

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

PATRICIA HERNANDEZ, Appellant

and

**U.S. POSTAL SERVICE, BULK MAIL
CENTER, Denver, CO, Employer**

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**Docket No. 04-1408
Issued: December 30, 2005**

Appearances:

John S. Evangelesti, Esq., for the appellant

Miriam D. Ozur, Esq., for the Director

Oral Argument November 16, 2005

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge

WILLIE T.C. THOMAS, Alternate Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 3, 2004 appellant filed a timely appeal of the April 14, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim for wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained a recurrence of disability on March 25, 2000, causally related to her July 12, 1999 employment injury.

FACTUAL HISTORY

Appellant, a 50-year-old distribution machine clerk, has an accepted claim for post-traumatic stress disorder (PTSD), which arose on July 12, 1999 (12-0184073).¹ On October 25, 1999 appellant returned to full-time work, albeit at a different facility. A new worksite away from her prior supervisor was the only restriction imposed with respect to appellant's ability to resume work. She continued to work at her new facility for approximately seven months.

On March 27, 2000 appellant filed a traumatic injury claim alleging an anxiety attack on March 24, 2000 when an attendance control supervisor, Ed Laffredo, yelled at her and waved his arms in a threatening manner. Appellant approached Mr. Laffredo and asked that he sign a note she had written to remind herself of the forms she needed to submit regarding her workers' compensation claim. Mr. Laffredo refused to sign appellant's note and allegedly told her that he did not care whether her paycheck was correct. Appellant became distraught over the incident and, a few hours later, was transported from work to a local emergency room by ambulance.

The claim was initially denied on June 23, 2000 because appellant failed to establish that she was injured in the performance of duty (12-0189296). This decision, however, was subsequently set aside and the case remanded to the Office for development as an occupational disease claim.²

Appellant filed a May 15, 2001 claim for compensation (Form CA-7) under claim number 12-0184073 for disability beginning March 25, 2000. By decision dated May 28, 2002, the Office denied the claim finding that the evidence did not establish that her March 25, 2000 work stoppage was causally related to her July 12, 1999 accepted employment injury.

The Office also issued a May 28, 2002 decision in claim number 12-018926. After further development of appellant's March 27, 2000 emotional condition claim, the Office denied the claim finding that appellant failed to establish any compensable employment factors.

Appellant requested oral hearings with respect to both decisions issued on May 28, 2002. A combined hearing was held on October 23, 2002, and the hearing representative issued decisions denying each claim on January 15 and 17, 2003.

Appellant filed an appeal with the Board, which was docketed as No. 03-767. On June 16, 2003 the Board issued an order remanding the case for proper assemblage. The Office

¹ The Office accepted that on July 12, 1999, appellant had a heavy load of mail and she requested assistance from her supervisor, Kristine L. Prusak, who responded "Too bad." Although appellant later received some assistance, the work was not completed until after her lunch break. When Ms. Prusak returned she yelled at appellant regarding the late dispatches. She also used profanity and verbally threatened appellant. Later that same day, Ms. Prusak continued her verbal assault while appellant waited outside the operations manager's office to report the earlier incident.

² Appellant's counsel informed the hearing representative that the March 27, 2000 claim was not based solely on the one encounter with Mr. Laffredo, but included several other employment incidents that preceded the March 24, 2000 altercation.

then issued a merit decision dated September 29, 2003, which denied appellant's claim for wage-loss beginning March 25, 2000.

This decision was also appealed to the Board, and it was docketed as appeal No. 04-218. The record forwarded to the Board was incomplete, and therefore, the Board issued a February 27, 2004 order remanding the case for proper assemblage.

On April 14, 2004 the Office issued a decision denying wage-loss compensation on or after March 25, 2000.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁴

ANALYSIS

The record establishes that appellant's claimed disability beginning March 25, 2000 was not the result of a "spontaneous change" in her medical condition.⁵ When appellant was treated in the emergency room on March 24, 2000 she reported that she had gotten into an argument with her boss and had forgotten to take her Xanax that day. She was diagnosed with acute anxiety reaction, which was attributed to "a combination of not taking her medications today and having an argument with her boss." The March 24, 2000 encounter with Mr. Laffredo, which appellant initially alleged was the sole cause of her disability beginning March 25, 2000, constitutes a new exposure to the work environment. Appellant has not established a causal relationship between her current disability and the accepted July 12, 1999 employment injury. This finding is further supported by the opinions of appellant's psychologist and psychiatrist.

Dr. Susan B. Rutherford, a clinical psychologist, reported on September 24, 2001 that when appellant returned to work in October 1999 she continued to be in an emotionally frail state and the March 2000 "traumatizing incident" with Mr. Laffredo "aggravated her already ... fragile emotional state." In a report dated October 19, 2001, Dr. Dorothy E. Faris, a Board-certified psychiatrist, similarly noted that appellant had not recovered from her PTSD when she returned to work on October 25, 1999. She also indicated that continuing events at work

³ 20 C.F.R. § 10.5(x) (1999).

⁴ *Id.*

⁵ 20 C.F.R. § 10.5(x) (1999).

worsened appellant's condition, including lack of training, frequent transfers, and assignments to shifts against her restrictions. Dr. Faris further stated that on March 24, 2000 a supervisor confronted appellant, "directly causing a panic attack at work" and since then appellant was unable to work due to PTSD. Both Dr. Rutherford and Dr. Faris placed significant emphasis on the March 24, 2000 incident with Mr. Laffredo. While appellant may continue to suffer from PTSD, the medical evidence does not establish that her current disability was the result of a spontaneous change in her medical condition.

Appellant does not allege, nor does the record establish that her limited-duty assignment was withdrawn on or about March 25, 2000.⁶ Additionally, the record does not establish that her limited-duty position changed such that it was no longer consistent with her restrictions. When she returned to work on October 25, 1999, appellant's only restriction was that she not work at the same facility as her former supervisor, Ms. Prusak. Appellant was transferred from the Denver Bulk Mail Center to the Mail Processing Annex in Aurora, CO., where she worked as a parcel post distributor (machine). Her tour of duty was from 2:30 p.m. to 11:00 p.m. While there is evidence that the employing establishment attempted to change appellant's shift to 4:30 p.m. to 1:00 a.m., appellant's initial limitations did not include specific work hours. Also, when appellant's physician advised on March 13, 2000 that she should be excused from working after 9:00 p.m., the employing establishment granted appellant's leave requests for the week preceding her March 25, 2000 work stoppage.

Appellant's counsel argued alternatively that the March 25, 2000 work stoppage was the result of a consequential injury. A subsequent injury, either an aggravation of the original injury or a new injury, is compensable if it is the direct and natural result of a compensable primary injury.⁷ However, the Office has not issued a decision on this aspect of the claim and it is not presently before the Board on this appeal.⁸

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability beginning March 25, 2000, causally related to her July 12, 1999 employment injury.

⁶ 20 C.F.R. § 10.5(x) (1999). When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements. *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁸ The Office has not issued an adverse decision on appellant's emotional condition since the January 15 and 17, 2003 decisions.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 30, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board