

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

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SHIRLEY J. HIGGS, Appellant	)	
	)	
and	)	<b>Docket No. 04-1197</b>
	)	<b>Issued: April 13, 2005</b>
DEPARTMENT OF LABOR, OFFICE OF	)	
WORKERS' COMPENSATION PROGRAMS,	)	
Dallas, TX, Employer	)	

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*Appearances:* *Case Submitted on the Record*  
*Shirley J. Higgs, pro se*  
*Office of the Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On April 5, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated March 10, 2004. Under 20 C.F.R. §§ 501(c)(2) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether sustained an emotional condition in the performance of duty.

**FACTUAL HISTORY**

This is the second appeal before the Board. Appellant, a 42-year-old claims examiner, filed a claim for benefits based on an emotional condition on March 14, 2002 which appellant alleged that she first became aware was caused by factors of her employment on September 13, 2001. Appellant claimed that she was being worked outside of her restrictions, which resulted in her being unable to meet her standards.

Appellant submitted a statement dated March 12, 2002 in which she stated that she had been issued medical restrictions which entailed no more than 4 hours of typing and no lifting of greater than 25 pounds, with a 10-minute stretch break every hour. She stated:

“I returned to a ‘limited duty’/temporary job assignment, General Claims Examiner GS-12 on July 23, 2001. I encountered a lot of factors that have lead to a lack of sleep, hair loss, weight gain, loss of interest in daily activities and overall depression. The pain I was experiencing in my hands and wrist due to bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome caused me to continuously fall behind on my work.”

\* \* \*

“In August 2001, my manager Rita Gray presented me with my performance standards. Considering the fact that they were the same standards the other traditional claims examiners received (without any modifications) I knew I was being set up to fail.”

Appellant stated that there were several factors of employment, which caused or contributed to the development of her emotional condition and were therefore compensable:

- (1) The diligent effort she made trying to meet the quality and quantity of her position in accordance with her performance standards;
- (2) Due to her physical restrictions, she felt unable to perform her duties;
- (3) Management did not adjust her workload to conform with her medical restrictions when she returned to light duty on July 23, 2001;
- (4) She was working outside of her restrictions;
- (5) She was required to perform the same duties as any other claims examiner;
- (6) She had a tense relationship with management due to filing multiple grievances, unfair labor practice claims and Equal Employment Opportunity claims.

In a medical report dated September 13, 2001, Dr. Louis E. Deere, an osteopath, stated that psychiatric testing revealed significant elevations in the clinical scales, which predisposed her for several diagnoses. Dr. Deere advised that appellant was unhappy, withdrawn, moody and tense, with low energy, passivity and low self-esteem. He noted a decreased ability to concentrate which interfered with her decision-making in addition to feelings of hopelessness, agitation and confusion, which put her at risk for self-harm. Dr. Deere related that appellant heard voices, believed she was the target of a conspiracy and felt that people feared her temper. He diagnosed generalized anxiety disorder with multiple phobias, major depression and adjustment disorder and concluded that her accepted work injury (for carpal tunnel syndrome) produced the anxiety and depression.

The factual and medical evidence appellant submitted to support her claim included a light-duty job offer signed by appellant on July 23, 2001;<sup>1</sup> an August 13, 2001 claims examiner roster noting her assignment to a number block of a claims examiner, who had recently resigned and left a backlog of work; performance standards for the period April 1, 2001 to April 30, 2002; appellant's written comments regarding her performance standards; emails dated August 22 and 24, 2001, a work-capacity evaluation dated October 2, 2001 by Dr. Thomas C. Diliberti, an attending Board-certified orthopedic surgeon; a December 3, 2001 claims examiner roster showing that appellant was no longer on the list; a March 20, 2002 attending physician's report (Form CA-20) by Dr. Deere; and an August 20, 2001 memorandum from appellant to management, which discussed appellant's meeting with her supervisor to discuss her performance standards. In an email dated August 21, 2001, appellant advised management that she required assistance with working within her restrictions and in meeting her performance standards.

In the March 20, 2002 Form CA-20, Dr. Deere reiterated his diagnosis of major depression, generalized anxiety disorder with multiple phobias and mixed adjustment disorder and indicated that appellant was totally disabled due to these conditions during the period September 17, 2001 to the present. He attributed appellant's condition to working outside her medical restrictions and her workload. Dr. Deere also attributed her depression to being unable to meet her performance standards.

By letter dated March 26, 2002, the Office requested additional medical and factual information. Appellant submitted a summary of her November 19, 2001 grievance, an October 4, 2001 letter from Zee Massey, a union steward, an October 25, 2001 step 2 grievance response by E. Martin Walker, regional director, an August 2, 2001 email in which she asserted that she was having a difficult time with managing her workload within her restrictions; and copies of her work log detailing her workflow.

By decision dated May 7, 2002, the Office denied appellant's claim on the basis that she failed to establish any compensable factor of employment and thus fact of injury was not established. By letter dated May 8, 2002, appellant requested an oral hearing, which was held on October 24, 2002.

By decision dated December 9, 2002, an Office hearing representative affirmed the Office's May 7, 2002 decision denying benefits, but modified it to reflect that appellant had failed to establish an injury in the performance of duty. In a December 4, 2003 decision,<sup>2</sup> the Board set aside the Office's decisions. The Board found that appellant had established a compensable work factor with regard to her attempting to meet her work deadlines and keep up with her workload and therefore established a *prima facie* case for an emotional condition. The Board further found that, although Dr. Deere's reports did not constitute sufficient medical rationale explaining how the accepted employment factor caused or contributed to appellant's emotional condition, his reports were generally supportive of appellant's claim and sufficient to

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<sup>1</sup> This light-duty job was a temporary assignment in which appellant was slated to work four hours per day initially, then gradually increase her hours to eight per day.

<sup>2</sup> Docket No. 03-1447 (issued December 4, 2003).

require further development of the medical evidence by the Office. The Board therefore remanded for referral to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's emotional condition was causally related to the accepted employment factor of attempting to keep up with her workload. The complete facts of this case are set forth in the Board's December 4, 2003 decision and are herein incorporated by reference.

On remand, the case file was referred to Dr. Tarakumar Reddy, Board-certified in psychiatry and neurology, for a second opinion examination. In a March 2, 2004 report, Dr. Reddy, after stating findings on examination and reviewing the medical evidence and statement of accepted facts, diagnosed dysthymic disorder and major depression, moderate, in addition to generalized anxiety disorder and multiple phobias. In response to the question whether appellant had an emotional condition caused by the compensable factor of employment shown on the statement of accepted facts, he advised as follows:

“It is not possible to say, with any degree of medical certainty that her emotional condition was solely caused by the compensable factors of employment because she also had other longstanding physical and medical conditions which would have contributed to the development of her depression. However, it is within reasonable medical probability that the incident that occurred in the performance of duty also contributed to the development of her depression. Her condition has not improved because of lack of regular treatment.”

In response to another question as to whether appellant's condition was self-generated or due to a preexisting personality disorder, Dr. Reddy advised that there were several factors that were affecting appellant's ability to function. He explained that her job dissatisfaction and disappointment, as well as her preexisting personality disorder, contributed to her current psychiatric problem. Dr. Reddy also noted however that appellant did not meet her performance standards despite diligent efforts to do so. He advised that the mental status examination and Minnesota Multiphasic Personality Inventory show that appellant was experiencing significant depression and anxiety.

By decision dated March 10, 2004, the Office, finding that Dr. Reddy's report represented the weight of the medical evidence, found that appellant failed to submit medical evidence sufficient to show she sustained an emotional condition in the performance of duty. The Office stated that appellant's failure to meet the performance standards of her job was not a compensable factor of employment. The Office further stated that “the Board has consistently found that reactions to performance are not covered by the [Federal Employees' Compensation] Act.” The Office concluded that appellant's claim should be denied on the grounds that the medical evidence of file failed to establish that the claimed emotional condition was causally related to the accepted factor of employment.

#### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee

has an emotional condition and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>3</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>4</sup>

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>5</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>6</sup>

Appellant's burden of proof is not discharged by the fact that she has established an employment factor, which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>7</sup>

### ANALYSIS

The Board found in its December 4, 2003 decision that appellant had established a compensable work factor; *i.e.*, her attempting to meet her work deadlines and keep up with her workload therefore establishing a *prima facie* case for an emotional condition. On remand, the case was referred to Dr. Reddy, who stated that, although it was not possible to say with any degree of medical certainty that appellant's emotional condition was solely caused by the compensable factors of employment, she also has other longstanding physical and medical conditions, which would have contributed to the development of her depression. He further stated that it was within reasonable medical probability that the incident that occurred in the performance of duty also contributed to the development of her depression. Dr. Reddy noted that appellant did not meet her performance standards despite diligent efforts to do so.

The Board finds that the Office improperly found that Dr. Reddy's referral opinion supported a conclusion that the medical evidence of file failed to establish that the claimed

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<sup>3</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>4</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>5</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Id.*

<sup>7</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

emotional condition was causally related to the accepted factor of employment. Moreover, the Office's statements that appellant's failure to meet the performance standards of her job, which contributed to her condition was not a compensable factor of employment and that "the Board has consistently found that reactions to performance are not covered by the Act" are incorrect. The Board specifically held in its December 4, 2003 decision, that appellant had established a compensable work factor with regard to her attempting to meet her work deadlines and keep up with her workload and discussed at length how appellant's attempts to meet her production standards had contributed to the development of her emotional condition. Further, the Board has long held that emotional reactions to situations in which an employee is trying to meet her position requirements are compensable.<sup>8</sup> Thus, the Office's statements contradicted the Board's specific instructions and misconstrued the Board's longstanding case law.

In addition, contrary to the Office's conclusion, Dr. Reddy's opinion constitutes probative, rationalized medical evidence sufficient to support a finding that appellant's claimed emotional condition is causally related to the accepted factor of employment. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>9</sup> Dr. Reddy's March 2, 2004 report, is based on a proper factual and medical background, sufficiently explains his opinion on causal relationship and succinctly relates the diagnosis of a work-related emotional condition to the factor found compensable in this case. Therefore, the Board finds that the medical evidence of record, as represented by Dr. Reddy, is sufficient to establish that the accepted factor of employment; *i.e.*, her attempting to meet her work deadlines and keep up with her workload, caused or contributed to appellant's stress-related condition. As Dr. Reddy explained, while the accepted employment factor was not the sole cause of appellant's depression, within a reasonable degree of medical certainty it did contribute to her depression. When questioned again by the Office regarding the role of personal, preexisting or personality factors as the cause of the diagnosed condition, Dr. Reddy again stated that appellant worked diligently to meet her performance standards, but could not do so. Dr. Reddy's opinion therefore establishes that the accepted factor of employment did contribute to appellant's depression. Accordingly, the Board reverses the Office's March 10, 2004 decision denying compensation for an emotional condition and finds that appellant has sustained an emotional condition in the performance of duty. As the Office has not made a finding regarding any period of disability resulting from this injury, this case will be remanded to the Office for further development of this aspect of the claim.

### CONCLUSION

The Board finds that appellant met her burden to establish that she sustained an emotional condition in the performance of duty.

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<sup>8</sup> See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

<sup>9</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs dated March 10, 2004 is reversed and the case is remanded to the Office for a determination of the nature and extent of any disability causally related to the accepted emotional condition.

Issued: April 13, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member