

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONIQUE A. GARRETT and DEPARTMENT OF THE AIR FORCE,
U.S. AIR FORCE ACADEMY, OFFICE OF THE CHAPLAIN,
Colorado Springs, Colo.

*Docket No. 97-327; Submitted on the Record;
Issued February 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition leading to hypertension in the performance of duty as alleged.

On August 2, 1995 appellant, then a 31-year-old administrative assistant, filed a claim for stress and hypertension sustained in the performance of duty on or before April 11, 1995. Appellant stopped work on April 11, 1995. In an attached statement, appellant alleged that supervisors Col./Chaplain Frissell and TSgt. Timothy Sackie harassed her from January to March 1995, causing an elevation of blood pressure. She asserted that this harassment increased due to the Office of Workers' Compensation Programs' acceptance of an April 11, 1995 traumatic injury claim for a low back injury sustained that day when she slipped and fell in an icy parking lot. Appellant was seven months pregnant when she fell. Also, appellant had a severe hearing loss due to a childhood injury, and was provided an amplified handset to use at work by a state rehabilitation counselor in December 1988. She submitted factual and medical evidence in support of her claim.

In a March 31, 1995 statement, appellant alleged that Col. Frissell monitored her personal telephone calls, and confronted her on March 30, 1995 after she telephoned her fiancé who was stationed overseas. Col. Frissell allegedly stated that he did not trust appellant, even though she admitted making the call. TSgt. Sackie generally corroborated appellant's statement.¹

Appellant took the minutes of an April 5, 1995 staff meeting, at which personnel were instructed that "DSN calls are for official business only!"

¹ In an April 3, 1995 form, appellant's union representative filed a grievance on her behalf regarding a March 30, 1995 incident in which appellant was yelled at by Col. Frissell and TSgt. Sackie for making a personal phone call to her fiancé.

In April 4 and 6, 1995 reports, Dr. Ellen F. Arendt, an attending Board-certified obstetrician and gynecologist, stated that appellant developed physical symptoms requiring a March 31, 1995 hospital evaluation due to “problems with stress in the workplace.” Dr. Arendt recommended that appellant “be moved to a less stressful work situation.”

In April 12, 1995 reports, Dr. Arendt noted that appellant had hypertension after an April 11, 1995 fall,² opining on April 25, 1995 that work stress was a factor in causing appellant’s hypertension.

In a June 14, 1995 report, Dr. Arendt stated that appellant had experienced problems with “stress in the workplace” throughout her pregnancy, and developed serious hypertension at 30 weeks gestation, at which time she “reported being under a great deal of stress at work.” Dr. Arendt then ordered appellant to be home on bed rest, “to take her out of the workplace” and lower her blood pressure. She refused appellant’s request that she return to work in May 1995 because of the detrimental effect of the “significant stress that she has experienced at work. [Dr. Arendt] was very concerned that if [appellant returned] to the workplace, that her blood pressure would become much worse and endanger both her and the baby.”³ Appellant delivered a daughter on June 16, 1995.⁴

In an August 28, 1995 report, Dr. Arendt stated that “continued ... stress in the workplace ... would only exacerbate her elevated blood pressure,” which had improved with bed rest. She concluded that appellant had “pregnancy-induced hypertension which was exacerbated by stress in the workplace.”

In a September 5, 1995 statement,⁵ appellant described employment incidents which she alleged caused her claimed condition. On January 3, 1995 Col. Frissell would not intervene when coworkers used her adapted telephone and refused to reset the volume controls. On February 9, 1995 Col. Frissell threw papers at her during a performance evaluation, and on April 4, 1995 raised his voice to her about seeing her union representative. On March 30, 1995 Col. Frissell yelled at appellant, threw papers at her and said he did not trust her. She alleged a pattern of harassment by TSgt. Sackie regarding her leave requests, and that Col. Frissell accused her of wrongdoing on March 30, 1995 as she made a personal telephone call to her fiancé. Appellant noted that as a result of these incidents, she experienced hypertension leading

² In an April 14, 1995 report, Dr. Arendt noted that appellant experienced an increase in blood pressure after the April 11, 1995 fall due to stress over the health of her unborn child.

³ Dr. Arendt submitted copies of chart notes dated November 1994 to June 1995.

⁴ In an August 14, 1995 report, Dr. Mary Lou Shearn, an attending clinical psychologist, noted counseling appellant for difficulties with stress. She stated that appellant’s “profound hearing impairment ma[de] her work as a secretary demanding and pressured.” Dr. Shearn related appellant’s accounts of problems with her supervisors, anxiety regarding the financial pressures of extended leave, having to go to various agencies for financial help although ordered to be in bed, and the stress of being a single parent.

⁵ The Office sent an August 17, 1995 letter to appellant requesting detailed, rationalized medical information, and a detailed description of the alleged employment factors. The Office also sent August 17 and September 21, 1995 letters to the employing establishment requesting additional information.

to bed rest from April 17 to June 16, 1995. She alleged discrimination due to her race, gender, pregnancy and disability.

Appellant submitted statements from chaplain's office coworkers. In a May 1, 1995 letter, Donna Skeith stated that, during an April 18, 1995 staff meeting, Col. Frissell stated that appellant's April 11, 1995 fall did not warrant medical treatment or bed rest. In an August 24, 1995 letter, Ms. Skeith stated that Col. Frissell yelled at appellant and threw things at her. In an August 26, 1995 letter, Elizabeth P. Fechner stated that Col. Frissell had frequent outbursts at appellant and other employees, and that discussions at regular staff meetings would "set him off."⁶

In a September 11, 1995 letter, a state rehabilitation counselor noted appellant's "profound hearing loss" severely impaired her "ability to hear and understand speech, and recommended that she avoid jobs requiring "constant telephone duties and dictation (taking minutes during meetings)."⁷

In a September 26, 1995 letter, TSgt. Sackie stated that appellant and Col. Frissell "did not communicate with each other very well."⁸ In an October 2, 1995 letter, TSgt. Sackie corroborated appellant's account of March 30, 1995 reprimands for making personal telephone calls, which resulted in her transfer to Col. John Bernstein.⁹

In a January 11, 1996 letter, the employing establishment noted that meetings were held with appellant on August 21, October 24 and 30, 1995 regarding TSgt. Sackie's complaints that appellant made long distance calls to her fiancé, although a senior supervisor was not convinced that appellant acted improperly. Appellant was reassigned to Col. Bernstein as of October 30, 1995.¹⁰

In a January 26, 1996 report, Dr. Jason Richter, a psychiatrist and second opinion physician, reviewed the medical record and statement of accepted facts, and diagnosed an

⁶ Appellant also submitted August 1995 statements from Maria Madigar, James Wyatt, Bonny Madison and Robin Johnson supporting appellant's characterization of TSgt. Sackie and Col. Frissell's behavior.

⁷ The record indicates that one of appellant's duties was taking minutes of staff meetings.

⁸ In a September 17, 1995 report, Dr. James J. Simerville, an attending orthopedist, diagnosed low back pain and sacroiliac dysfunction due to the April 11, 1995 fall. He noted appellant continued to experience mild hypertension and low back pain after she delivered in June 1995 and, therefore, the hypertension was "more related to her low back pain" from the April 11, 1995 fall "than her pregnancy as it persisted beyond the pregnancy." He prescribed physical therapy. In a December 28, 1995 report, Dr. Simerville diagnosed bilateral sacroiliac dysfunction.

⁹ In a January 2, 1996 report, Dr. Dennis L. Schneider diagnosed chronic muscle contraction headaches due to "significant stress related to work and new baby," hypertension, back pain and migraine headaches aggravated by life stress. He prescribed medication.

¹⁰ A November 14, 1995 grievance settlement agreement notes that Col. Bernstein would be appellant's new supervisor and prepare a new performance appraisal for her. In a January 17, 1996 letter, a union representative noted that appellant would change supervisors from TSgt. Sackie to Col. Bernstein, an employing establishment chaplain, who would also prepare a new performance appraisal for appellant.

adjustment disorder with anxiety, resolved. He opined that appellant's hypertension was primarily caused by pregnancy. Dr. Richter stated that he was unable to "specify whether there was any period of disability" due to the fall, the low back injury, or whether back pain from the injury caused appellant's hypertension. He cited two published medical abstracts which indicated that work-related stress did not cause hypertension in women, and therefore any employment factors could not have caused appellant's hypertension.

By decision dated February 16, 1996, the Office denied appellant's claim on the grounds that causal relationship was not established. The Office found the following to be compensable factors of employment: Col. Frissell pounded his fists on his desk and threw papers in appellant's presence when speaking with her on various unspecified dates; on April 18, 1995, during a staff management meeting, Col. Frissell disputed the legitimacy of appellant's absence due to the April 12, 1995 fall; Col. Frissell would not intervene when coworkers would use appellant's adapted telephone handset and not reset the controls.¹¹ The Office further found that Dr. Arendt's reports were insufficiently rationalized, and that the weight of the medical evidence rested with Dr. Richter.

The Board finds that appellant has not established that she sustained an emotional condition leading to hypertension in the performance of duty as alleged.

To establish appellant's occupational disease claim that she has sustained an emotional condition with consequential hypertension in the performance of duty, she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing both that she has an emotional or psychiatric disorder; and (3) that the identified compensable employment factors are causally related to her emotional condition.¹² In an emotional condition claim, the Office, as part of its adjudicatory function, must make findings of fact regarding which of the alleged working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship.¹³

In this case, by February 16, 1996 decision, the Office accepted as compensable factors of employment that Col. Frissell pounded his fists on his desk and threw papers in appellant's presence when speaking with her on various unspecified dates, would not intervene when coworkers interfered with her adaptive equipment and on April 18, 1995 disputed the legitimacy

¹¹ The Office found the following employment factors to be factual but not compensable: various grievances and Equal Employment Opportunity complaints as no error or abuse was shown on the part of the employing establishment; a verbal reprimand for making personal calls; frustration regarding her personal finances and having to take leave due to her pregnancy; stress regarding leave requests; frustration regarding a performance appraisal; feeling ill after a March 31, 1995 meeting with a union representative regarding a leave request which was later approved; frustration that coworkers were transferred or had resigned; and that appellant's acting supervisor from March 17 to April 12, 1995 stated he could deny appellant's leave request. The Office found the following alleged factors were not established as factual: on April 4, 1995 Col. Frissell yelled at appellant in her office; Col. Frissell tried to take away appellant's two 15-minute breaks; and emotional stress over her health and that of her baby.

¹² See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹³ See *Barbara Bush*, 38 ECAB 710 (1987).

of appellant's absence due to the April 12, 1995 fall. As in this case, when the matter asserted is established as a compensable factor of employment, the Office bases its decision on the medical record. In this case, the Office found that appellant submitted insufficient rationalized medical evidence supporting causal relationship to establish that the accepted employment factors caused any medical condition.

In support of her claim, appellant submitted several reports from Dr. Arendt, an attending Board-certified obstetrician and gynecologist, consistently supporting a causal relationship between "stress" in the workplace, hypertension and other physical symptoms. In April 4 and 6, 1995 reports, Dr. Arendt stated that appellant had symptoms attributable to workplace stress, requiring a March 31, 1995 hospital evaluation. Dr. Arendt noted appellant's hypertension in April 12, 1995 reports, opining on April 25 and June 14, 1995 that work stress was a factor in causing appellant's hypertension. In an August 28, 1995 report, Dr. Arendt diagnosed "pregnancy-induced hypertension ... exacerbated by stress in the workplace." Although Dr. Arendt repeatedly opined appellant's hypertension was caused in part by workplace stress, she did not explain the pathophysiologic mechanism of this causation. This lack of medical rationale diminishes the probative value of Dr. Arendt's opinion.¹⁴ Also, Dr. Arendt did not mention any specific stressful incidents or other work factors. The Board has held that medical opinions premised on an inadequate factual or medical history are of diminished probative medical value.¹⁵

In a January 26, 1996 report, Dr. Richter, a psychiatrist and second opinion physician, diagnosed an adjustment disorder with anxiety, resolved. Based on the complete medical record and a statement of accepted facts, Dr. Richter opined that appellant's hypertension was primarily caused by her pregnancy. He stated his opinion that any job stress appellant encountered in her employment would not trigger hypertension. Rather, he found the primary causative agent to be her pregnancy and cited to several medical articles pertaining to hypertension in women from job stress. Dr. Richter concluded appellant's disability due to hypertension was not work related. As Dr. Richter's opinion was based on a complete and accurate factual and medical history, his opinion constitutes the weight of medical opinion.

Consequently, appellant has not established her emotional condition claim, as she submitted insufficient rationalized medical evidence to establish a causal relationship between the accepted factors of employment and any medical condition.

The decision of the Office of Workers' Compensation Programs dated February 16, 1996 is hereby affirmed.¹⁶

¹⁴ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹⁵ See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

¹⁶ The record indicates that on October 9, 1996 appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review. However, appellant filed her appeal with the Board on October 22, 1996. The Office issued a November 4, 1996 decision denying appellant's request for a hearing as untimely, as it was made more than 30 days following the Office's February 16, 1996 decision. As the Office issued the November 4,

Dated, Washington, D.C.
February 10, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

1996 decision after appellant filed her appeal with the Board on October 22, 1996, that decision must be set aside; *see Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).