U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRIET M. JASPER and DEPARTMENT OF THE NAVY, NAVAL LEGAL SERVICE OFFICE, Norfolk, Va.

Docket No. 97-170; Submitted on the Record;
Issued March 4, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM, BRADLEY T. KNOTT

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

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met her burden of proof.

To establish his claim 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.[1] 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.[2]

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability

[1] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[2] *Victor J. Woodhams*, 41 ECAB 345 (1989).

comes within coverage of the Federal Employees' Compensation Act.[3] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[4]

The facts in this case reveal that on January 6, 1995 appellant, then a 48-year-old legal clerk, filed an occupational disease claim, alleging that accommodations established due to aggravation of an employment-related thigh injury led to an emotional and psychological disorder.[5] She had stopped work on September 17, 1993. By decision dated November 7, 1995, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not sustained an injury in the performance of duty. On August 12, 1996 appellant requested reconsideration and submitted additional evidence. In an August 29, 1996 decision, the Office denied modification of the prior decision.

In support of her claim, appellant submitted a December 7, 1994 statement alleging that her stress was caused because of the following factors: (1) she was ordered to sign an accommodation letter dated July 29, 1993 that was contrary to the recommendations of her physician; (2) she was unable to conform to the accommodations set for her because her job duties required that she move around; (3) restrictions were placed on her without her physician's knowledge or consent; (4) the restrictions created an inefficient work process; (5) the restrictions made her feel "disabled, helpless, hopeless and worthless"; (6) she could not deal with the lack of mobility in carrying out her work duties; (7) her supervisor would become angry when she tried to discuss the change in her job structure; (8) she did not feel she had the "privilege" to take sick leave because of her responsibilities as a Notary Public which was too constricting and confining for her; (9) on September 17, 1993 her supervisor delayed approving sick leave until she "became visibly ill on the bathroom floor." In an August 12, 1996 letter, she added that the restrictions placed on her did not comply with the Americans With Disabilities Act (ADA). In a statement that day she stated that the confinement to her desk caused a psychological condition because she could not move around "intermittently" as required by her treating internist, Dr. Glenn R. McDermott. Appellant concluded:

> "My supervisor set up the accommodations for me and for her to think I could actually carry out my duties confined to a chair or my desk was unrealistic.
>
> "Continuous and repetitive movement is required in my job position and there is no way of getting around it. Knowing I could no longer perform my job due to structure of the office and the large volume of work that needed to be done, the accommodations I was instructed to follow caused depression, tension, anxiety, and the pain in my right thigh caused more stress. Measures should have been

[3] 5 U.S.C. § 8101 *et seq.*

[4] *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] The record contains a decision dated September 16, 1994 in which the Office denied that appellant sustained an employment-related emotional condition causally related to her accepted thigh condition. Appellant was advised to submit a new claim for stress related to work factors.

> taken to place me in a job I could perform based on my physical disability. The type of accommodations set for me could not possibly work due to the type of work I performed. Staff members could not assist me in all aspects of my job duties. Every duty I performed was essential to my job except filing and working in the reception area when serving as a Notary Public."

In a second statement dated August 12, 1996, appellant described the events of September 17, 1993, stating that Chief White denied her sick leave request, stating that when told she was sick, Chief White then called another employing establishment notary. After ascertaining that the notary would notarize if an emergency arose, appellant stated:

> "Chief White told me to put the leave slip in her in box, but she did not sign it. She said I could go. As I started to leave, Chief White said, 'I do [not] feel comfortable letting you go.' So I did not leave. I went back to my desk and became very ill. I went into the bathroom and collapsed on the floor beside the commode.... Chief White came into the bathroom and spoke to me in an angry tone of voice...."

Appellant related that she was then transported to a hospital where she was diagnosed as being dehydrated, was given intravenous medication and was discharged.

In an April 30, 1993 duty status report, Dr. McDermott advised that appellant could intermittently lift 0 to 10 pounds 7 hours per day or 10 to 20 pounds 2 hours per day, sit 7 hours per day, stand 2 hours per day, walk ½ hour per day and climb stairs ½ hour per day. She was not to lift heavier than 20 pounds, climb ladders, kneel, bend, stoop, twist or pull/push.

A July 29, 1993 employing establishment memorandum signed by appellant provides restrictions to her physical activities that comport with Dr. McDermott's recommendations. The memorandum notes that appellant did not abide by restrictions to her physical activity that were instituted in 1991[6] and were, therefore, being reiterated. The following changes were noted: The filing cabinets were moved closer to appellant's desk; she was to alternate notary duties and on the days assigned was "instructed to remain at the front desk for the duration of the afternoon;" on alternate days she was to remain at her desk and complete other assigned tasks;[7] two employees would man the office during lunch hours enabling appellant to sit at her desk and answer the telephone while the other employee would man the front desk; appellant was to "consolidate her efforts" to reduce walking by making periodic trips to the printer, ask other personnel to retrieve her printed documents; utilize the telephone intercom or e-mail to contact other employing establishment personnel; she was to limit climbing stairs to an half hour per day and otherwise use the elevator. The memorandum concluded:

[6] An employing establishment memorandum dated November 20, 1991 indicates that the employing establishment restructured appellant's job duties, based on her physician's opinion that her nonemployment-related leg condition was exacerbated by the "constant standing and walking" at work. She was to sit and type in the back office in the morning and sit in the front office in the afternoon while serving as a notary.

[7] It was further noted that other employing establishment personnel had been instructed to coordinate emergency notary services within the vicinity of appellant's work area.

> "The above accommodations are considered reasonable to reduce any actual physical requirements for you while performing the requirements of your job. You are expected to follow this guidance and not move unnecessarily during the work day. Should you feel at any time that additional accommodations are necessary, you should inform me as soon as possible. Lastly, you are advised that should you choose not to comply with the above accommodations, you will be subject to appropriate disciplinary action."

The record contains a September 17, 1993 statement in which appellant's supervisor, Chief Petty Officer Judith N. White, described the events that day, stating that appellant had left a lunchtime baby shower for the department commander, Lieutenant Commander (LCDR) Jones, before it was over but afterwards helped clean up, seeming "fine ... laughing and joking." Shortly thereafter appellant requested leave for the rest of the day. Chief White continued:

> "I told her that I could [not] do it, that she knew that I had to keep one notary on board at all times. She said that she knew this but that she was requesting the leave because she was sick. I ... told her she was putting me between a rock and a hard place. I told her to let me make a phone call to Chris Collis to see if she would be around if I needed an emergency notary. Chris stated that she would be here this afternoon so I told [appellant] to leave but that I was not happy with the way she handled this. Approximately 5 [to] 10 minutes later I went to the printer and [appellant] was still at her desk. Shortly thereafter I was informed ... that [she] was in the ladies room and was sick."

Appellant was then taken to the employing establishment clinic. Chief White concluded:

> "This may or may not be relative, but it should be noted that [appellant] had wanted to discuss and submit her workers' comp[ensation] claims [with] me today. I had asked her this afternoon if the claims were something that were critical and needed to be discussed with me today and she told me no but that she really wanted to get with me about them. I told her that I would discuss them with her Monday. It was after this conversation that [she] made it known that she was sick."

An employing establishment memorandum of resolution dated October 14, 1993 provides that appellant agreed to withdraw her allegations of discrimination provided that the employing establishment would allow her to take sick leave when requested regardless of the number of notaries available at the time such leave was requested.

Chief White also provided a statement dated October 21, 1993, noting that appellant had come in to speak with LCDR Jones and herself that day and described the conversation.

In an undated statement, a coworker, V.A. Dunmire, stated that she had been sent to the employing establishment in August 1993 to help straighten it out. After reviewing the procedures in place, she devised a system that was approved by LCDR Jones and put in place. She described a lack of cooperation from appellant regarding the new procedures, stated that she found appellant sick on September 17, 1993 and concluded that there was a clash of personalities

between appellant and Chief White. A second coworker, Ursula Brown, also provided an undated statement in which she opined that Chief White always dealt with appellant in a professional manner.[8]

The Board finds that the July 29, 1993 letter in which the employing establishment outlined restrictions to appellant's physical activity was in accordance with Dr. McDermott's report dated April 30, 1993. Furthermore, appellant has alleged error in the administrative process by which the employing establishment assigned her to light-duty work and not any inability to perform her light-duty job assignments. The evidence establishes that appellant focused on her own feelings of being ill-treated by her supervisor,[9] and her emotional reaction arose from frustration at not being permitted to work in a particular environment and is not due to a compensable work factor.[10] In general, matters regarding the use of sick leave are administrative matters not related to the employee's regular or specially assigned work duties.[11] To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence that there was error or abuse in the administrative action.[12] In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[13] Mere perceptions of error or abuse are not sufficient to establish entitlement to compensation.[14] In this case, appellant has not submitted evidence corroborating her various allegations of harassment. While appellant provided a guide that included general principles for compliance with the ADA, she did not specifically indicate how her job restrictions were not in compliance.[15] Consequently, appellant has failed to establish a compensable factor of employment.

[8] The record also contains evidence regarding events subsequent to September 17, 1993 that are not relevant to the issue in this case.

[9] *See David G. Joseph*, 47 ECAB 490 (1996).

[10] *See Helen P. Allen*, 47 ECAB 141 (1995).

[11] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[12] *See Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

[13] *See Jimmy Copeland*, 43 ECAB 339 (1991).

[14] *See Curtis Hall*, 45 ECAB 316 (1994).

[15] *See generally Earl D. Smith*, 48 ECAB ____ (Docket No. 95-2749, issued August 13, 1997).

The decisions of the Office of Workers' Compensation Programs dated August 29, 1996 and November 7, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 4, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member