U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BLANCA J. OYOLA and DEPARTMENT OF DEFENSE, DIRECTOR HUMAN RESOURCES, Pensacola, FL

Docket No. 99-323; Submitted on the Record;
Issued August 22, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she developed disabling chest pain radiating to her right arm due to stress in the performance of duty, causally related to compensable factors of her federal employment.

On October 7, 1996 appellant, then a 42-year-old occupational therapist, filed a claim alleging that on that date she experienced deep chest pain in her heart area radiating to her right arm and "angina-like pain," due to her federal employment.

Appellant was treated on the date of incident, by Dr. Oscar Rodriguez, a Board-certified family practitioner, who noted complaints of acute chest pain with cervical spasm, noted that her electrocardiogram was normal and diagnosed acute fibrositis and costochondritis. Dr. Rodriguez opined that appellant was totally disabled until October 31, 1996 and checked "yes" to the form question of whether the condition found was caused or aggravated by employment activity. By report dated October 14, 1996, he noted that appellant had acute cervical bursitis (fibrositis) and acute chest wall inflammation (costochrondritis) and opined: "Both conditions are related to work overtime not to a cardiac condition. Next step will be a 'panic disorder' if not treated."

Appellant's supervisor, Maria V. Barkmeier, denied any knowledge of work-related issues causing stress to appellant. Ms. Barkmeier noted that appellant told her that she felt pressure from her degree program and preferred not to take paperwork home at night because she was trying to complete her assignments towards her degree in the evening.[1]

An October 9, 1996 note from Dr. Francisco Arrieta, a Board-certified cardiologist, reported that appellant was seen that date with chest discomfort "highly suspected stress induced, job related." An echocardiogram that date was reported as normal.

[1] Appellant was completing her Master's degree.

By letter dated December 12, 1996, appellant stated that she had been under treatment for costochondritis and fibrositis linked to job stress and noted that she resigned from work.

By letter dated January 17, 1997, the Office of Workers' Compensation Programs advised appellant that further information was needed and it requested that she submit a detailed statement of the employment factors implicated in causing her condition and a comprehensive medical report supporting causal relation.

In response appellant submitted a February 27, 1997 report from Dr. Francisco J. Chico, a Board-certified family practitioner, which described her symptoms, the results of examination and the treatment provided. Dr. Chico diagnosed cervical myositis, costochondritis, muscle spasms, anxiety reaction and angina pectoris suspect and he opined: "According to patient history, overworking conditions and professional pressures triggered her condition on the day of her examination [October 7, 1996]."

In a March 5, 1997 narrative response, appellant alleged overwork in her job as an occupational therapist for two schools; that she had been asked to increase her duties by adding a full case load of students with special needs and disabilities at a third school; for whom she was expected to provide evaluation and treatment; that she had to often work overtime to comply with required documentation within specified timelines. Appellant also claimed that she had to work overtime to complete her work because her learning-disabled, handicapped and retarded students needed extra time to complete evaluations. Appellant also alleged that she was required to travel on a daily basis, but that she had not been advised of this when she was hired. She also noted that due to the full case load of students in multiple schools, she was required to change rooms frequently, which required heavy lifting, and climbing and that she was exposed to extreme heat due to inoperable air conditioning.

Appellant claimed that on October 7, 1996 her supervisor told her to cancel the group of severely handicapped students scheduled the next day because "they have been receiving enough therapy," and instead directed to see the newly added elementary school students. Appellant noted that she had never seen elementary school students before and that she had no training in treating or evaluation of those cases. Appellant claimed that she was provided with a schedule of 25 additional students at the third school and was directed to provide therapy services. Appellant submitted her schedule and claimed that she was provided inadequate time for preparation and only 30 minutes for lunch. When appellant complained to her supervisor that she had inadequate time for preparation, the supervisor allegedly erased one name from her schedule, an autistic child who needed therapy, which upset appellant. Following that incident, appellant returned to her classroom and experienced the claimed chest pain with right arm radiation.

By memorandum dated March 27, 1997, Ms. Barkmeier noted that, although appellant claimed to be overworked and overloaded, each of the two occupational therapists was assigned an equal case load of 64 cases and, when students from a third school were assigned, appellant was advised that she would no longer be responsible for completing evaluations, which would be completed by a third occupational therapist. Ms. Barkmeier noted that a full case load at the elementary school was 47 cases, but that appellant was assigned to work with only 14 students. Ms. Barkmeier noted that only one occupational therapist served the students at the elementary

school the previous year; that appellant requested a change in her schedule to work four mornings per week at the intermediate school and five afternoons per week at the high school to implement a prevocational program with a group of students with moderate-to-severe disabilities and that this was her area of expertise. Ms. Barkmeier noted that the 14 additional elementary school students were assigned only one half day per week, that appellant was never asked to take work home or to type reports, that handwritten reports were encouraged to save time and that appellant took reports home because she could do them on her home computer. She contended there was ample preparation time to complete all required paperwork during the workday. Ms. Barkmeier noted that appellant did inform her of an error in the amount of lunch time allotted and the omission of a preparation period, which was immediately corrected by a schedule revision and that the autistic child taken from appellant's schedule was to be seen by another therapist.

By decision dated July 24, 1997, the Office rejected appellant's claim finding that no injury had occurred in the performance of duty. The Office found that appellant failed to establish any compensable factors of employment in the development of her condition.

Appellant requested reconsideration of the July 24, 1997 decision. In support of her request, appellant alleged that an arbitrator's decision in a coworker's case found that Ms. Barkmeier engaged in harassment, abuse, intimidation and retaliation and that the employing establishment engaged in coercion, intimidation and reprisal. Appellant also alleged that her schedule, as submitted, demonstrated that the supervisor did not include sufficient preparation time and that the third occupational therapist, who was supposed to complete appellant's evaluations, did not exist at that time. Appellant noted she was not experiencing stress regarding the completion of her Master's degree as documented by her professors' letters. Appellant stated that Ms. Barkmeier claim that appellant had sufficient time to complete paperwork was completely accurate. Appellant alleged that professional evaluations by occupational or physical therapists were provided to parents in formal case study meetings and were expected to be typed, not handwritten and that appellant's schedule charges were not of her own design but were due to parents requesting more service.

By decision dated July 15, 1998, the Office denied modification of the July 24, 1997 decision finding that the evidence submitted in support was not sufficient to warrant modification.

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

To establish appellant's claim that she has sustained chest pain radiating to her right arm due to stress in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has a diagnosed disabling condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her chest pain.[2] Rationalized medical opinion evidence is medical evidence that includes a physician's

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

rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an 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]

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. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement imposed by his employment or has fear of anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.[4] Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or specially assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.[5] A noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."[6]

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[7] When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.[8] When the matter asserted is a

[3] *Id.*

[4] *Donna Faye Cardwell, supra* note 2; *see also Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Id.*

[6] *See Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

[7] *See Barbara Bush*, 38 ECAB 710 (1987).

[8] *Ruthie M. Evans*, 41 ECAB 416 (1990).

compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.[9]

The record supports that for the immediate period leading up to and including October 7, 1996, appellant attributed her emotional condition to factors arising from the performance of her regular and specially assigned duties as an occupational therapist. This included the assignment of additional special needs children who, she feared, she did not have the ability to handle or to provide with adequate therapy, considering her existing work schedule at multiple schools. Appellant was assigned to perform appropriate therapy on 13 to 15 new special needs elementary school children, in addition to her other case assignments. Appellant's supervisor acknowledged the additional case assignment. As noted above, when an employee experiences an emotional reaction to her regular or special assigned employment duties or to a requirement imposed by her employment, or has fear or anxiety regarding her ability to carry out assigned duties, any disability resulting from an emotional reaction to such situation is regarded as arising out of and in the course of the employment and comes within the coverage of the Act.[10] Therefore, this additional assignment of special needs children, a specially assigned duty and a requirement of her employment, is a compensable factor of appellant's employment under the Act.[11]

Further, appellant noted that she was overworked prior to the assignment of the special need children. She submitted a copy of her work schedule, deliniating the time allowed for preparation for therapy, completion of paperwork and documentation required for the children she treated and schedule changes to meet with parents. Appellant took work home to complete paperwork and documentation required by the timelines imposed. Appellant noted that she was under pressure to complete required reports on time and in a format appropriate for formal case study meetings, which required that the reports be typed. The Board notes that, although Ms. Barkmeier claimed that appellant had time during which to accomplish required paperwork, this time allotment is not evident from the work schedule submitted to the record which demonstrated four mornings and five afternoons filled with child contact time and the additional filling of the fifth morning with fourteen students.

The Board has held that overwork may be a compensable factor of employment if established by the facts or the case record.[12] The Board finds that the evidence pertaining to appellant's regular daily schedules is sufficient to establish that she performed overtime work at home.

As appellant has establish two compensable factors of employment, the medical evidence must be examined to see if it supports that appellant developed a condition causally related to these compensable factors.

---

[9] *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

[10] *See Lillian Cutler*, *supra* note 4.

[11] *Id.*

[12] *William P. George*, 43 ECAB 1159 (1992); *Janie Lee Ryan*, 40 ECAB 812 (1989).

On October 7 and 14, 1996 appellant's treating physician, Dr. Rodriguez, noted her complaints of acute chest pain and cervical spasm. He diagnosed cervical bursitis (fibrositis) and acute chest wall inflammation (costochondritis), opined that the conditions found were caused or aggravated by her employment activity and specifically noted that "[b]oth conditions are related to work overtime, not to a cardiac condition." Although this report is not fully rationalized, it does generally support causal relation.

On October 9, 1996 Dr. Arrieta opined that appellant had "highly suspected stress-induced, job-related" chest discomfort and he indicated that appellant's echocardiogram that date was normal for cardiac pathology.

Dr. Chico diagnosed cervical myositis, costochondritis, muscle spasms, anxiety reaction and suspect angina pectoris and also indicated that "overworking conditions and professional pressures triggered her condition on the day of her examination (October 7, 1996)."

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[13] In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she sustained disabling chest pain, the evidence raises an uncontroverted inference of causal relationship that is sufficient to require further development of the case record by the Office.[14]

Therefore, the case must be remanded to the Office for the preparation of a statement of accepted facts delineating the compensable factors of employment and referral to an appropriate internist for a rationalized opinion as to whether the compensable factors of appellant's employment caused the stress which precipitated appellant's condition.

[13] *William J. Cantrell*, 34 ECAB 1223 (1983).

[14] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Consequently, the decision of the Office of Workers' Compensation Programs dated July 15, 1998 is hereby set aside and the case is remanded to the Office for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
August 22, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member