

**United States Department of Labor
Employees' Compensation Appeals Board**

DOREEN ORTIZ, Appellant)

and)

**DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
Jacksonville, FL, Employer**)

**Docket No. 04-1035
Issued: July 27, 2004**

Appearances:
Doreen Ortiz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On March 10, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 18, 2004, finding that appellant had not established that she sustained an injury in the performance of her federal duties. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of her federal duties.

FACTUAL HISTORY

On March 3, 2003 appellant, then a 46-year-old claims examiner, filed a notice of traumatic injury alleging that on February 20, 2003 while on the telephone with a medical provider, the provider used profane and abusive language causing her to experience anxiety and

high blood pressure. In a February 25, 2003 statement, appellant wrote that on the date in question she received a call from a health care provider named Tracey, who was angry and argumentative. According to her the first thing Tracey said was that she had been on hold for 20 minutes and her tone was rude, belligerent and abrupt. According to appellant, when she informed Tracey that the records she was calling about were likely no longer available because they were over three years old, Tracey started cursing and denigrating everyone in the office. She stated that Tracey told her she was a worthless human being, a liar and a human piece of shit and that she wanted to speak to her supervisor. According to appellant, when she told Tracey that her supervisor would call her back, she responded "bullshit." Tracey went on to make condescending remarks using abusive names and language. Appellant wrote that this made her heart thump and her head was light. She then hung up and went to her supervisor's office who called Tracey back.

In a statement dated February 20, 2003, Julie Hill, appellant's supervisor, stated that appellant came to her office to report a telephone call in which profanity was used and that she interpreted it to be very offensive. She told Ms. Hill that she had tried to help the caller, but was unable to successfully do so and was called derogatory names, including those mentioned above. Ms. Hill added that she then called the provider, Tracey, to find out what happened and what the problem was. According to Ms. Hill, Tracey was argumentative, upset and extremely frustrated by the employing establishment's bill paying procedures. Tracey denied using profanity directed at appellant, but did use it toward the Office in general, including saying "this is crap" related to a denied bill.

After completing the call with Tracey, Ms. Hill told appellant that she was concerned about her history of negative interactions, when on the telephone with providers. According to Ms. Hill, appellant responded that, if a caller was rude to her, she would be rude back and she was not going to take that from providers. Appellant added that, when Tracey was rude to her, she put her on hold for awhile to let her cool down. But, when appellant returned to the call, she was even madder. According to Ms. Hill, appellant began to cry, shake and sweat profusely; but only after she raised the issue of the pattern of negative calls.

In a March 2, 2003 form report, Dr. Manuel Portalatin, family practitioner, stated that he treated appellant on February 20, 2003 and he found her anxious and with high blood pressure. He diagnosed an anxiety disorder, indicated with a check mark that her condition was caused by her employment and stated that appellant was totally disabled from February 20 to March 11, 2003.

In a March 24, 2003 statement, Jerrell Armont, a coworker, stated that he was working near appellant while she was taking a call and noticed that she was visibly upset and telling her caller to please calm down. He noted that her face was red and she was breathing hard. According to Mr. Armont, after terminating the call appellant had tears in her eyes and said that she was trying to help but the caller was cursing at her. In a March 2, 2003 letter, appellant stated that the direct cause of her elevated blood pressure, chest pain and dizziness was the conversation she had with a disgruntled provider while on telephone bank duty.

In an April 3, 2003 report, Dr. Portalatin stated that medical records from June 2002 to April 2, 2003 show that appellant has had persistent high blood pressure since February 20, 2003. He noted that, on two previous occasions, January 17 and 29, 2003, appellant had high blood pressure related to back pain. Dr. Portalatin diagnosed hypertension and added that the etiology of hypertension is unknown, but noted that there was a temporal relationship between the incident of February 20, 2003 and appellant's high blood pressure.

In an April 16, 2003 decision, the Office denied appellant's claim, finding that she failed to establish that she sustained an injury as she alleged noting inconsistencies related to the alleged telephone call.

Appellant requested an oral hearing that was later changed to a review of the written record. In a June 12, 2003 statement, Dr. Raul Soto Acosta, a psychiatrist, stated that he treated appellant on February 21, 2003 for stress and anxiety related to a job incident the previous day. He reported that she said that her anxiety was caused by a provider badgering her over the telephone; specifically she was cursed at and was talked to in a profane and extremely offensive way. Dr. Acosta diagnosed major depressive and anxiety disorder.

In an October 30, 2003 statement received by the Office July 28, 2003, appellant denied that she had a pattern of negative reactions to customers over the telephone. She noted that she has had three supervisors in five years and never had a problem. Appellant added, her current supervisor, Ms. Hill, was inexperienced and her attempt to diminish the offensive language and shift the blame to her was ridiculously equivocal. The record indicates that appellant filed a grievance against Ms. Hill for an unrelated reprimand and for making untrue statements, including those related to the February 20, 2003 incident in her charges. In a rebuttal to a comment made by Ms. Hill, appellant noted that she has had five previous supervisors and never had a problem. The record indicates that appellant did request and was denied, transfers four times in her five-year career at the employing establishment.

In a February 18, 2004 decision, the hearing representative denied appellant's claim, finding that the evidence supports that she was involved in a stressful telephone call on February 20, 2003 but the evidence does not establish that the call contained profanity and led to appellant's condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and the circumstances and her subsequent course of action. An employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.³

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. 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 Act.⁴

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 compensable 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 the claimant.⁵

ANALYSIS

In the present case, the Board finds that appellant has established that she had a telephone conversation with a provider, Tracey, who was angry and argumentative. Appellant's own statement that this telephone call occurred and was tense in nature is corroborated by other evidence, including the statement by Mr. Armont and appellant's supervisor. However, as her supervisor confronted the provider regarding the use of profanity during the call and this aspect of the call was disputed, the provider's use of profanity during appellant's telephone call is not established. The Office hearing representative also found that appellant was party to a stressful telephone call, but found that profanity was not established. As this tense and argumentative telephone call was a part of appellant's performance of her regular duties, she has established a compensable factor of employment.

However, the medical evidence is insufficient to establish that the telephone call caused appellant's medical condition and to miss approximately two weeks of work. The record indicates from appellant's own statements that she has been in her current position for five years,

³ *Joseph Albert Fournier*, 35 ECAB 1175, (1984).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

and has a history of responding aggressively to irate or offensive callers. She told Ms. Hill that if a caller is rude to her she will be rude in response and that she put the February 20, 2003 caller on hold for several minutes to let her calm down. In addition the medical evidence does not demonstrate that Dr. Portalatin had actual knowledge of what was said, nor does it provide medical reasoning why this particular call caused appellant's hypertension.

The Board further notes that, in his April 3, 2003 report, Dr. Portalatin stated that appellant had a history of hypertension, including recent episodes related to back pain. His report does not explain, given appellant's medical history and how she historically responds to irate callers, why he believes this episode of hypertension was not related to another factor, such as her back pain.

Dr. Portalatin did state that there was temporal relationship between appellant's hypertension and the telephone call February 20, 2003. But the Board has consistently stated that the fact that a condition arises while appellant was at work does not establish that work caused the condition.

Dr. Acosta's report is of diminished probative value because he simply reported what appellant said occurred without providing any explanation as to how the specific incident on February 20, 2003 resulted in her medical condition. Moreover, his report does not indicate that he was aware of her history of hypertension, including the recent episodes related to back pain.

CONCLUSION

The Board finds appellant has not met her burden of proof to establish her hypertension was causally related to an employment factor.

ORDER

IT IS HEREBY ORDERED THAT the decisions by the Office of Workers' Compensation Programs dated February 18, 2004 and April 16, 2003 are affirmed.

Issued: July 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member