

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY J. WHITEHEAD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, Miss.

*Docket No. 97-434; Submitted on the Record;
Issued December 18, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are whether appellant is capable of working full time in her light-duty position and whether appellant established that her disability for work after June 22, 1994 was causally related to her employment.

On October 30, 1993 appellant, then a 43-year-old licensed practical nurse, filed a notice of traumatic injury, claiming that on October 28, 1993 she strained her neck when getting heavy patients up and off stretchers. The Office of Workers' Compensation Programs accepted the claim for a cervical strain and herniated disc at C5-6.

Following cervical fusion on February 11, 1994, appellant was released for light-duty work on April 26, 1994 by her attending physician, Dr. Victor J. Bazzone, a neurological surgeon. Appellant returned to work on June 7, 1994, but left work on June 22, 1994 due to high blood pressure and stress and then worked intermittently until August 10, 1994.

On July 21, 1994 the Office determined that appellant's light-duty nursing position fairly and reasonably represented her wage-earning capacity and reduced her wage-loss compensation to zero. Appellant timely requested an oral hearing, which was held on March 15, 1995.

At the hearing, appellant described her initial injury, stating that a patient hit her with his right fist, causing her neck to "pop," but that the ward was so hectic because of the shortage of personnel that she delayed seeking treatment for two days. Appellant testified that when she initially returned to light duty, the peer pressure made her feel worthless in that other personnel were running the surgery floor and she had to sit and answer the telephone. Appellant stated that when she again returned to work on June 7, 1994, she began experiencing high blood pressure problems. Appellant emphasized that she had never had hypertension or depression prior to her October 28, 1993 injury.

On May 9, 1995 the hearing representative denied appellant's claim on the grounds that the medical evidence established that appellant was capable of continuing her light-duty position after April 26, 1994 and that appellant had failed to establish that her hypertension and stress condition were causally related to work factors.

Appellant requested reconsideration on May 7, 1996 and submitted factual statements from her supervisor, herself, and a coworker as well as medical reports from Dr. Rand M. Voorhies, Board-certified in neurological surgery, and Dr. Valerie R. Lenox, Board-certified in internal medicine, and Dr. J. Donald Matherne, a licensed clinical psychologist, and a determination of disability by the Social Security Administration.

On July 23, 1996 the Office denied reconsideration on the grounds that the evidence submitted in support of appellant's request was insufficient to warrant modification of its prior decision. The Office found that the medical evidence established that appellant was capable of performing the light duties assigned to her and that appellant had failed to establish any causal relationship between work factors and her hypertension, emotional condition and chronic neck pain.

The Board finds that the Office properly reduced appellant's wage-loss compensation to zero on the grounds that she had the wage-earning capacity of a light-duty nurse.

Under the Federal Employees' Compensation Act,¹ an employee who is disabled from the job she held when injured due to work-related residuals returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability that makes her incapable of performing the light duty.² As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.³ Here, appellant has failed to establish either.

The duties appellant was expected to perform upon her return to work in April 1994 consisted of transcribing orders, transporting specimens to the laboratory, keeping patient records, answering the telephone, filing reports and using a computer. The job description stated: "No direct patient care."

Appellant's attending physician, Dr. Bazzone, who operated on her neck on February 11, 1994, released her for light duty on April 26, 1994. He stated in a report dated April 11, 1994 that appellant would have no patient care or assistance, but added in a report dated April 25, 1994 that appellant was "quite frightened" that she would again be hurt by patients when she returned to work.

¹ 5 U.S.C. §§ 8101-8193.

² *Mary A. Howard*, 45 ECAB 646, 651 (1994).

³ *Cloteal Thomas*, 43 ECAB 1093, 1097 (1992).

However, at the hearing, appellant testified that her duties -- answering the telephone, running errands, doing paperwork -- did not change upon her return to work. Appellant added that the position description she signed on June 1, 1994 accurately reflected the duties she performed and that she had no assigned duties requiring direct patient contact. Thus, appellant has failed to show a change in the nature of her light-duty job.

Appellant has also failed to establish that her work-related condition worsened to the point of disabling her from performing the duties of her job. The record shows that Dr. Bazzone stated in a December 28, 1993 report that there was no clear-cut evidence of nerve impingement in appellant's neck and no herniation of the cervical discs. A magnetic resonance imaging (MRI) scan done on December 20, 1993 showed borderline spinal stenosis at C3-4 and C5-6 but no other abnormality. Not until February 9, 1994, when a myelogram showed an "acutely" herniated disc at C5-6, was surgery contemplated and subsequently done.

In a February 18, 1994 report, Dr. Bazzone stated that appellant would recover from her surgery in three months and in all likelihood would be able to return to her former job. In subsequent reports, Dr. Bazzone stated that appellant was "doing very well" and reached maximum medical improvement on April 25, 1994. On June 7, 1994 Dr. Bazzone signed appellant's functional job description of light duty. On August 8, 1994 Dr. Bazzone stated that appellant had "completely recuperated from her surgical procedure." On August 29, 1994 Dr. Bazzone released appellant from his care. A March 10, 1995 x-ray revealed mild kyphosis but an otherwise normal cervical spine. Thus, the medical evidence establishes that appellant's work-related injury had resolved.⁴

The Board also finds that appellant has failed to meet her burden of proof in establishing that her hypertension, adjustment disorder and chronic pain were causally related to work factors.

Under the Act, appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment. To establish that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁵

⁴ See *Major W. Jefferson*, 47 ECAB ____ (Docket No. 94-1186, issued January 25, 1996) (finding that a claimant who stops work for reasons unrelated to her work-related physical condition has no compensable disability within the meaning of the Act).

⁵ *Vaile F. Walders*, 46 ECAB 822, 825 (1995).

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.⁶ There are distinctions regarding the type of work situation giving rise to an emotional condition which will be covered under the Act.

For example, disability resulting from an employee's emotional reaction to his or her regular or specially-assigned duties or to a requirement imposed by the employing establishment is covered.⁷ However, an employee's emotional reaction to an administrative or personnel matter is generally not covered,⁸ and disabling conditions caused by an employee's fear of termination or frustration from lack of promotion are not compensable. In such cases, the employee's feelings are self-generated in that they are not related to assigned duties.⁹

Nonetheless, if the evidence demonstrates that the employing establishment erred or acted abusively or unreasonably in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse may be covered.¹⁰ However, a claimant must support his allegations with probative and reliable evidence; personal perceptions alone are insufficient to establish an employment-related emotional condition.¹¹

The initial question is whether appellant has alleged compensable employment factors as contributing to his condition.¹² Thus, part of appellant's burden of proof includes the submission of a detailed description of the specific employment factors or incidents, which appellant believes caused or adversely affected the condition for which he claims compensation.¹³ If appellant's allegations are not supported by probative and reliable evidence, it is unnecessary to address the medical evidence.¹⁴

In this case, appellant has alleged that her high blood pressure, chronic neck pain and stress were caused by her employment. The Office referred appellant to Dr. Matherne for 30 days of outpatient counseling to help her in returning to full-time work.

In a report dated June 28, 1994, Dr. Matherne diagnosed adjustment disorder with mixed anxiety and depressed mood and stated that appellant had experienced significant anxiety and depression associated with injuries she received while working as a nurse. He added that

⁶ *Lillian Cutler*, 28 ECAB 125, 129 (1976).

⁷ *Jose L. Gonzalez-garced*, 46 ECAB 559, 563 (1995).

⁸ *Sharon J. McIntosh*, 47 ECAB ____ (Docket No. 94-1777, issued August 28, 1996).

⁹ *Barbara E. Hamm*, 45 ECAB 843, 850 (1994).

¹⁰ *Margreate Lublin*, 44 ECAB 945, 956 (1993).

¹¹ *Ruthie M. Evans*, 41 ECAB 416, 425 (1990).

¹² *Wanda G. Bailey*, 45 ECAB 835, 838 (1994).

¹³ *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993).

¹⁴ *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

appellant had physical therapy at the employing establishment, which apparently resulted in her sustaining a more significant and disabling injury.

In his May 25, 1994 evaluation, Dr. Matherne explained that appellant felt her medical treatment was mismanaged, that the physical therapist at the employing establishment ruptured her disc, that the employing establishment refused to allow her to seek outside medical treatment and that appellant was angry and unhappy about being unable to function as a full-duty nurse.

In a report dated March 13, 1995, Dr. Matherne reiterated that appellant had significant emotional problems, which were work related and that she continued to exhibit pain symptoms related to a neck injury, which was exacerbated by physical therapy at the employing establishment. In a May 1, 1995 report, Dr. Matherne opined that appellant's depression and pain symptoms resulted from her neck injury and that she needed psychotherapy to assist her in dealing with stress caused by her inability to return to work.

Dr. Matherne's reports are insufficiently probative to establish that any work factors caused appellant's depression and complaints of pain. First, the record does not support appellant's allegation that a physical therapist ruptured appellant's cervical disc in treating her.

Appellant's accounts of the November 26, 1993 incident are inconsistent -- she testified that a Nancy Edwards had ruptured her disc and then got another therapist, Tina Atchinson, to call appellant to apologize. However, appellant's coworker later stated in an affidavit dated July 19, 1995 that appellant had told her that Ms. Atchinson had done the manipulation and that Ms. Atchinson subsequently approached them on a break and told them that had she known the manipulation would worsen appellant's condition, she would not have done it.

Further, Ms. Edwards denied that she had ever manipulated appellant's spine and Ms. Atchinson denied that she had called appellant to apologize. Ms. Edwards submitted the health clinic records documenting appellant's treatment in November 1993 and stated that on November 26, 1993 appellant complained of severe pain in the left side of her neck, "unrelieved" by any of the treatment modalities she received that day. Ms. Edwards added that appellant was inconsistent in providing feedback -- she told one therapist that a cold spray treatment was painful yet informed Ms. Edwards that the treatment was positive.

The objective tests appellant underwent following the November 26, 1993 incident showed no herniated disc or any cervical abnormality beyond mild stenosis and spondylosis. Not until February 6, 1994 did Dr. Bazzone place appellant on disability due to an acute herniation. Although he related this diagnosis to the October 28, 1993 injury, he said nothing about any previous rupture in his initial report dated December 15, 1993, noting only that the month-long physical therapy appellant had undergone had provided only temporary relief.

The Board finds that no injury was caused by the November 23, 1993 treatment. Appellant's belief that her cervical disc problem resulted from physical therapy on that day is not supported by corroborative evidence, either factually or medically and is, therefore, insufficient to constitute a work factor. It follows that Dr. Matherne's reliance on the incident as a cause of her diagnosed adjustment disorder renders his opinion nonprobative.

Similarly, appellant's allegations of coworker harassment are unsupported by any witnesses. While remarks may have been made regarding appellant's limited duties, particularly when the employing establishment was short-staffed, appellant's reactions are self-generated and, therefore, not compensable under the Act. Her frustration at being unable to resume the usual duties of an LPN and her feelings of worthlessness are also not compensable. The Board notes that, despite her work limitations and extended absence, appellant was regarded highly enough as an employee to earn a highly successful rating for 1993 to 1994.

Finally, the medical evidence is insufficient to establish that appellant's hypertension was caused by work factors. Dr. Lenox first diagnosed hypertension -- sudden onset, seemingly stress related -- on June 21, 1994. In reports dated June 21 and 29, 1994, Dr. Lenox stated that appellant complained of elevated blood pressure for four days, headaches, dizziness and episodes of left-arm numbness. Appellant related that she was under quite a bit of stress at work, that they had been giving her a hard time because of her injury and she felt depressed. Dr. Lenox added that the increased blood pressure was directly related to the work injury and the increased stress of returning to work full time.

In an August 16, 1994 report, Dr. Lenox stated that prior to her work-related injury, appellant had no history of hypertension, which was due to a great deal of job-related stress resulting from her work injury. In an October 25, 1995 report, Dr. Lenox opined that appellant had developed hypertension "somewhere between February and June 1994." While it was impossible to be certain of the cause of hypertension in any person, appellant's condition was caused by chronic pain associated with her work injury and exacerbated by stress and anxiety due to the continued problems she experienced in dealing with the employing establishment.

The Board finds that Dr. Lenox's opinion is insufficient to establish a causal relationship between appellant's hypertension and her employment. Dr. Lenox provided no medical rationale for her opinion that general stress and "continued problems" at work caused an elevation in appellant's blood pressure.¹⁵ Her reasoning that because appellant had no hypertension prior to the injury, its aftereffects must have been caused by work-related stress is a cursory conclusion not supported by the medical evidence.¹⁶ Inasmuch as appellant has failed to meet her burden of proof in establishing that her disability after June 22, 1994 was causally related to work factors, the Board finds that the Office properly denied her claim.

¹⁵ See *Margarette B. Rogler*, 43 ECAB 1034, 1039 (1992) (finding that a physician's opinion that provides no medical rationale for its conclusion on causation is of diminished probative value).

¹⁶ See *Cleopatra McDougal-Saddler*, 47 ECAB ____ (Docket No. 95-2634, issued March 26, 1996) (finding that the fact that appellant was asymptomatic before an injury but symptomatic afterward is insufficient to establish, absent supporting rationale, a causal relationship).

The July 23, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
December 18, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member