U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LADIE R. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, Ohio

Docket No. 96-1054; Submitted on the Record;
Issued April 13, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish an emotional condition in the performance of duty.

The Board has duly reviewed the record and finds that appellant has not met her burden of proof to establish an emotional condition in the performance of duty.

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 the employment but nevertheless does not come within the concept or 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] Under *Lillian Cutler*, the disability is not covered where it results from such factors as an employee's fear of losing one's job or frustration from not being permitted to work in a particular environment or to hold a particular position.[2] Generally, the only factors of employment which will bring a claim within the scope of the Act are those that relate to the duties the employee was hired to perform.[3]

Appellant, a quality improvement specialist, filed a claim on February 28, 1995 for total disability beginning February 21, 1995. Effective February 21, 1995, appellant was assigned to

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[1] 5 U.S.C. §§ 8101-8193.

[2] 28 ECAB 125 (1976). Actions of the employing establishment in administrative or personnel matters do not generally fall within coverage of the Act, unless the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters; *see Merriett J. Kauffman,* 45 ECAB 696 (1994).

[3] *See Merriett J. Kauffman*, *supra* note 2.

Tour I, with scheduled hours of between 1:00 a.m. and 9:00 a.m., Monday through Friday.[4] Appellant stopped work on February 21, 1995 the date she was supposed to report to work on the night shift. In her statement accompanying her claim form, she indicated that she was unable to work the night shift because of her preexisting hypertension condition, which the Office had accepted previously as having been aggravated by her employment. She characterized her current inability to work as a recurrence of the prior accepted claim.[5] Appellant also claimed that change in shift was a retaliatory measure for a conflict she had experienced with her supervisor, Mr. Nasser, which resulted in disciplinary action taken on January 19, 1995.[6] She claimed increased headaches and high blood pressure as a result of both the conflict with her supervisor and the requirement to work the night shift.

In response, Mr. Nasser denied any retaliatory or punitive component of the directed shift change. He noted that the Plant Manager had determined that the bulk of processing of mail occurring between 6:00 p.m. and 6:00 a.m. warranted a change in the allocation of employee's who performed quality inspection services for the Quality Improvement operations.

The medical records show that appellant obtained blood pressure monitoring at the employing establishment health unit on January 12, 19 and 30, 1995, and was provided with medication for headaches on two of those three dates of treatment. On February 16, 1995 appellant obtained treatment from Dr. Joan O. Rothenberg, a Board-certified internist and emergency medicine physician, who had treated her for three years. Dr. Rothenberg reported increased chronic hypertension which was difficult to control due to work stress and indicated that the night shift would only exacerbate the problem. Subsequent treatment notes from the employing establishment health unit recommend a second opinion or fitness-for-duty evaluation.

The Office of Workers' Compensation Programs advised appellant by letter dated April 19, 1995 of the required evidence to meet her burden of proof to establish an emotional condition. In response, appellant submitted a statement noting her dissatisfaction with the lack of training since the reorganization in 1992 and the procedures implemented by Mr. Nasser and Ms. Torain. She cited the events which occurred after her conflict with Mr. Nasser in January 1995, including the letter of warning issued on January 19, 1995, the addition of Mr. Nasser as an immediate supervisor, a change in offices, and removal of her supervisory duties. Appellant noted that in 12 years as a quality improvement specialist, she worked either Tour II or III and she was now scheduled to work Tour I.[7] She indicated her frustration with the employing

[4] Appellant obtained notification of the shift change in a February 9, 1995 memorandum from Mr. Nasser, the manager of Distribution Operations. In his February 9, 1995 memorandum, Mr. Nasser stated that appellant's new schedule was a result of a discussion between the Plant Manager and Manager of Distribution Operations in Tour I, concerning the need to reinstate checks in the letter sorting machine operation in Tour I. He advised appellant of her responsibilities to submit weekly reports to both himself and to her current supervisor, Ms. Torain, the manager of Quality Improvement.

[5] Under claim number A9-324356 the Office accepted appellant's claim for temporary aggravation of tension headaches which ceased no later than January 26, 1988.

[6] Appellant had received a letter of warning for conduct unbecoming of a postal employee on January 19, 1995 as a result of the conflict. Appellant refused to sign the letter of warning and submitted a statement on January 27, 1995, protesting the disciplinary action.

[7] The record indicates that prior to her work as a quality improvement specialist, appellant had worked as a clerk

establishment's disregard of her physician's recommendations that she not work the night shift, and the lack of acknowledgment concerning her prior employment-related aggravation of hypertension condition. Appellant stated that she relied on the statements of the employing establishment nurse pertaining to required medical documentation to support her contention that she could not work the night shift. She noted frustration with the inability to change the proposed assignment in meetings held on February 27 and March 10, 1995, and the failure of the employing establishment to approve sick leave for the period March 6 to 17, 1995, after she had been told that such would be provided. Appellant submitted an April 6, 1995 report by Dr. Rothenberg, who noted that appellant was unable to work the night shift because "hypertensive patients are well known to have a norepinephrine surge between 2:00 [a.m.][and] 5:00 a.m. in the morning." She stated, "[i]t is unfortunate that the atmosphere at this particular plant is such that an employee's hypertension should be so clearly and significantly worsened by the work environment." Appellant submitted an employing establishment memorandum dated April 7, 1995, by which the employing establishment offered her the shift of 3:00 a.m. to 11:30 a.m. with a start date of April 15, 1995.

The record indicates that appellant remained off work and that in July 1994 the plant manager offered appellant the ability to remain on Tour II, but indicated that her assignment would be changed and that she would be apprised of the assignment upon her return to work on July 24, 1994. Appellant did not return to work.

By letter dated July 13, 1995, the Office advised appellant of the deficiencies of her claim particularly with respect to the medical evidence. In response, appellant submitted July 6 and 27, 1995 reports from Dr. Edgar L. Ross, a Board-certified anesthesiologist, who diagnosed vascular headaches and probable migraines with a recommendation for nerve block treatment, without addressing the specific complaints of appellant's employment. She also provided a report from Dr. Rothenberg, who noted a referral for the recommended occipital nerve block treatment.

By decision dated August 23, 1995, the Office accepted as a compensable factor of employment the conflict between appellant and Mr. Nasser in January 1995, and found that the medical evidence submitted did not establish a causal relationship between the accepted factor of employment and appellant's aggravation of hypertension or claimed emotional condition.

Appellant attributed her aggravation of hypertension and increased migraines to administrative changes made by Mr. Nasser beginning in the spring of 1994, culminating with an incident in January 1995, for which she received a letter of warning. For administrative actions to be considered compensable factors of employment, the employee must demonstrate that the

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or letter sorting machine operator in Tour I for 13 years.

actions were abusive in error.[8] While the Office accepted the conflict between Mr. Nasser and appellant as a compensable factor of employment, appellant has submitted no other evidence to establish that the administrative actions which occurred prior to and after the conflict with Mr. Nasser, were improper or in error.

With respect to a change in duty shift, the Board has held that a change in an employee's duty shift may be compensable in certain cases.[9] The factual circumstances of an employee's claim are reviewed to determine whether the alleged injury is being attributed to the inability to work regular or specially-assigned job duties due to a change in the duty shift, *i.e.*, a compensable factor arising out of and in the course of employment, or to the employee's frustration over not being permitted to work a particular shift or hold a particular position. Where the circumstances involve an employee's dissatisfaction with the manner in which a shift change is made, including a perception of discrimination or retaliation, the Board reviews the evidence to determine whether the employing establishment erred or was abusive in directing the shift change.[10] Where the Board finds that the evidence establishes that the claimant's dissatisfaction is with the actual shift and inability to perform work during that shift, a change in shift work is generally compensable assuming the shift was implemented.[11]

In the present case, the change in shift was not implemented. Appellant did not report to work on February 21, 1995, the effective date of the transfer from Tour II to Tour I. Because appellant did not begin working in the new shift, the Board finds that the shift change is not a compensable factor. The Board notes as well that appellant has not submitted sufficient evidence to establish that the proposed change in shift constituted harassment or was retaliatory.

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[8] *See Elizabeth W. Ensil*, 46 ECAB 606 (March 16, 1995) (finding that the assignment of work duties and the assessment of work performance while generally related to the employment are administrative functions of the employer, and not duties of the employee); *see also*, *James W. Griffen*, 45 ECAB 774 (1994) (with respect to reassignments and the denial of work requests); *Margreate Lublin*, 44 ECAB 945 (1993); *Michael Thomas Plante*, 44 ECAB 510 (1993).

[9] *See Helen P. Allen*, 47 ECAB ____ (Docket No. 93-1794, issued October 16, 1995); *Elizabeth Pinero*, 46 ECAB 123 (1994); *Peggy R. Lee*, 46 ECAB 527 (1995); *Goldie K. Behymer*, 45 ECAB 508 (1994); *Eileen P. Corigliano*, 45 ECAB 581 (1994); *Doug Osborne*, 44 ECAB 849 (1993); *Gloria K. Swanson*, 43 ECAB 161 (1991); *John J. Granieri*, 41 ECAB 916 (1990); *Charles J. Jenkins*, 40 ECAB 362 (1988).

[10] *See Elizabeth Pinero*, *supra* note 9 (where the Board found that appellant had not established that the change in work shift was instituted in a discriminatory fashion and she stopped work prior to the change in shift); *Mary A. Sisneros*, 46 ECAB 155 (1994) (where appellant did not establish claimed favoritism by a supervisor in assigning work shifts which rotated); *Peggy R. Lee*, *supra* note 9 (where the Board found lack of evidence to establish disparate treatment in assignments or noncompliance with the employee's restrictions to perform light-duty work).

[11] For cases where the Board held the shift change compensable, *see Dodge Osborne*, *supra* note 9 (where the Board found that the medical evidence established problems in sleeping for an employee who had worked an afternoon shift for 17 or 18 years and recently changed shifts at the direction of the employing establishment); *Charles J. Jenkins*, *supra* note 9 (where the Board found that a change from day-shift to night-shift work was a compensable factor of employment and remanded the case for evaluation of the medical evidence). *Cf. Gloria K. Swanson*, *supra* note 9 (where the Board found a lack of administrative error or abuse in assigning appellant to the latter half of her regular work shift, as opposed to the preferred first half of the shift); for cases where the Board has found that the shift change was not covered because it was not implemented or the claimant stopped work prior to the shift change, *see Elizabeth Pinero*, *supra* note 9; *Eileen P. Corigliano*, *supra* note 9 (where the Board found that a shift change not implemented is not compensable under the Act); *Goldie K. Behymer*, *supra* note 9.

The Board notes that where an employee has asserted compensable factors of employment and the evidence of record establishes the truth of the matter asserted, the medical evidence becomes relevant in whether or not appellant sustained the burden of proof to establish an employment-related emotional condition.[12] Based on the finding that her conflict with the supervisor in January 1995 was compensable, the medical evidence is relevant to determine whether the medical reports diagnose a condition due to this factor.

The Board finds that appellant has not submitted any medical evidence to support her claim for aggravation of hypertension condition or headaches due to the conflict with her supervisor in January 1995. While the health unit treatment notes indicate that appellant was monitored for high blood pressure in January 1995, the treatment notes do not correlate the high blood pressure with the conflict of the supervisor. The medical evidence beginning in February 1995, including a February 7, 1995 treatment note from the employing establishment health unit, focus on the directed new schedule change to the night shift, which was to be effective February 21, 1995. In her report dated February 16, 1995, Dr. Rothenberg, a Board-certified internist and emergency medicine physician, noted her three-year treatment of appellant for chronic hypertension and exacerbation of her condition by work-related stress, but did not address the actual conflict with the supervisor to support an aggravation of appellant's underlying hypertension condition due to this factor. While her reports focused on appellant's inability to work the night shift, as stated above, appellant did not return to work in the assigned night shift, and thus, her reports do not establish a medical condition due to working the night shift. Furthermore, the reports by Dr. Ross, a Board-certified anesthesiologist, do not relate appellant's aggravation of hypertension condition to the accepted work factor of appellant's conflict with her supervisor. Accordingly, the Board finds that appellant has not established her claim for an emotional condition in the performance of duty.

[12] *See Gregory Meisenberg*, 44 ECAB 527 (1993).

The decision of the Office of Workers' Compensation Programs dated August 23, 1995 is hereby affirmed.

Dated, Washington, D.C.
April 13, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member