation of her previous symptoms."

From March 31 through July 1998, appellant was detailed to a medical clerk position in the nursing service. On August 4, 1998 she was officially assigned to the medical clerk typing position, where she remained through approximately March 2000. Appellant submitted factual evidence from employing establishment supervisors substantiating that there were staff shortages in appellant's work unit that added to appellant's workload, forcing her to work outside of her prescribed restrictions.

In a March 16, 1999 memorandum from Ms. Frazier to Allen Colston, medical center director, it was noted that there was a "problem with admissions from the urgent care area" due to short staffing and no support. Ms. Frazier noted that appellant was on light duty "functioning as a clerk with extremely limited use of her right arm. Her physician has threatened to take her off work if she can[no]t abide by his plan of treatment for her.... [A]re we going to handicap her more by giving her duties that are not approved of by her physician?" Mr. Colston replied by March 17, 1999 memorandum that there were staffing shortages caused by compressed schedules which affected appellant's work unit.

Also, in a March 22, 1999 memorandum, Gloria McGee, a senior nursing supervisor, noted that appellant's work unit was short handed, and that additional personnel were needed to cover for admissions.

Appellant also submitted medical reports addressing overwork.

In a March 10, 1999 report, Dr. Carlisle noted appellant's frustration over the employing establishment being "unable to accommodate the work restrictions that I placed upon her," when staffing shortages caused an increase in job activities. "She reports she has been forced to use her right upper extremity daily for the past several months" Dr. Carlisle restricted her from

assigned to the position of 'modified' medical clerk to accommodate her medical limitations."

performing any activities with her right upper extremity. He permanently proscribed repetitive right upper extremity activities.

In an October 20, 1999 report, Dr. Carlisle noted that the employing establishment continued to insist “on making her use her right upper extremity for activities which exacerbates her symptoms. Dr. Carlisle diagnosed chronic impingement syndrome, right cubital tunnel syndrome and right de Quervains tenosynovitis. Dr. Carlisle permanently prohibited all activities with the right upper extremity.

In a November 4, 1999 report, Dr. Carlisle noted that appellant was “upset and tearful today because of her frustration with her workplace. Despite multiple attempts to convey permanent work restrictions to her employer, they have been unable to accommodate her.... She will require permanent restrictions with essentially no use of her right upper extremity other than for activities of daily living.”

The Board finds that appellant has submitted sufficient evidence to substantiate that she was made to work outside her medical restrictions for the above periods from March 1997 through 1999. As the Office did not find this a compensable factor of employment, the case will be remanded to the Office for full consideration of the medical record and any other development deemed necessary to determine the nature and extent of any conditions caused by overwork. Following such development, the Office shall issue an appropriate decision in the case.

Appellant also asserted that her emotional condition was due, in part, to not being provided with official position descriptions for light-duty assignment in March 2000. The record indicates that in January 2000, the employing establishment developed a light-duty medical clerk position description, approved by Dr. Carlisle on March 30, 2000. Appellant accepted the position on April 18, 2000. She continued to experience health problems which she attributed to the stress of not receiving an official position description.¹⁰ However, the Board has held that preparation of position descriptions is an administrative function of the employer.¹¹ Therefore, appellant’s reaction to this function and to February 2 and 3, 2000 meetings held to formulate the position description may be covered under the Act only upon a showing of error or abuse by the employing establishment. The Board finds that appellant has not shown such error or abuse in this case.

Appellant also alleged a pattern of harassment by her supervisors regarding the design and implementation of her light-duty assignments. To show harassment by a supervisor, appellant must establish a factual basis for her claim by supporting allegations with probative

¹⁰ In a series of reports from May 1 to August 6, 2000, Dr. Olakunle D. Ajanaku, an attending internist, noted treating appellant beginning in August 1998 for “severe medical problems,” including strokes, acute ischemia syndrome, tachycardia, maladjustment disorder and stress, “that have been deteriorating over a period of time. Dr. Ajanaku recommended that appellant “be considered for a less stressful environment to prevent further deterioration.” He noted that “this stress and subsequent medical and emotional problems are related to employment conditions.” Dr. Ajanaku held appellant off work through October 6, 2000. In a July 19, 2000 report, Dr. Dean P. Montgomery, an attending clinical psychologist, related appellant’s account of events that she had been “disabled on the job and ha[d] not received a reassignment or job description she can carry out.” Dr. Montgomery diagnosed “post-traumatic stress disorder” and held appellant off work for two months.

¹¹ *Georgia M. McCardle*, 48 ECAB 502 (1997); *Frederick D. Richardson*, 45 ECAB 454 (1994).

and reliable evidence.¹² Appellant has not presented the requisite evidence in this instance to corroborate her allegations of harassment.

The decisions of the Office of Workers' Compensation Programs dated October 16, July 25 and 12, 2000 are hereby set aside and the case remanded to the Office for further development consistent with this decision.¹³

Dated, Washington, DC
February 1, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² See *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

¹³ Accompanying her request for appeal, appellant submitted numerous new medical reports and other factual evidence. The Board cannot consider this new evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).