

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARLENE M. GARY and SOCIAL SECURITY ADMINISTRATION,
St. Louis, MO

*Docket No. 99-1299; Submitted on the Record;
Issued December 6, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained injuries with her wrist, hands, arms, back, neck, left knee and eyesight causally related to factors of her federal employment; and (2) whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On October 10, 1997 appellant, then a 49-year-old claims representative, filed an occupational disease claim. Appellant stated:

“The problems I am having with my wrist and hands, arms, back, and neck and left knee as well as eyesight and stress are all caused or aggravated by my employment. I first noticed the hands and wrist problems about March 1995 and it has gotten progressively worse [due to] the writing and typing I do. The left knee problems started September 1995 by accidentally bumping my left knee on a steel post under my desk. The problems with stress have worsened since October 1996 because of [the] pressure of the large workloads and not enough people to do the work and pressure put on me by my supervisor. I have a lot of chest pain brought on by [the] stress of large workloads and [my] supervisor not properly following regulations. I have had a lot of doctor visits and I have properly requested leave but my supervisor continues to put undue stress as she does not accept statements of my doctors. My eyesight has worsened from continuous viewing of computers.”

Appellant further related, “[i]n March 1995 I heard my wrist pop backwards as I picked up a manual. The wrist and hand pain has become progressively worse over time as well as my eyes, back and neck pain. I had difficulty with bumping my knee until I adjusted to my new work station.” On the reverse side of the claim form, appellant’s supervisor indicated that appellant was claiming a recurrence of a March 1, 1995 injury with the addition of employment-related stress.

In a report dated May 15, 1997, Dr. Saul D. Silvermintz, an internist, related that he was treating appellant for anemia and noted that she also had “persistent chest pain, which comes and goes and this is most likely from stress; although there is some evidence that she may have coronary artery disease on the basis of some slight abnormality of her cardiograms.”

By letter dated December 22, 1997, the Office of Workers’ Compensation Programs requested additional factual and medical information from appellant.

Appellant submitted a report dated May 9, 1996 from Dr. Richard S. Sohn, a Board-certified neurologist, who examined appellant relative to complaints of pain in her hands which increased with typing or writing. Dr. Sohn found that her history was “compatible with carpal tunnel syndrome” but noted that she had no objective sign of the condition on examination.

In a report dated August 20, 1996, Dr. Silvermintz related that he had treated appellant since January 29, 1996, at which time she had pain in her neck from a motor vehicle accident. He stated that appellant experienced pain in her wrists and that “[s]he thought that it could possibly be from the computer she was using and she did have a board on the computer to raise her wrists.” Dr. Silvermintz found that her complaints were “totally compatible with a [c]arpal [t]unnel [s]yndrome bilaterally with a mildly positive Tinel sign. However, I cannot really make this diagnosis because of the negative EMG [electromyogram].” The physician recommended that appellant not use a keyboard.

Appellant further submitted a discharge summary of her hospitalization from October 22 to 24, 1997 for chest pain. The physician noted the history of injury as appellant complaining of radiating chest pain “after receiving a flu shot. [Appellant] describes a chest pressure which also occurred in the left jaw. [She] was walking and interviewing clients when the pain occurred.” The physician diagnosed chest pain with questionable ischemia, chronic anemia, a history of anxiety and an upper respiratory tract infection.

In a report dated January 22, 1998, Dr. Silvermintz diagnosed probable thalassemia minor and coronary artery disease. He further noted that appellant was depressed and anxious.

In a letter received by the Office on January 22, 1998 appellant related that events on October 22, 1997 aggravated her heart condition. She stated:

“After I had a flu shot on October 22, 1997, I went back to the interviewing area and began to interview clients. As I interviewed the second interview which was a lady with her young son, the pain in my left arm, shoulder, chest, [and] neck area began to become increasing[ly] worse with pain and pressure radiating over the entire area. It became worse and worse as I interviewed. The little boy who was at my desk was extremely active and began to write all over the chair in the interviewing area, as I was returning to the interview from picking up queries. The child’s mother did not do much to discipline the child. I took the pen away and asked the mother if she would like to return later. She stated she wanted to finish, so we continued as I was almost at [the] end of [the] interview, I copied some documents and as I returned to my seat again the child was on the back of the chair looking over into to the next interview booth and almost fell. The adult

there with the child still did not do a lot to control the child. By this time the pain had become worse and I left [the] interview area after [the] clients left and talked with the supervisor and then left for [the] hospital.... I do [not] know how much the flu shot caused.”

Appellant further related that she experienced job stress due to her supervisor pressuring her for medical reports and not helping her get to a doctor on October 22, 1997. Appellant also stated that repeatedly sending the same information to the Office worsened her stress and heart condition. She concluded, “The stress on the job mainly came from the continuous pushing by [my] supervisor and her continually pushing me for medical records even after they were submitted by doctors. She would not allow me to take sick leave and put me under restrictions.”

By decision dated May 18, 1998, the Office denied appellant’s claim on the grounds that she did not establish fact of injury. The Office found that appellant did not submit documentation establishing that the claimed employment factors occurred as alleged and further did not submit medical evidence establishing an employment-related condition.

The Board finds that appellant has not met her burden of proof to establish that she sustained injuries with her wrist, hands, arms, back, neck, left knee and eyesight causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.²

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; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁴ 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

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ 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.⁷ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁸

In this case, appellant has not submitted sufficient medical evidence to establish that she sustained a condition causally related to factors of her federal employment. In the discharge summary dated October 22, 1997, a physician noted that appellant's chest pain began after interviewing a client and receiving a flu shot but did not attribute any diagnosed condition to either event. Further, the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship. Neither the fact that the condition became apparent during a period of employment nor the belief of the employee that the condition was caused or aggravated by employment factors is sufficient to establish causal relation. Causal relationship is a medical issue that can be established only by probative medical evidence.⁹

In a report dated August 20, 1996, Dr. Silvermintz noted appellant's belief that computer use worsened her wrist problems; however, he did not render any definitive diagnosis or causation finding. Consequently, Dr. Silvermintz opinion is insufficient to meet appellant's burden of proof.

The Board further finds that appellant has not met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

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 an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.¹⁰ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384-85 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

⁹ *Ruth C. Borden*, 43 ECAB 146 (1991).

¹⁰ 5 U.S.C. §§ 8101-8193.

in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.¹¹

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.¹² This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.¹³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or 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.¹⁴ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁵

Regarding appellant's allegations that her supervisor wrongly pressured her for medical documentation and unfairly denied her requests for sick leave, the Board notes that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.¹⁶ Although matters regarding leave usage are generally related to the employment, they are administrative functions of the employer and not duties of the employee.¹⁷ However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁸ In this case, appellant has not submitted any evidence supporting her contention that she was wrongly denied leave and unfairly required to

¹¹ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁴ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁵ *Id.*

¹⁶ See *Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

¹⁷ *Id.*

¹⁸ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

produce medical documentation. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant also attributed her stress to repeatedly submitting the same information to the Office. However, the Board notes that the development of any condition related to such matters would not arise in the performance of duty as the processing of compensation claims bears no relation to appellant's day-to-day or specially assigned duties.¹⁹

Appellant has also alleged overwork and understaffing as a cause of her stress-related condition. The Board has recognized that claims of overwork do relate directly to the performance of regular or specially assigned duties and may give rise to a compensable factor of employment.²⁰ However, as with all allegations, overwork must be established on a factual basis. Appellant has not submitted any evidence corroborating her allegations of overwork and, therefore, has not established a compensable factor of employment.

Appellant described the conduct of a client's child prior to her hospitalization on October 22, 1997. Stress encountered during the performance of appellant's regular employment duties, which includes interviewing clients, would constitute a compensable factor of employment.²¹ However, appellant's burden of proof is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.²² Appellant has submitted no rationalized medical evidence discussing how or why any specific employment factor caused or aggravated any diagnosed condition and thus has failed to meet her burden of proof.²³

¹⁹ See *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986).

²⁰ *William P. George*, 43 ECAB 1159 (1992).

²¹ It is not clear whether appellant attributed her need for medical treatment on October 22, 1997 to receiving a flu shot or stress from the encounter with the customer.

²² *Id.*

²³ Appellant filed her appeal with the Board on March 15, 1999. Appellant also requested reconsideration before the Office. In a decision dated April 1, 1999, the Office denied review of its prior decision. The Office's April 1, 1999 decision is null and void as both the Board and the Office cannot have jurisdiction over the same issue in the same case. 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990).

The decision of the Office of Workers' Compensation Programs dated May 18, 1998 is hereby affirmed.

Dated, Washington, DC
December 6, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member