

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LADORA K. MIRZA and DEPARTMENT OF TRANSPORTATION,  
MEMPHIS AIR ROUTE TRAFFIC CONTROL CENTER, Memphis, Tenn.

*Docket No. 95-2520; Submitted on the Record;  
Issued January 8, 1998*

---

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

This is the second appeal in this case.<sup>1</sup> By decision and order dated December 14, 1994, the Board remanded the case for the Office of Workers' Compensation Programs to make findings of fact regarding appellant's allegations of harassment by co-workers.

On October 25, 1992 appellant, then a 41-year-old air traffic control specialist, filed an occupational disease claim alleging that she sustained an emotional condition which she attributed to her employment. She alleged that her co-workers harassed her by commenting in a "hostile tone" on the fact that she was excused from a job duty, ripping and distributing flight progress strips while standing, because of a knee condition. Appellant stated that the employing establishment management attempted to intercede regarding the comments from her co-workers but that the efforts were unsuccessful.

In a report dated October 1, 1992, Dr. Oswald H. Thomas, III, a Board-certified family practitioner, related that appellant was hospitalized from September 26 to 29, 1992 with a diagnosis of angina, mild duodenitis, gastroesophageal reflux and small hiatal hernia. He did not indicate the cause of these conditions.

In a report dated October 23, 1992, Dr. Thomas related that appellant presented on September 26, 1992 complaining of a 10- to 14-day history of chest discomfort which she associated with stress. Dr. Thomas stated his opinion that appellant's condition was aggravated by the stress of being an air traffic controller since she had noted a worsening of her symptoms in stressful work situations.

---

<sup>1</sup> See Docket No. 93-1836.

In a report dated January 20, 1993, Dr. David P. Millett, a specialist in occupational medicine, diagnosed variant angina due to spasm of a coronary artery which had a 30 percent blockage. He stated that the spasm and subsequent chest discomfort were due to the coronary artery blockage and this was not the result of her employment. Dr. Millett stated that appellant's claim that she suffered chest pain or discomfort at work was subjective and that he had no way of knowing when she had symptoms except by herself reporting. He noted that appellant had a very busy life situation and many home responsibilities. Dr. Millet stated, "It is my opinion that her illness was not caused by her job and that there is no objective proof that her illness or symptoms are aggravated by her employment."

In a report dated January 27, 1993, Dr. Thomas related that appellant did not experience angina with routine family stress but did experience angina with the following work incidents: on October 5, 1992 while discussing a work situation over the telephone, on October 9, 1992 while driving to a meeting which would determine her work status, and on December 7, 1992 while discussing the employing establishment's Christmas party and a pay check which was apparently mishandled. Dr. Thomas stated his opinion that the stress that appellant experienced at work aggravated her angina condition.

By decision dated March 8, 1993, the Office denied appellant's claim for compensation benefits.

Following appellant's appeal to the Board and remand of the case, appellant's immediate supervisor, in a statement dated February 6, 1995, related that appellant had been experiencing problems with her knee since commencing her job at the employing establishment. He stated that on September 16, 1992 appellant was upset because of a comment from a co-worker and that he approached the co-worker and asked him to stop making such comments. The supervisor stated that he held a meeting that day and advised appellant's co-workers not to make derogatory remarks regarding the fact that appellant was excused from a particular duty due to her knee condition. The supervisor stated that he told appellant to report any further derogatory comments immediately and that two weeks later she advised him that she had heard three more comments.

By decision dated April 10, 1995, the Office denied appellant's claim for compensation benefits on the grounds that appellant had failed to establish that her angina condition and hospitalization were causally related to a compensable factor of employment.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition causally related to factors of her employment.

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 his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation

Act.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

In the instant case, appellant has alleged that harassment by her co-workers contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and co-workers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.<sup>4</sup>

In this case, appellant has alleged that she sustained an emotional condition because her co-workers made derogatory comments concerning the fact that she was excused from a particular job task due to a knee condition. It appears from the Office's April 10, 1995 decision that the Office accepted that such an incident of harassment occurring on September 16, 1992 constituted a compensable factor of employment.

The record shows that on September 16, 1992 appellant was upset because of a comment from a co-worker. The supervisor stated that he held a meeting that day and advised appellant's co-workers not to make derogatory remarks regarding the fact that appellant was excused from a particular duty due to her knee condition. The supervisor stated that appellant had not informed him of any problems with her co-workers until the September 16, 1992 incident. The record shows that appellant reported three additional comments made by co-workers within the next three weeks.

In the present case, appellant has identified a compensable factor of employment with respect to harassment from co-workers regarding the fact that she was excused from a particular job duty. However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.<sup>5</sup>

In a report dated October 1, 1992, Dr. Thomas, a Board-certified family practitioner, related that appellant was hospitalized from September 26 to 29, 1992 with a diagnosis of angina, mild duodenitis, gastroesophageal reflux and small hiatal hernia. However, he did not indicate the cause of these conditions and therefore his report is insufficient to establish that appellant sustained any medical condition in the performance of duty.

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>5</sup> See *William P. George*, 43 ECAB 1159, 1168 (1992).

In a report dated October 23, 1992, Dr. Thomas related that appellant presented on September 26, 1992 complaining of a 10- to 14-day history of chest discomfort which she associated with stress. Dr. Thomas stated his opinion that appellant's condition was aggravated by the stress of being an air traffic controller since she had noted a worsening of her symptoms in stressful work situations. However, Dr. Thomas did not identify the particular incidents or situations which he believed had caused or contributed to appellant's emotional condition and he did not mention the harassment by co-workers, the situation to which appellant attributed her condition. Additionally, he provided no medical rationale explaining how appellant's condition was caused by her job. Therefore, this report is insufficient to support appellant's claim of an employment-related emotional condition.

In a report dated January 20, 1993, Dr. Millett, a specialist in occupational medicine, diagnosed variant angina due to spasm of a coronary artery which had a 30 percent blockage. He stated that the spasm and subsequent chest discomfort were due to the coronary artery blockage and this was not the result of her employment. Dr. Millett stated that appellant's claim that she suffered chest pain or discomfort at work was subjective and that he had no way of knowing when she had symptoms except by her self-reporting. He noted that appellant had a very busy life situation and many home responsibilities. Dr. Millett stated, "It is my opinion that her illness was not caused by her job and that there is no objective proof that her illness or symptoms are aggravated by her employment." As Dr. Millett did not opine that appellant's coronary problem was causally related to her employment, his report is insufficient to discharge appellant's burden of proof.

In a report dated January 27, 1993, Dr. Thomas related that appellant did not experience angina with routine family stress but did experience angina with the following work incidents: on October 5, 1992 while discussing a work situation over the telephone; on October 9, 1992 while driving to a meeting which would determine her work status; on December 7, 1992 while discussing the employing establishment's Christmas party and a pay check which was apparently mishandled. Dr. Thomas stated his opinion that the stress that appellant experienced at work aggravated her angina condition. However, appellant has alleged that her emotional condition was caused by harassment from co-workers regarding the fact that she was excused from performing one of her job duties. These other factors cited by Dr. Thomas have not been accepted as compensable employment factors. Furthermore, Dr. Thomas provided no medical rationale explaining how these three incidents caused appellant's angina. Therefore, this report is insufficient to establish that appellant sustained an employment-related medical condition.

The April 10, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
January 8, 1998

George E. Rivers  
Member

A. Peter Kanjorski  
Alternate Member

Willie T.C. Thomas, Alternate Member, dissenting:

Appellant herein, an air traffic controller, filed an occupational disease claim on October 25, 1992 alleging she suffered from Prinzmetal angina and gastroesophageal reflux due to stress caused by her hostile work environment. Specifically, appellant stated that at the end of June 1992 she came under constant harassment from co-workers due to a physical disability which allowed her to escape the duty of ripping and distributing flight progress strip.

By decision dated March 8, 1993, the Office of Workers' Compensation Programs denied appellant's claim stating that her emotional condition was not caused by factors of her employment. Following an appeal of that decision to the Board, the Board remanded the case to the Office stating that appellant had implicated a compensable factor of employment and that the Office must develop the case to determine whether the evidence supports appellant's allegation.

On remand, the Office wrote the following letter to the employing establishment:

"In accordance with the decision by the Employees' Compensation Appeals Board, issued December 14, 1994, we have been directed to develop the factual evidence concerning the allegations made by [appellant].

"She has alleged that she experienced stress at work as a result of her co-workers making derogatory comments about her inability to perform one of her job duties, ripping strips, due to a knee condition.

“She alleges that these comments occurred three or four times per day for three months. She alleges that a supervisor unsuccessfully tried to intervene. She was hospitalized on September 26, 1992.

“Please have [appellant’s] Supervisor provide a statement addressing the above.”

The Office received a response from appellant’s supervisor on February 13, 1995. The supervisor stated:

“[Appellant] has been experiencing problems with her knee since arriving at Memphis Center. When assigned to work the A-side (which requires a lot of standing) it would bother her. [Appellant] was advised to skip the person in the break rotation if they were on the A-side and relieve the next person in line who would relieve the person on the A-side.

“September 16, 1992:

“[Appellant] was upset and crying. I told her to take a break. [Appellant] advised me a controller in the area had said something to her that upset her. I approached this person and advised him that any remarks that could be construed as out of line would cease and desist. [Appellant] went and talked to Ms. Thelma Rudd (EEO counselor). Upon returning to the control room, [appellant] took sick leave for the rest of the day. Mr. Robert Snyder, area manager, and myself assured Ms. Rudd that steps would be taken to stop any inappropriate actions.

“That same day, I conducted a meeting with my team to explain what took place. I advised the team that if they were making any derogatory remarks, they would stop immediately. I also informed Mr. Frank Grisamore and Mrs. James Kyle (adjacent Team Supervisors) to advise their team’s that if they were making comments to [appellant] concerning the A-side to stop. The team members told me that one of the problems with the rotation was [appellant] was not doing as told; she was going to the section *she* wanted to work and relieving that person to get the A-side out. (Emphasis in the original.)

“September 17, 1992:

“I met with [appellant] this morning and told her, ‘to prevent any further problems, when you return from a break to check in with the area supervisor in charge and the ASIC will assign you a work position.’ I told her we will tell everyone in the area to cease and desist if they were making any remarks. [Appellant] felt these actions would correct the problem. I told [appellant] to inform me *immediately!* if there were any remarks made. Two weeks later she told me she heard three comments. (Emphasis in the original.)

“September 20 to 21, 1992:

“Mr. Snyder, Mr. Grisamore, Mr. Kyle and myself conducted a meeting with Team 1, 2, and 3 to advise all present, management’s position concerning harassment.

“September 26, 1992:

“I was advised [that appellant] was in the hospital with chest pains, but they were not sure what the problem was. [Appellant] filed a claim for compensation on October 25, 1992, for Prinzmetal’s angina and gastroesophageal reflux (A6-558.762) which was denied.

“Personally, I never heard any derogatory remarks made to [appellant]. She never said one word to me about derogatory remarks until that day on September 16, 1992. I think [appellant] was under a lot of stress, attributed to her lift outside the FAA [federal aviation administration] more than inside. [Appellant] was holding down a full-time job, working unusual rotating shifts, trying to rear two young children and run a household.”

A senior claims examiner issued a decision on April 10, 1995 finding that appellant’s emotional condition was not caused by factors of her employment and did not occur in the performance of duty. In a memorandum containing findings of fact, the claims examiner concluded that there was only a single documented incident consisting of a single comment by a co-worker which occurred on September 16, 1992.

Because appellant identified a compensable factor of employment, the issue is whether she underwent harassment by her co-workers. The claims examiner concluded: “I find that the evidence of record does not support this contention” in denying appellant’s claim. He found that appellant’s condition did not occur in the performance of duty and was not caused by factors of her employment.

From a careful perusal of the memorandum received February 13, 1995 from appellant’s supervisor, it should be pointed out that Mr. William S. Chauncey reported that on September 16, 1992 appellant was upset and crying due to a comment from a controller which had upset her; that following a talk with the EEO counselor, appellant took the remainder of the day off on sick leave. Under the date September 17, 1992, the supervisor reported that appellant told him that she had heard three comments after appropriate actions had been taken to inform all personnel to cease making any derogatory remarks. Under the date September 20 and 21, 1992, the supervisor reported that an additional meeting was held with three other management officials to advise all personnel management’s position concerning harassment.

It should be noted that appellant identified one of the co-workers in her January 29, 1993 letter as “RT Renner” who suggested that she should retire if she could not do the work. Appellant’s supervisor confirmed that he talked to the employee, however, appellant reported that one week later on September 14, 1992 that Mr. Renner openly commented to her that she

should take a “medical.” Appellant went on to report comments hollered across the room on September 16, 1992 by Mr. House causing her to meet with the EEOC counselor, Mrs. Rudd and begin the informal complaint process. None of the above co-workers or counselor was contacted and asked to comment but the supervisor.

From my review of the total evidence of record, I conclude that appellant has established that she indeed was harassed in the performance of her duties and that this was a compensable factor of employment.

Turning now to the medical evidence, the only medical report of record negating causal relationship between the stress appellant alleged she sustained on the job and her diagnosed medical conditions of Prinzmetal Angina is by the employing establishment’s regional flight surgeon, Dr. David P. Millett, a nonexamining physician. He reported that the chest pain due to spasm of a coronary chest artery was due to 30 percent blockage of the coronary chest artery and not due to her employment. He further stated that her illness was not caused by her job and no objective proof that her illness or symptoms were aggravated by her job.

On the other hand, I find the reports of appellant’s treating physician, Dr. O.H. Thomas, III, persuasive that the stress appellant experienced at the hands of her co-workers and in performing her job aggravated her angina condition. In his January 27, 1993 report, Dr. Thomas described appellant’s hospitalization, treatment, incidents of stress appellant reported experiencing on the job leading to angina symptoms and the length of time he estimated that she would miss from work. I find the medical evidence submitted from Dr. Thomas to constitute the weight of the medical evidence and establishes that appellant’ stress on the job aggravated her angina condition. I would reverse the decision of the Office and remand the case for a determination of the period of disability appellant underwent due to this aggravation and payment of appropriate compensation and medical expenses. Because appellant has been wrongfully denied benefits, in my opinion, I feel compelled to record this dissent.

Willie T.C. Thomas  
Alternate Member