

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY W. O'ROURKE and DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT, North Fort Myers, FL

*Docket No. 98-346; Submitted on the Record;
Issued October 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that her emotional condition is causally related to compensable factors of her employment.

On October 14, 1996 appellant, then a 43-year-old community development technician, filed a claim for moderately severe anxiety-based depression. In a December 4, 1996 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. In a December 30, 1996 letter, appellant, through her attorney, submitted medical evidence. In a March 15, 1997 letter, appellant's attorney formally requested reconsideration. In a May 14, 1997 merit decision, the Office denied appellant's request for modification of the December 4, 1996 decision. The Office subsequently received letters dated April 21 and 23, and May 6, 1997 requesting reconsideration and offering additional medical evidence. In a June 10, 1997 merit decision, the Office again denied appellant's request for modification. On June 12, 1997 the Office received a May 23, 1997 letter requesting reconsideration. In a June 16, 1997 letter, appellant's attorney repeated the request for reconsideration. In an October 15, 1997 decision, the Office found that appellant had established fact of injury in that she had shown at least one compensable factor of employment. The Office, however, found that the medical evidence established that appellant's emotional condition was not causally related to factors of her employment. It therefore denied her claim for compensation.

The Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes with the coverage of the Act. 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. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

In a June 14, 1997 letter, appellant stated that over the prior four to five years the employing establishment was undergoing reorganization. She indicated that she held multiple positions of program review assistant, county program technician, collections representative and community development technician. Appellant noted that she was assigned to county offices in three counties, all of which had severe administrative problems with procedural breaches and seriously backlogged work loads. Appellant indicated that she established and maintained a pilot program in one county which included recommending foreclosures and preparing foreclosure dockets for referral within the employing establishment. She stated that the work was extremely stressful. She commented that she did not receive a job description for 18 months and received minimal supervision. Appellant also indicated that she was harassed by delinquent borrowers, which included people employed by the local police and the local sheriff's departments. She stated that the primary employing establishment was extremely backlogged with work. Appellant noted one coworker had retired several months earlier, another coworker sought a transfer and was replaced by a less aggressive person. She related that her supervisor was in an accident and was unable to work for four months. Appellant indicated that she became responsible for all the clerical and technical responsibilities. Appellant noted that while she was at the primary employing establishment, she was detailed to another office for two to three days a week for a six-month period. Appellant reported that in January 1996 two county offices merged which precipitated her hospitalization in February 1996 for ulcerative colitis. She indicated that when she returned to work, there was a large backlog of work and she did voluntary overtime without compensation. Appellant stated that she took medical leave in December 1996.

In a July 24, 1997 letter, Stephen G. Whitfield, the acting state Director of the employing establishment, stated that there were no abnormal backlogs at the employing establishment. He noted that at one time, appellant was the only clerical technical employee in an office after a coworker was transferred for personal reasons which led to some backlog for a few months until a replacement was hired. Mr. Whitfield indicated that appellant had requested reassignments on

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

several occasions. He admitted that every agency would experience backlogs during certain peak periods and the employing establishment was no exception. Mr. Whitfield noted that the employing establishment went through a transfer of function in 1995 and a reduction-in-force in 1997 as well as a consolidation from 34 local offices to 15 local offices. He indicated that appellant was included in a pilot collection project when she expressed interest in. Mr. Whitfield denied that appellant went without a position description. He noted that, as her current position description contained servicing of rural housing accounts, there was no need to change it but it was amended to reflect the pilot assignment. Mr. Whitfield indicated that appellant was under supervision at all times with some discretion over day-to-day activities. He commented that most employees dealing with collections and delinquent borrowers routinely faced belligerent individuals or those who were less than cordial. Mr. Whitfield stated that appellant did not report any harassment and the supervisors indicated that they were unaware of any specific instances. He indicated that appellant volunteered for the detail assignment of two to three days a week in one county office after that county office asked for her. He stated that the other county office had staff with sufficient expertise to accomplish the work while appellant was on the detail assignment. Mr. Whitfield noted appellant did voluntary overtime during periods of increased work loads but received either overtime pay or compensatory time for the work. He indicated that the merger of county offices occurred in June 1996, not January 1996 as stated by appellant. Mr. Whitfield commented that the merger caused appellant anguish because she could not get along with some of the people she was required to work with in the consolidated office. He noted that appellant had been off work for an extended period and had been instructed to return to work on June 23, 1997. Mr. Whitfield stated that when she did not return, she was placed on absent-without-leave status and her dismissal was recommended.

The Office accepted that appellant had two compensable factors of employment; the backlog that occurred when appellant was the only clerical technician in the employing establishment for a few months and her job requirement to deal with delinquent borrowers. Both of these activities involved appellant's assigned duties and therefore were within her performance of duty. The consolidation of offices is an administrative matter that is unrelated to appellant's assigned duties. While appellant contended she faced severe backlogs, she has not submitted the factual basis to show that she had a backlog for periods other than that acknowledged by the employing establishment. She also did not explain the procedural breaches that she complained of as being stressful. Appellant worked voluntary overtime and did volunteer for the detail assignment which had her working in two county offices at the same time. These activities constituted assigned duties for appellant and would be compensable factors of employment. However, the employing establishment indicated that appellant was compensated for her voluntary overtime. Therefore, there is no showing of an additional factor of employment caused by uncompensated overtime.

As appellant had compensable factors of employment, the issue then becomes whether these factors caused her emotional condition. To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying the employment factors alleged to

⁴ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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,⁷ must be one of reasonable medical certainty⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

In a December 18, 1996 report, Dr. Roxann Sangiacomo, a psychiatrist, stated appellant was suffering from moderate to severe major depression which had a direct correlation with work-related stressors. She stated that appellant's depression was sufficiently severe that she was unable to work. In an April 19, 1997 report, Dr. Sangiacomo again stated that appellant had stress-induced major depression and commented that it appeared that most of her stressors occurred in the workplace. In response to a question by the Office, Dr. Sangiacomo, in a May 14, 1997 letter, gave a history of appellant's employment that was very similar to the history given by appellant in her June 14, 1997 statement. She stated that appellant should be limited to a 40-hour work week, should be placed in one job setting with a firm job description and receive work load reviews by her supervisor biweekly or monthly. Dr. Sangiacomo therefore related appellant's depression to factors of her employment which she subsequently related to the Office. These factors included factors that the Office subsequently found were compensable factors of employment.

The Office referred appellant, together with the statement of accepted facts, and the case record, to Dr. Rudolph E.M. Janosko, a Board-certified psychiatrist, for an examination and second opinion. In a September 29, 1997 report, Dr. Janosko diagnosed depression, not otherwise specified. He noted that appellant was hospitalized at the age of 12 for psychiatric problems. Dr. Janosko noted that in 1992 appellant was referred to a mental health professional after expressing veiled threats of violence and feelings of ostracism by coworkers. He stated that the statement of accepted facts detailed the stressors that were part of appellant's employment. He commented that it seemed appellant had a responsible and demanding job with indications that she may not have always had the help, cooperation and supervision she needed. Dr. Janosko indicated, however, a clear causative link could not be made between job stress and development of a psychiatric disorder. He asked rhetorically whether appellant's psychiatric hospitalization and subsequent treatment was caused by the stress of school, puberty or possibly by being a

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁶ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

victim of abuse. Dr. Janosko stated that all these factors, as well as genetic constitutional factors may have led to appellant's decompensation. He contended that appellant had the potential for many years for psychiatric decompensation. Dr. Janosko, however, did not specifically address whether the compensable factors of appellant's employment would have caused her emotional condition or would have aggravated a preexisting condition to the point that she would be unable to work. He gave no rationale for his opinion that a clear causative link could not be made between the compensable factors of employment and appellant's depression other than to speculatively cite other possibilities caused appellant's disability. His report therefore has little probative value and creates a conflict with the report of Dr. Sangiacomo. The case must therefore be remanded for resolution of this conflict.

On remand, the Office should prepare a new statement of accepted facts to reflect the findings of the Board in this decision. The Office should then refer appellant, together with the statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The specialist should be requested to give a diagnosis of appellant's condition and provide his rationalized opinion on whether appellant's condition was caused or aggravated by the compensable factors of her employment, in whole or in part. If he should find that appellant's condition was an aggravation of a preexisting psychiatric condition, he should indicate whether the employment-related aggravation was temporary or permanent and if temporary, the extent and duration of any employment-related temporary aggravation. After further development as it may find necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated October 15, 1997, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.

October 4, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member