

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WYNNE A. FITZGERALD and U.S. POSTAL SERVICE,
POST OFFICE, Grand Junction, CO

*Docket No. 98-810; Submitted on the Record;
Issued April 25, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

On August 29, 1994 appellant, then a 36-year-old customer service supervisor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her stress was due to factors of her federal employment. In a supporting statement dated August 28, 1994, appellant detailed the harassment she was subjected to as well as the long work hours and large work load.

In a note dated April 30, 1994, Dr. Ann M. Mass, an attending Board-certified internist, diagnosed stress disorder and depression and noted that appellant had been advised to remain off work for 30 days.

In an October 3, 1994 report, Dr. Robert M. Sholtes, an attending Board-certified psychiatrist, noted that he first saw appellant on September 19, 1994 for evaluation of a depressive disorder. Dr. Sholtes noted:

“She presented with a history of depression that worsened considerably over the summer of 1994. She describes significant work stresses that are associated with the precipitation of this depression.”

Dr. Sholtes also noted appellant's history of depression began in 1989 “when she was [involved] in some conflict with administrator” as well as being involved in a whistle-blowing activity.

By decision dated April 13, 1995, the Office of Workers' Compensation Programs denied appellant's claim, finding that the medical evidence need not be addressed as appellant had not established any compensable factors of employment.

Appellant disagreed and requested a hearing, which was held on December 4, 1995.

In a report dated January 10, 1996, Dr. Sholtes noted:

“I have been treating [appellant] since 1994, for major depression. She presented with severe symptoms requiring a lengthy stay in a partial hospital program. The treatment began immediately after her arrival in Illinois after a precipitous move from out west. She described severe stress related to unrealistic working conditions and expectations. She described multiple attempts to resolve both the unrealistic working conditions and to negotiate a compromise with her immediate supervisor, without success. As a result, she was very withdrawn, low energy, having daily panic attacks and insomnia. With ongoing treatment, she only gradually improved. It is my opinion that the stresses described from her employment at the [employing establishment] in Aspen exacerbated this episode of depression.”

By decision dated March 15, 1996 and finalized on March 19, 1996, the hearing representative affirmed the April 13, 1995 decision on the basis that appellant failed to submit rationalized medical evidence supporting that she developed her emotional condition due to compensable factors of employment. The hearing representative determined that appellant had established compensable work factors of long hours and extra work during her employment at Aspen, but that she had failed to submit any rationalized medical evidence relating her depression to her long hours and extra work.

By letter dated March 15, 1997, appellant’s attorney requested reconsideration and submitted evidence in support of his request.

In a nonmerit decision dated May 20, 1997, the Office denied appellant’s request on the basis that no substantive legal questions or new and relevant evidence had been submitted.

On July 29, 1997 appellant again requested reconsideration and submitted a June 10, 1997 report from Dr. Sholtes in support of her request. In his June 10, 1997 report, Dr. Sholtes noted:

“She described severe stress related to unrealistic working conditions and expectations. She reported working long hours, bringing home work, working under demanding and tense conditions and experienced considerable stress in her workplace. This kind of stress is known to precipitate depression and anxiety.”

In his opinion, Dr. Sholtes attributed appellant’s depression to the stress she experienced while employed in the Aspen office.

By merit decision dated October 28, 1997, the Office denied appellant’s request.

The Board finds that the case is not in posture for a decision.

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 illness has some connection with the employment but nevertheless does not come within the concept 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 is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.¹

To establish appellant's occupational disease claim that she has 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 the claimant.³

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁴ When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician.⁵ In the instant case, appellant submitted a June 10, 1997 report from Dr. Sholtes. Dr. Sholtes in his report attributes appellant's stress disorder and depression due to stresses of "working long hours, bringing home work, working under demanding and tense conditions and experienced considerable stress in her workplace." While Dr. Sholtes' reports, specifically his June 10, 1997 report, are not sufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her depression was causally related to compensable factors of employment, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.⁶ The Board notes that there is no medical evidence of record refuting a causal relationship between appellant's current emotional condition and her employment injury. On remand, the Office should refer appellant, together with the case record and a statement of

¹ *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

² *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

³ *Id.*

⁴ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *See Horace Langhorne*, 29 ECAB 820 (1978).

accepted facts, for examination by an appropriate medical specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated October 28 and May 20, 1997 are set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
April 25, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member