United States Department of Labor
Employees' Compensation Appeals Board

SIGGER P. NEAL, Appellant	)	
and	)	**Docket No. 03-1306**
	)	**Issued: February 24, 2004**
DEPARTMENT OF VETERANS AFFAIRS, WEST LOS ANGELES MEDICAL CENTER, Los Angeles, CA, Employer	)	

Appearances:
Sigger P. Neal, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 5, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated February 27, 2003, which denied her emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On August 7, 2002 appellant, then a 54-year-old medical clerk, filed a claim alleging that she sustained a post-traumatic stress disorder due to various unspecified incidents and conditions at work. Appellant submitted May 20 and July 30, 2002 reports in which Carolyn S. Marsee, a licensed clinical social worker, stated that she had post-traumatic stress disorder "as a result of

problems with a patient" in the geriatric ward. By letter dated September 18, 2002, the Office requested that appellant submit additional factual and medical evidence in support of her claim. In another letter dated September 18, 2002, the Office requested that the employing establishment provide additional factual evidence, including information about the patient in the geriatric ward mentioned in Ms. Marsee's reports.

Appellant submitted a December 10, 2002 statement addressing the incidents and conditions which she believed caused her emotional condition. Appellant alleged that on an unspecified date, a patient came up to her desk and asked about a smell in the area. She indicated that she advised the patient that some people had been painting and that, due to a request regarding the nature of her position, she told him that she was a medical clerk. Appellant alleged that the patient stated that he did not believe she was a medical clerk and told her that she should be placed in a backroom with a bag over her head. She indicated that the patient advised her that he would not leave until she told him the truth. Appellant left the area after telling the patient that she would call security.

Appellant alleged that her work area was unsafe due to the many patients who passed her and the fact that she was "the first target that anyone would see" when entering the building. She stated that her work area was poorly lit and that the position of her desk would cause her to be "trapped" behind the desk. Appellant alleged that she advised Bonnie Pierce, a supervisor, and Marlene Brewster, a union official, about her safety concerns. She claimed that the patient who told her to place a bag over her head continued to follow her at times; she alleged that the same patient also asked coworkers about her whereabouts and told them the details of the initial incident. Appellant asserted that she advised Ms. Pierce about this patient and about an earlier attack by another patient in the same unit who molested a coworker.[1] She told Ms. Pierce and Ms. Brewster about these matters, but that nobody listened to or and did anything to address her concerns. Appellant claimed that Ms. Brewster told her that there was no other workplace to send her and that she should not complain "as long as nothing happened" to her.[2]

Appellant submitted various intake forms and clinical progress notes dated between 1997 and 2002 which were prepared by Ms. Marsee and several other licensed clinical social workers with illegible signatures. Some of the notes contained a diagnosis of post-traumatic stress disorder and discussed appellant's concerns about a patient in the geriatric ward. It does not appear that any of these notes were prepared or approved by a physician. The record also contains August 10 and September 28, 1998 notes in which Dr. Sharon J. Jones, an attending Board-certified internist, discussed appellant's medication regimen, indicated that she had symptoms consistent with depression and noted that she had post-traumatic stress disorder secondary to an "on-the-job injury." In the September 28, 1998 note, Dr. Jones stated that appellant had a fear of being attached by patients if she returned to work. In several notes dated between August and November 2002, another physician with an illegible signature described

[1] Appellant indicated that the patient who molested a coworker was not transferred to another work area until a month has passed after the incident.

[2] She also indicated that on an unspecified date she had been attacked in the unit for nursing home care. She suggested that she was physically attacked but did not provide any further details.

appellant's course of treatment for emotional problems. In a note dated October 8, 2002, the physician indicated that appellant reported being attached by an elderly patient.

By letter dated January 22, 2003, the Office requested that the employing establishment provide additional information about the employment factors alleged in appellant's December 10, 2002 letter. The employing establishment was asked to address the incident with the patient in the geriatric ward, appellant's later encounters with the same patient and her general concerns about safety in the workplace.

By decision dated February 27, 2003, the Office denied appellant's emotional claim. The Office accepted as a compensable employment factor, the instance when a patient in the geriatric ward told appellant that she should be placed in a backroom with a bag over head. The Office did not accept any other employment factors alleged by appellant. The Office determined it was factual that appellant continued to be followed by the patient from the geriatric ward on later dates and that the patient described the initial incident to coworkers, but found that these incidents did not occur in the performance of duty. The Office also determined that it was factual that appellant told Ms. Pierce and Ms. Brewster about her safety concerns and about another coworker who told her she had been molested by a patient. It also found that Ms. Brewster told appellant that there was no other work place to send her and that she should not complain "as long as nothing happened" to her. However, the Office determined that these factually accepted incidents did not occur in the performance of duty. The Office also determined that it had not been accepted that appellant's work area was unsafe or that appellant informed Ms. Pierce and Ms. Brewster that she felt unsafe due to "patients coming and going." The Office noted that treatment reports of social workers did not constitute medical evidence and found that appellant did not submit medical evidence relating her claimed condition to the accepted employment factor. The Office did not mention any of the several physician notes submitted by appellant.[3]

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]

[3] The Office did not receive a response to its January 22, 2003 letter until after it issued its February 27, 2003 decision. However, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[6] This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[7]

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.[8] 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.[9]

ANALYSIS

In the present case, appellant alleged that he sustained an emotional condition as a result of a number of employment incidents and conditions, including an incident when a patient in the geriatric ward told her to place a bag over her head, her later encounters with the same patient, her general concerns about safety in the workplace, her concern about the safety implications of the fact a coworker told her she had been molested by a patient and her feeling that the employing establishment did not adequately respond to her various safety concerns. By decision dated February 27, 2003, the Office accepted only the occurrence of the initial incident with the patient in the geriatric ward, but denied the claim because there was no medical evidence relating appellant's claimed emotional condition to this one accepted incident.

The Board finds that the Office's February 27, 2003 decision does not contain adequate factual findings to support the denial of appellant's emotional condition claim. In determining whether a claimant has discharged her burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact.[10] Office procedure further specifies that a final decision of the Office must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."[11] These requirements are supported by Board

[6] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[7] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[8] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[9] *Id.*

[10] 5 U.S.C. § 8124(a) provides: "The [Office] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of the Office "shall contain findings of fact and a statement of reasons."

[11] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

precedent.[12] Moreover, as noted above, the Office is required in emotional condition claims to make findings of fact regarding which working conditions are deemed compensable factors of employment.

There are numerous aspects of the Office's findings which are incomplete or unexplained. The Office accepted the occurrence of the instance when a patient in the geriatric ward told appellant that she should be placed in a backroom with a bag over head and determined that it was factual that appellant continued to be followed by the patient from the geriatric ward on later dates and that the patient described the initial incident to coworkers. The Office accepted that the initial incident with the patient in the geriatric ward occurred in the performance of duty, but also found that the patient's later actions and encounters with appellant, although factually accepted, did not occur in the performance of duty.[13]

The Office also determined that it was factual that appellant constantly told Ms. Pierce, a supervisor, and Ms. Brewster, a union official, about her concerns regarding the safety of the workplace and about another coworker who told her she had been molested by a patient. It also found that it was factual that Ms. Brewster told appellant that there was no other workplace to send her and that she should not complain "as long as nothing happened" to her. The Office determined that these factually accepted incidents did not occur in the performance of duty, but did not provide any explanation whatsoever why they did not occur in the performance of duty. The employing establishment's handling of appellant's concerns about safety would be administrative or personnel functions of the employer and not duties of the employee.[14] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment.[15] The Office did not perform any analysis of whether the employing establishment's actions, including the alleged statements of Ms. Brewster, would constitute error or abuse in an administrative or personnel matter.

The Office also determined that it had not been accepted that appellant's work area was unsafe or that appellant informed Ms. Pierce and Ms. Brewster that she felt unsafe due to "patients coming and going." The Board has found that unsafe conditions in the workplace could possibly constitute an employment factor if established by the factual evidence.[16] Appellant made several specific claims about why she felt her workplace was unsafe, including

[12] *See James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

[13] The Office did not explain why it accepted the occurrence of the initial actions of the patient in the geriatric ward. The Board has recognized the compensability of verbal altercations or abuse in certain circumstances, but the Office did not adequate identify what particular actions were actually committed by the patient in the geriatric ward. *See Mary A. Sisneros*, 46 ECAB 155, 163-64 (1994); *David W. Shirey*, 42 ECAB 783, 795-96 (1991). It should be noted that the Office had not received any statement from the employing establishment prior to the issuance of the February 27, 2003 decision.

[14] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[15] *Id.*

[16] *See generally Peggy Ann Lightfoot*, 48 ECAB 490 (1997).

concerns about the location of her desk, the number of patients who passed it and the lighting of her workplace. It does not appear that the Office addressed any of these matters in determining that her workplace was unsafe. The rationale for this finding of the Office remains unclear. Moreover, it is uncertain why the Office determined that it was not factually accepted that appellant informed Ms. Pierce and Ms. Brewster that she felt unsafe due to "patients coming and going." Such a finding is inconsistent with the Office's other finding, noted above, that it was factual that appellant constantly told Ms. Pierce and Ms. Brewster about her concerns regarding the safety of the workplace and about another coworker who told her she had been molested by a patient.[17]

CONCLUSION

The Board finds that the case is not in posture regarding whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty. For the above-described reasons, the Office's February 27, 2003 decision did not contain adequate findings regarding the denial of appellant's emotional condition claim. On remand, the Office should perform a proper assessment of appellant's emotional condition claim and, after such development it deems necessary, should issue an appropriate decision regarding her claim.

[17] The Office also found that appellant did not submit medical evidence relating her claimed condition to the one accepted employment factor. Although the Office properly noted that the reports of social workers would not constitute medical evidence, it did not mention any of the several physician notes submitted by appellant. As causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician cannot be considered by the Board in adjudicating that issue. *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.

Issued: February 24, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member