United States Department of Labor
Employees' Compensation Appeals Board

SHEILA G. MALRY, Appellant	)	
and	)	**Docket No. 05-1572**
	)	**Issued: May 15, 2006**
U.S. POSTAL SERVICE, BRENTWOOD STATION, Washington, DC, Employer	)	

Appearances:
Jules Fink, Esq., for the appellant
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument April 11, 2006

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 20, 2005 appellant filed a timely appeal from the June 3, 2005 merit decision of the Office of Workers' Compensation Programs, which denied her claim that she sustained an injury in the performance of duty on December 12, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's decision.

ISSUE

The issue is whether appellant's exposure to noise from the delivery bar code sorter on December 12, 2000 aggravated her post-traumatic stress disorder.

FACTUAL HISTORY

On the prior appeal of this case,[1] the Board affirmed an August 5, 2002 Office decision denying appellant's claim for compensation. The Office accepted that she was exposed to noise

[1] Docket No. 03-246 (issued May 10, 2004).

at work on December 12, 2000, but the medical evidence failed to establish the element of causal relationship, stating:

> "No physician in this case has explained with a medical rationale how appellant's occupational exposure to noise from bar code sorters on December 12, 2000 would cause or contribute to her diagnosed emotional condition. It is not enough for a physician to relate the history given by [her] and then merely diagnose 'work-related stress' or list an acute recurrent episode of post-traumatic stress disorder as 'job related.' The physician must well explain, to a reasonable degree of medical certainty, the medical or psychiatric basis of how the accepted exposure caused or contributed to appellant's emotional condition. Dr. Fougy, [her] psychiatrist, reported appellant's history, symptoms and complaints but never discussed the nature of post-traumatic stress disorder, how this diagnosis was established in [her] case and how the noise from bar code sorters on December 12, 2000 affected her psychiatric condition. Because [she] has submitted no such medical opinion evidence to support that her accepted occupational exposure to noise on December 12, 2000 aggravated her preexisting post-traumatic stress disorder, [appellant] has not met her burden of proof to establish the essential element of causal relationship."[2]

Appellant requested reconsideration and submitted the March 17, 2005 report of Dr. Donald B. Vogel, a Board-certified psychiatrist, who first evaluated her in June 1987, (sic) when she presented after a heavy machine fell on her at work: "The sorting machine weighed between 500 and 1,000 pounds. It took five men to pull it away. [Appellant] was trapped for several minutes, was taken to the emergency room, from there sent to work and from work sent to home." Although her medical workup was normal, Dr. Vogel reported she felt pain and tenderness and was very shaken up. Appellant felt a great deal of anxiety about going to work "and particularly hearing a noise of the machine going bing, bing, bing." Dr. Vogel explained that, since the condition persisted more than a month, the diagnosis was post-traumatic stress disorder, with the particular symptoms being ringing in her ears, some bad dreams that would wake her up, reenactment of being crushed, terror at walking past the machines at work and not wanting to be at that workplace. Dr. Vogel reported that these symptoms waxed and waned. He added: "In 2000, while at work, these symptoms came back particularly with some loud noises from the same machine. It made [appellant] very upset."

After relating appellant's history, Dr. Vogel described his findings on mental status examination:

> "Today, [appellant] presents as a short black woman neatly dressed, a soft voice. No acute distress. Noted being very uptight for the whole previous week just knowing that she would have to talk about these symptoms. [Appellant] said she never talks about these symptoms with anybody, except her lawyer, Dr. Franklin, and myself. She clearly reviewed the history of the injury in 1997 and in 2000

[2] The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

> when the symptoms came back. The symptoms have never really gone. What has happened since is a period of a week or so, four or five times a year, these symptoms came back full blast. Otherwise they get milder, but she clearly has been affected. To review, [appellant] has very distressful memories that go on all the time of the event. She has some bad dreams that occur and reoccur. The event is replayed back. The trigger is clearly some noises at work, but they do not do all the time, since she is at work all the time but during a period of four or five weeks a year, those noises seem to trigger it."

Dr. Vogel diagnosed a clear history of post-traumatic stress disorder following the injury in 1997 and reexacerbation of the symptoms in 2000. He reported that appellant was currently somewhat better. She had some of the symptoms but not the full syndrome; she no longer met the criteria for post-traumatic stress disorder. He recommended that she go back on an antidepressant.

In a decision dated June 3, 2005, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that the record still lacked a reasoned medical opinion to support that noise from the bar code machine on December 12, 2000 caused an aggravation of appellant's preexisting post-traumatic stress disorder.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[4]

Causal relationship is a medical issue,[5] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty[7]

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8]

ANALYSIS

Dr. Vogel's March 17, 2005 report does not establish the element of causal relationship. To begin with, it relates an inaccurate history of injury: that appellant first presented when a heavy machine fell on her at work. "The sorting machine weighed between 500 and 1,000 pounds. It took five men to pull it away." One of appellant's symptoms, he stated, was reenactment of being crushed by this heavy machine. But contemporaneous evidence shows that a machine did not fall on her. Appellant's diary from June 9, 1997 clarifies that it was a pie cart full of mail that tumbled down on her, pinning her against the machine in question:

> "I was just about to clear a stacker on the top shelf of the Delivery Bar Code Sorter when I saw the pie cart full of mail tumbling down on me, it happened so fast I couldn't run so I braced myself up against the machine with my right side and thru my arm up to protect my face. At the same time my partner Ray Lewis was just as shocked as I was because our eyes met and it was all over. I remember him saying I'm going to get help, stay here. I was petrified. I just stood there. When Mary came over I remember her saying, Sheila move this tray. At this time (4) four people was trying to remove this piece of equipment out the way so I can move. At this time my leg was still caught between the machine and one of the shelves that came out [of] the machine. Incidentally it was my left side of my body and leg that was trapped.… In the meantime the paramedics was called and they took me out in a neck brace and on a board because my neck was hurting possibly when I turned my head to protect my face."

The Board cannot say whether it makes a difference to the diagnosis of post-traumatic stress disorder whether a pie cart full of mail tumbled down on appellant, pinning her as she stood braced against a bar code sorter or whether the bar code sorter itself, weighing perhaps as much as 1,000 pounds, fell on her and crushed her. Regardless, it is well established that medical conclusions based on inaccurate or incomplete histories are of diminished probative value.[9] As the history is not accurate, the report of Dr. Vogel is of reduced probative value.

Dr. Vogel's impression was that appellant had a clear history of post-traumatic stress disorder following her injury in 1997 "and reexacerbation of the symptoms of 2000." He did not specify a reexacerbation on December 12, 2000 which is the issue presented in this case, so his opinion on causal relationship is also vague.

He did note that four or five times a year, for a period of a week or so, appellant's symptoms came back. The trigger, he reported, was clearly or seemed to be, noises at work or

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

"those noisy machines." Her attorney directs the Board's attention to several lines appearing under the heading "MENTAL STATUS" and argues that Dr. Vogel is offering medical rationale for an opinion on causal relationship. But the heading indicates that he is assessing appellant's mental state based on her thoughts, her perceptions and her beliefs. Dr. Vogel did not discuss causal relationship in a separate section of his report. It appears that he is merely relating appellant's history.

At best, Dr. Vogel reported that noise from the machines at work sometimes triggered appellant's symptoms and did so in the year 2000. The basic problem here is that this is simply a conclusion on his part; he made no attempt to explain how he came to it. Dr. Vogel did not discuss the underlying clinical findings or other evidence that convinced him, to a reasonable degree of medical certainty that this triggering phenomenon did, in fact, occur on December 12, 2000. As a result, the Board finds that Dr. Vogel did not provide an adequate psychiatric and factual basis for the opinion expressed. He did little more than simply assert the March 17, 2005 report that noise triggered a reexacerbation of symptoms in 2000. Dr. Vogel must provide rational for his stated conclusions to establish they are based on something more than mere possibility. He did not fully explain why appellant's symptoms returned four or five times a year when she was exposed to the noise of this machine year round. But without a proper history of injury, without a psychiatric explanation of how triggers work, and without some reference to particular clinical findings or other evidence showing that a triggering episode happened at work on December 12, 2000, as alleged, his March 17, 2005 report does not discharge appellant's burden of proof to establish causal relationship. Therefore, the Board will affirm the denial of appellant's claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that exposure to noise from the delivery bar code sorter on December 12, 2000 aggravated her post-traumatic stress disorder. The medical opinion evidence submitted to support her claim offers no reasoned discussion of causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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