

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

P.W., Appellant

and

**U.S. POSTAL SERVICE, MARION POST
OFFICE, Marion, OH, Employer**

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**Docket No. 08-315
Issued: August 22, 2008**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 13, 2007 appellant, through counsel, filed a timely appeal from an October 18, 2007 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her emotional condition claim. 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 established that she sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On November 13, 2006 appellant, then a 50-year-old rural route carrier, filed an occupational disease claim alleging that on October 24, 2006 she first realized her stress was employment related. She attributed her stress to pain from injuries sustained in an employment-related automobile accident on July 25, 2003, which was aggravated by walking on concrete

floors and “answering the [tele]phone constantly, other employees asking me to do jobs for them.”

In support of her claim, appellant submitted an October 24, 2006 progress note and October 30, 2006 report by Dr. Bipin M. Desai, a treating Board-certified psychiatrist, who noted that appellant appeared angry, anxious and depressed. She related that she had difficulty with her employment. Appellant informed Dr. Desai that “she’s been hanging up on customers, she’s been rude to them” and was afraid of losing her job. Dr. Desai opined that appellant was “[s]truggling with chronic pain.” He diagnosed depression, chronic pain, irritability and poor attention span and was disabled for the period October 24 to November 14, 2006. On November 7, 2006 Dr. Desai again diagnosed depression and noted that appellant was to be off work from November 7 to 30, 2006.

On December 5, 2005 the Office received appellant’s statement. She reiterated that she had been in constant pain since an employment-related automobile accident on July 25, 2003. As a result of this accident, appellant worked at a limited-duty job and began to see Dr. Desai on September 28, 2004 to assist her in coping with her pain and stress.

By letter dated December 12, 2006, the Office informed appellant that the evidence of record was insufficient to support her claim. It advised her to submit additional medical and factual evidence.

Appellant submitted additional medical reports pertaining to her prior treatment.

In a September 28, 2004 report, Dr. Desai diagnosed recurrent moderate to severe major depressive disorder and pain disorder due to psychological and pain factors. He reported that appellant had been involved in an automobile accident on July 25, 2003 while delivering mail. Appellant informed Dr. Desai that she had returned to a limited-duty job and “[w]orkers’ [c]omp[ensation] is fighting her every step of the way.” On October 22, 2004 Dr. Desai reported improvement in her affect and mood and that her flashbacks and nightmares “have pretty much resolved.” In a December 24, 2004 progress note, he stated that appellant related being frustrated due to the employing establishment making increasing demands on her. Dr. Desai diagnosed depression and anxiety and noted that appellant felt overwhelmed. On November 9, 2004 he reported that appellant was anxious and depressed and “[s]truggling with chronic pain and work-related stressors.”

On November 30, 2004 Dr. Desai reported that appellant was coping better with her chronic pain and her affect and mood were improved.

In a progress note dated January 11, 2005, Dr. Desai stated that appellant was anxious and depressed. He reported that appellant was “having difficulties with anxiety and nightmares” and that she was afraid the employing establishment was going to transfer her. On February 1, 2005 Dr. Desai reported improvement in mood and effect and that her flashbacks and nightmares had decreased. On March 1, 2005 he noted that appellant was anxious and mildly depressed and working light duty.

In progress notes dated May 25, 2005, Dr. Desai reported that appellant was working light duty and was “[c]oping with work-related stressors.” He reported her mood as mildly

anxious with an appropriate affect. On August 24, 2005 Dr. Desai related that appellant was performing light-duty work and “doing adequately at this time” with a mildly anxious mood.

In progress notes dated November 8, 2005 and January 31, 2006, Dr. Desai reported appellant as mildly anxious with a fairly bright affect. He again stated that she was “doing adequately at this time” and was “[c]oping with her disabilities and work-related stressors.”

On July 18, 2006 Dr. Desai related that appellant was coping at work. He noted that her mood was slightly anxious while her affect was fairly bright and she was working 40 hours per week. On October 10, 2006 Dr. Desai noted that appellant was anxious, depressed and irritable. Appellant related that she had “been short with customers” as well as hanging up on them. She “[s]poke at lengths the work-related stressors” and related that “she’s afraid she’s going to lose her job.”

Dr. Desai subsequently reported appellant’s affect and mood became improved and she was “less irritable” He reported that appellant was “coping better with stressors including her chronic pain.” On November 22, 2006 Dr. Desai treated appellant for recurrent moderate to severe major depression, pain disorder and post-traumatic stress disorder which he attributed “to both physical and psychological factors.” He opined that she was currently totally and permanently disabled.

By decision dated February 26, 2007, the Office denied appellant’s claim on the grounds that she failed to establish that her depression was causally related to her federal employment. It found the medical evidence of record insufficient to establish a causal relationship between appellant’s emotional condition and disability as of October 24, 2006 and her duties as a rural carrier.

In a letter dated March 10, 2007, appellant’s counsel requested an oral hearing before an Office hearing representative, which was held on July 24, 2007. At the oral hearing, appellant testified that she performed limited-duty work in 2004. Her duties, beginning in 2005, initially included answering the telephone but were expanded to include verifying certified mail, lifting trays of mail and data entry. Verifying certified mail consisted of people calling her on the telephone to locate the certified mail. Appellant had to determine whether the mail had been returned to sender or sent back for some other reason. She then “had to take mail out to the carriers that had forgotten their mail.” In October 2006, appellant started making inputs in the computer for the postal customers, checking off the carriers’ accountable mail. She testified that she took pain pills and her light-duty job involved more walking, as the bathroom was located on the other side of the building. Appellant stated that “it was just a lot of work” and she experienced flashbacks and nightmares of her automobile accident. She related that on or about October 24, 2006 she became frustrated with her job and “just cracked.”

In a report dated March 14, 2007, Dr. Desai stated that appellant had experienced significant neck and back pain since the July 25, 2003 employment injury. Since that time, while delivering mail, appellant became depressed, anxious, irritable, labile and had difficulties getting along with her peers. Dr. Desai diagnosed major depressive disorder due to chronic pain which he attributed to the July 25, 2003 employment injury. He also reported appellant as having post-

traumatic stress disorder with flashbacks and nightmares. Dr. Desai opined that appellant was totally disabled.

Subsequent to the hearing, appellant submitted progress notes for the period April 25, 2006 through May 7, 2007 from Dr. Desai.

By decision dated October 18, 2007, the Office hearing representative affirmed the denial of appellant's claim. The Office hearing representative found that appellant established an increased workload since early 2006 based on her testimony that she was performing multiple limited-duty assignments and the employing establishment did not controvert her description.

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 employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.³ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁴ As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.⁵ Where the claimant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.⁶ When the matter asserted is

¹ 5 U.S.C. §§ 8101-8193.

² *J.C.*, 58 ECAB ____ (Docket No. 07-530, issued July 9, 2007); *Lillian Cutler*, 28 ECAB 125 (1976).

³ *M.D.*, 59 ECAB ____ (Docket No. 07-908, issued November 19, 2007); *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁵ See *Charles E. McAndrews*, 55 ECAB 711 (2004).

⁶ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background, 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 compensable employment factors identified by the claimant.¹⁰

ANALYSIS

After appellant returned to limited duty following the 2003 employment injury, she alleged that her work duties increased. The hearing representative noted that, as of 2006, she answered telephones to verify certified mail inquiries and made data inputs into the computer. The Board has held that conditions related to stress from situations in which an employee is performing her regular specially assigned duties are compensable.¹¹ The evidence in this case is sufficient to establish that appellant's work duties increased. The employing establishment did not dispute appellant's description regarding the work she was performing and there is no contrary evidence of record. Under *Cutler*,¹² appellant has established a compensable work factor. This is not enough, however, to establish entitlement to benefits. Appellant must establish a causal connection between this compensable factor of employment and her diagnosed medical conditions.¹³

Appellant also attributed her stress to pain from injuries sustained in her July 25, 2003 employment-related automobile accident. Dr. Desai's initial medical report noted that appellant was "[s]truggling with chronic pain." In a September 28, 2004 report, he diagnosed recurrent moderate to severe major depressive disorder and pain disorder due to psychological and pain factors. Dr. Desai reported an accurate history that appellant had been involved in an automobile accident on July 25, 2003 while delivering mail. He diagnosed depression and anxiety on November 9, 2004, which he attributed to appellant's chronic pain and to other work-related stressors. On March 14, 2007 Dr. Desai stated that appellant has experienced "significant neck and back pain" since her July 25, 2003 employment injury and that since the injury she has "been

⁷ See *Charles D. Edwards*, 55 ECAB 258 (2004).

⁸ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007).

⁹ *D.D.*, 57 ECAB 734 (2006).

¹⁰ *Gary J. Watling*, 52 ECAB 278 (2001); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹¹ *Beverly R. Jones*, 55 ECAB 411 (2004).

¹² *Lillian Cutler*, *supra* note 2.

¹³ *Doretha M. Belnavis*, 57 ECAB 311 (2006); *Beverly R. Jones*, *supra* note 11.

depressed, anxious, irritable, labile and has had difficulties getting along with her peers.” He diagnosed major depressive disorder due to chronic pain which he attributed to the July 25, 2003 employment injury.

It is well established that proceedings under the Act¹⁴ are not adversarial in nature.¹⁵ While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁶ The Office has an obligation to see that justice is done.¹⁷ While the reports of Dr. Desai are not completely rationalized on the issue of causal relationship, they are sufficient to raise an uncontroverted inference between appellant’s depression and chronic pain arising from the accepted July 25, 2003 employment injury and to the *Cutler* factors in this case.¹⁸ The Board will remand the case for further development of the medical evidence and for an appropriate final decision on this issue.

CONCLUSION

The Board finds that this case is not in posture for decision on whether appellant sustained an emotional condition consequential to the accepted July 25, 2003 employment injury or to the accepted factor of her limited-duty work.

¹⁴ 5 U.S.C. §§ 8101-8193.

¹⁵ *William B. Webb*, 56 ECAB 156 (2004); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁶ *Peter C. Belkind*, 56 ECAB 580 (2005); *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

¹⁷ *R.E.*, 59 ECAB ____ (Docket No. 07-1604, issued January 17, 2008); *Rebecca O. Bolte*, 57 ECAB 687 (2006).

¹⁸ See *John J. Carlone*, see *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 18, 2007 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: August 22, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board