

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YLANDA Y. DUGAY and U.S. POSTAL SERVICE,
POST OFFICE, Waco, TX

*Docket No. 97-1912; Submitted on the Record;
Issued December 2, 1999*

DECISION and ORDER

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

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

On October 7, 1996 appellant, then a 41-year-old distribution clerk, filed an occupational disease claim, alleging that working at night caused a sleep dysfunction and stress. She had stopped work on August 10, 1996. In support of her claim, appellant submitted several statements in which she alleged that working for 10 years on the night shift caused a sleep disorder which led to nervousness, headaches and stress. She stated that she was tired all the time, was forgetful at work, could not concentrate or work as quickly as needed and needed help completing her work; thus, she was afraid she will lose her job. Appellant stated that she could not meet dispatches and deadlines and that coworkers would have to help her get the work out. This led to nervousness and depression to the degree that she could not function at all and could not work.

In a November 21, 1996 letter, the employing establishment indicated that appellant's duty hours were 12:50 a.m. to 9:00 a.m. and acknowledged that she had problems concentrating at work and was slow compared to other clerks. The employing establishment stated that she had never requested that her shift be changed.

By decision dated April 11, 1997, the Office of Workers' Compensation Programs denied the claim, finding that, as appellant failed to establish a compensable factor of employment, her emotional condition was not sustained in the performance of duty.

The relevant medical evidence includes a discharge summary from Brazos Psychiatric Hospital indicating that appellant was hospitalized from January 7 to 21, 1988 with a diagnosis of schizoaffective disorder. She reported a history of sleep disturbance, listlessness and difficulty concentrating. In letters to the employing establishment dated May 6 and 9, 1988, Dr. J. Clay Sawyer, who is Board-certified in psychiatry and neurology, requested that

appellant's shift be changed.¹ In a June 16, 1990 report, Alexander Howe, Ph.D., a psychologist, noted that appellant was hyperanxious and complained extensively about her inability to sleep because of her work schedule which affected her ability to think.

Dr. Robert Springer, a Board-certified pulmonologist, provided August 6, 1996 reports in which he noted appellant's history of 10 years working the night shift and stated that she had problems of sleep deprivation which led to problems with concentration and work deficiency. Dr. Springer advised that appellant "is probably one of the select people who cannot function on a long-term basis with working that shift of work and should be considered in the long run for a daytime job with more regular working hours." He diagnosed shift work sleep disorder, psychophysiological insomnia, probable upper airway resistance syndrome with snoring, rule out obstructive sleep apnea and exogenous depression, possibly related to sleep deprivation.

Dr. William E. Lebeau, who is Board-certified in psychiatry and neurology, provided a discharge summary dated September 4, 1996 indicating that appellant had been hospitalized from August 12 to 16, 1996 with a diagnosis of major depression, recurrent, with psychotic features. In reports dated September 24, October 7 and 11, 1996, he noted that she suffered from job-related stress and was not able to work. In an October 28, 1996 report, Dr. Lebeau advised that he first saw appellant on September 24, 1994 and noted that in January 1996 she began discussing her sleep problem and increasing difficulties at work. He stated that, despite all efforts to treat her with various medications, she continued to deteriorate until hospitalization was necessary on August 12, 1996. Dr. Lebeau noted that following discharge her condition remained tenuous and diagnosed major depression, recurrent, and shift work sleep disorder and concluded:

"I firmly believe that working on night shift has been a severe and serious aggravation to this patient's nervous system and has resulted in her coming to the point where she is no longer well enough to work any shift or any job. Hopefully, with time and treatment, she will recover to the point where she will be able to return to a job in the [employing establishment] but working only daylight shifts. At present she is unfit by reason of her illness to work anywhere. She is constantly anxious, frequently confused, forgetful and fearful."

In reports dated November 5, 1996 and January 29, 1997, Dr. Lebeau reiterated his findings and conclusions.

By report dated April 3, 1997, Dr. Springer advised that he was in charge of a sleep center and had evaluated appellant in that regard. He stated:

"I thought that she had a shift work sleep disorder, psychophysiology insomnia and exogenous depression probably related to sleep deprivation with some upper airway resistance syndrome. My only thoughts at that time were to get her off the

¹ Appellant also submitted treatment notes covering the period 1988 through 1992 which provided a diagnosis of sleep disorder and recommended treatment.

night shift if possible.... I do not think that the specific work factors were involved as much as the specific shift in times that she was working.”

Appellant also submitted statements from coworkers in which they described appellant’s sleepiness and lack of concentration at work.

The Board finds that this case is not in posture for decision and requires further development of the evidence.

To establish that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.² Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 employment factors identified by appellant.³

Compensability does not arise with frustration over not being able to work in a particular environment, but rather it arises from performance of regular or specially assigned duties.⁴ The Board finds that appellant’s working the night shift constitutes a compensable employment factor as this allegation relates to the performance of her regular or specially assigned duties and therefore arises out of her employment.⁵ The case will, therefore, be remanded to the Office for further development.⁶ On remand the Office should prepare an appropriate statement of accepted facts which provides a complete and proper frame of reference for a physician and further develop the medical evidence to resolve the issue of whether appellant sustained an emotional condition due to her employment. After such development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers’ Compensation Programs dated April 11, 1997 is hereby set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *See Charles J. Jenkins*, 40 ECAB 362 (1988). The Board notes that it is irrelevant whether appellant requested a change in shift.

⁶ When the claimant has established a compensable factor of employment, the Office should base its decision on an analysis of the medical evidence; *see Abe E. Scott*, 45 ECAB 164 (1993).

Dated, Washington, D.C.
December 2, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member