U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LISA J. O'TOOLE and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

Docket No. 99-689; Submitted on the Record;
Issued December 1, 2000

DECISION and ORDER

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

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on its merits under 5 U.S.C. § 8128(a).

On February 3, 1997 appellant, then a 43-year-old postal supervisor, filed a claim alleging that she developed stress due to harassment and humiliation by management. She stopped work that date and did not return.

Appellant alleged that she was being held responsible for all of the problems found at the employing establishment; that her employer was trying to fire her; that she was afraid management would find misplaced mail over the building; that another supervisor left notes for her; that a new supervisor was giving her orders; and that no one in management would talk to her. She alleged that she was told that she was not doing her job; that she was afraid of being left alone at night; that someone was planting misplaced mail in the building; that she received a letter of warning; that she was being given busy work; that she was not advised to return to work after training; and that she was told to get supplies for Laurel Springs as another attempt to degrade her. Appellant alleged that she was being stared at and scrutinized by numerous teams, that she was not allowed to make decisions, that they were going to send her to Delaware for training, that she was afraid that an employee she fired would return and kill her, that the back door was left open, that she was insulted when a supervisor of six months was put in charge, and that her hours were changed. She complained that the system of enforcement was not fair, and that she should not be responsible for every mistake a clerk or driver made, and argued that, if she was going to be disciplined, so should the postmaster be disciplined. Appellant alleged that the mail was late in arriving so that she was forced to make her carriers deliver in the dark which was dangerous and caused her constant worry and stress, that the stress from doing her job was overwhelming and that she repeatedly asked for help which was not granted.

In an April 9, 1997 statement, appellant noted that her stress was overwhelming from just doing her job. She alleged that for four years she had to fill in for the postmaster while doing her

job as well, and that she had to work an excessive amount of overtime, and that the job was getting too difficult to do. Appellant alleged that she could not do everything that was asked of her, that she either worked through lunch or had a shortened lunch break, and that the stress of working such long hours was taking its toll. She further alleged that she tried her best but that her best was not good enough, that she could not possibly do everything that was expected of her, that the job was just too much to handle no matter how hard she tried, and that after 18 years she now felt that she could no longer do her job. Appellant denied that she was worried about punishment, but stated that the stress came from the amount of mail that just kept coming. She claimed that she was worried about her carriers delivering mail after dark, but that she was told that she had no choice but to force carriers to deliver in darkness, as per district policy. Appellant stated that on February 3, 1997 she felt she could no longer do her job because it was just too much to handle, which was a devastating experience.

Appellant received a letter of warning on January 22, 1997 for failure to properly perform her duties, noting specifically that two hampers of mixed mail were found near the rear dock doors which should have been dispatched the preceding day.

On February 4, 1997 Dr. John R. Rushton, III, a Board-certified psychiatrist, diagnosed appellant as having job-related post-traumatic stress disorder and indicated that she was disabled as of February 3, 1997.[1]

By response dated February 6, 1997, the employing establishment controverted appellant's claim noting that there was no seniority as a supervisor, that changes of shift were made based on employing establishment need, that all supervisors were put on a six-day rotation schedule, that when errors were found they were corrected, that appellant was never left alone at night by herself, that she was asked to see that supplies were sent to Laurel Springs, that the letter of warning was warranted, and that appellant believed that everyone was out to get her.

By letter dated March 19, 1997, the Office requested further information, including a rationalized medical opinion supporting causal relation.

In a response dated March 22, 1997, appellant claimed that the real reason she totally fell apart on February 3, 1997 was that she realized that she could not do her job no matter how hard she tried. She claimed that she and four other employees searched the building and found no outgoing mail, yet the next day seven outgoing misplaced priority pieces were found, and she claimed that she felt totally helpless to stop mail from being left in the building and that she did not know what else she could do to prevent misplaced outgoing mail. Employee statements attesting to the search were also submitted.

By report dated April 4, 1997, Dr. Rushton discussed appellant's fears of the employing establishment, diagnosed post-traumatic stress disorder manifested by anxiety, depression, insomnia, panic and feelings of being overwhelmed, and opined that all were a "direct result of the emotional stress precipitated by her inability to do her job because mail was continually being found about the building in spite [of] her searching for possible mistakes in mail placement." A December 4, 1997 and a June 27, 1997 report stated likewise.

[1] This opinion was reiterated multiple times.

Appellant also submitted copies of messages to her supervisor stating that the amount of mail was too overwhelming to deliver without using overtime and that mail had to be delivered in the dark.

By decision dated July 8, 1997, the Office rejected appellant's claim finding that she had failed to implicate any compensable factors of employment in the development of her condition.

Appellant, through her representative, requested an oral hearing.

In support appellant submitted a June 27, 1997 report from Dr. Rushton which reiterated appellant's fears of the employing establishment, diagnosed post-traumatic stress disorder manifested by anxiety, depression, insomnia, panic and feelings of being overwhelmed and opined that all were a "direct result of the emotional stress precipitated by her inability to do her job...." An August 21, 1997 report from Dr. Rushton stated likewise.

Also submitted was an October 20, 1997 report from Dr. Lewis S. Alban, a clinical psychologist, which noted appellant's difficulties at work, described her present mental status, and provided as diagnoses "post-traumatic stress disorder [and] delusional disorder, persecutory type." Causal relation was not discussed.

A hearing was held on April 15, 1998 at which appellant testified. She testified that she began feeling stressed when she first began working there with 65 carriers whose names she did not know and with an area she did not know, yet she had to put people on routes. Appellant testified that her job responsibilities were to see that the carriers were out on their routes, but that because no other supervisor was hired for a while she had to assume supervision of the clerk part and window part of the operation and be responsible for window counts as well. She testified that besides being a delivery supervisor she had to fill in for the other supervisor when he was pulled out of the office and be responsible for hiring, firing and answering district managers' questions. Appellant testified to working overtime on most days, both reported and unreported overtime approximating 8 to 10 hours of overtime per week and she testified that she was stressed out about sending carriers out in the dark, but that it had to be done. She testified that she had to be out on the dock trying to check empty trays but had computer work to do also and had to search the building for outgoing mail and had to worry about supply rooms with open doors. Appellant testified that she had to watch clerks to make sure that they were doing their jobs yet she had to do her own job too, such that there was no way she could watch everybody for a mistake they might make. She testified that she was overwhelmed with all of her responsibilities.

Following the hearing appellant submitted an April 9, 1998 report from Dr. Rushton which noted that she was disabled due to her mental state, diagnosed as post-traumatic stress disorder and indicated that it was a direct result of the emotional stress precipitated by her inability to do her job.

The employing establishment submitted a May 11, 1998 statement indicating that acting supervisors were always provided as replacements for other supervisors' absences, that disciplining employees was part of a supervisors duties, that time cards demonstrated that appellant worked overtime two to three times per week, that it was appellant's duty to see that all of the mail was timely out of the building, that, although night delivery was not desirable, postal

vehicles had lights for night delivery and that a one-minute walk through the building would be sufficient to tell if all first class mail was in fact dispatched.

By decision dated July 13, 1998, the hearing representative affirmed the July 8, 1997 decision finding that appellant's statements concerning employment incidents were vague or confusing, that she did not establish that events she was complaining were regular or specially assigned duties, and that none of the medical evidence discussed causation with respect to the specific factors implicated. The hearing representative found that appellant's reaction to her inability to do her job was not compensable.

By letter dated August 5, 1998, appellant, through her representative, requested reconsideration, and in support submitted a July 28, 1998 report from Dr. Rushton.

By decision dated September 24, 1998, the Office denied appellant's request for further review of her case on its merits on the grounds that the evidence submitted was immaterial and insufficient to warrant reopening the case for a further review on its merits. The Office determined that, as no compensable factors of employment had been established, review of medical evidence was not necessary.

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

To establish her claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; 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 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 her regular or specially assigned employment duties or to a requirement imposed by her employment or has fear or anxiety regarding 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

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

[3] *Id.*

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 her regular or 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] 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 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]

In the instant case, the record supports that appellant's regular duties included putting 65 carriers out on their routes, day or night, hiring, firing, answering district managers' questions, doing computer entries, ensuring the safety of the building, checking the building and dock for misplaced mail and ensuring that all mail got out as prioritized. Additional or specially assigned duties were noted as including filling in for the postmaster when necessary, and supervising the clerks and window operations in the absence of another supervisor, which was confirmed by the employing establishment in its May 11, 1998 statement.

Appellant alleged that she was overwhelmed by performing her job, that she was stressed because she had to force carriers to deliver mail in the dark, that she was stressed by having to fill in for the postmaster or another supervisor, and be responsible for window counts plus do and be responsible for, her own job as well, that her job was getting too difficult for her and that she could not do everything she was asked to do. She claimed that her job was just too much for her to handle no matter how hard she tried and that she felt helpless to stop mail from being left in the building, as evidenced by her extensive building searches for outgoing mail, yet mail was later found undelivered anyway. Appellant alleged that the stress came from the volume of mail she had to handle and that she was overwhelmed by her responsibilities watching clerks, checking trays on the dock, searching the building for outgoing priority mail, doing computer

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

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

entries and ensuring building security, all at the same time. She therefore, has alleged that carrying out her regular and specially assigned duties caused disabling stress. 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, 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.[10] Therefore, appellant has established compensable job factors in the form of her stress and anxiety regarding her ability to carry out her regular and specially assigned duties as a supervisor.

Further, appellant also alleged that she frequently worked through lunch or had a shortened lunch break, and needed to work an extensive amount of overtime to get her job done, and the employing establishment confirmed, in its May 11, 1998 statement, that she performed overtime work several times per week. The Board notes that overwork, if supported as factual by the evidence of record, is a compensable factor of employment.[11]

As appellant has established compensable factors of her employment in the development of her disabling emotional condition, the medical evidence of record must now be considered.

Dr. Rushton stated, in multiple reports, that appellant was diagnosed as having post-traumatic stress disorder and indicated that it was a direct result of the emotional stress precipitated by her inability to do her job. Although unrationalized, this medical opinion is generally supportive of appellant's claim.

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.[12] This holds true in emotional condition claims as well as in initial traumatic injury claims. In the instant case, although none of appellant's treating physician's reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she developed a disabling emotional condition causally related to her federal employment, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship, that is sufficient to require further development of the case record by the Office.[13] Additionally, there is no opposing medical evidence in the record.

Therefore, the case must be remanded to the Office for a compilation of a statement of accepted facts, including specification of the compensable factors of employment implicated by appellant, and composition of the specific questions to be addressed, to be followed by a referral

[10] *Donna Faye Cardwell*, *supra* note 4.

[11] *Frank A. McDowell*, 44 ECAB 522 (1993); *William P. George*, 43 ECAB 1159 (1992).

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

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

to an appropriate specialist, for a rationalized opinion as to causal relation between the disabling emotional condition and the implicated employment factors.

As this is the disposition of the case, the issue of whether the Office abused its discretion in denying further review of appellant's case on its merits is rendered moot.

Consequently, the decision of the Office of Workers' Compensation Programs dated July 13, 1998 is hereby set aside, and the case is remanded for further development in accordance with this decision and order of the Board; the decision dated September 24, 1998 is moot.

Dated, Washington, DC
December 1, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member