

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ESTER P. FERNANDEZ and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 97-2249; Submitted on the Record;  
Issued January 10, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden to establish that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on April 21, 1997.

On May 15, 1996 appellant, then a 55-year-old revenue officer, filed an occupational disease claim alleging that she became emotionally and physically sick due to factors of her federal employment on November 21, 1995. Appellant stopped work on April 15, 1996.

In a June 11, 1996 narrative statement, appellant stated that during November 1995 her work load increased considerably, but that she still managed to do 79 plus cases. She also stated that she was given additional assignments from the group manager, which left her no time for her to do her own inventory.

In support of her claim, appellant submitted an April 15, 1996 medical note from Dr. Mark M. Singer, a Board-certified internist, which diagnosed acute bronchitis. A May 15, 1996 medical report from Dr. Charles G. Carluccio, a Board-certified psychiatrist, stated that appellant had symptoms consistent with stress-related disorders, that being irritable bowel syndrome and temporomandibular joint syndrome. It was also noted that appellant complained of recent low back pain. Dr. Carluccio stated that within all medical probability, appellant's present clinical state was causally related to her job pressures. In a May 31, 1996 medical report, Dr. Carluccio stated that there had been mild-to-moderate progress in appellant's overall clinical status of irritable bowel syndrome and temporomandibular joint disorder and low back pain, all of which are consistent with the diagnosis of stress-related disorders. He estimated that appellant could return to work on a part-time basis June 17, 1996.

In a June 28, 1996 letter, Bruce Winarchik, the group manager from the employing establishment, addressed appellant's statement of June 11, 1996. He stated that consistent with

appellant's position description, she performed other related duties (*i.e.*, collateral duties and special projects) as assigned in addition to her prescribed duties and responsibilities as a GS-11, revenue officer. He reported that additional assignments occurred infrequently during the year and were of minimal duration. He listed appellant's additional projects and noted that the most significant additional duty was shared between appellant and another co-worker. The group manager reported that appellant's average monthly inventory between October 28, 1995 and April 27, 1996 was 65 taxpayers, or 18 percent below the maximum allowable level of 79 taxpayers. He stated that the minimum targeted inventory range was 53 taxpayers and that appellant's inventory at the end of October 1995 was 54 taxpayers and 59 taxpayers by November 25, 1995, which was 25 percent below the maximum targeted inventory level.

By letter dated September 18, 1996, the Office notified appellant that the information she submitted was insufficient to establish a work-related condition and requested that appellant submit additional factual and medical evidence.

Appellant submitted an October 11, 1996 medical report from Dr. Carluccio, which advised that appellant had improved due to her treatment at the Holy Name Hospital Center. No additional factual evidence was received.

By decision dated February 6, 1997, the Office denied appellant's claim for compensation on the grounds that the evidence of file failed to establish that an injury was sustained as alleged. In an accompanying memorandum, the Office stated that the work factors alleged by appellant, that of increased inventory and additional assignments, were not accepted as factual as there was no supporting documentation to establish that appellant's work load significantly increased beyond her standards as a GS-11, revenue officer.

In a March 17, 1997 reconsideration request, appellant stated that her inventory level was much greater than that reported by the general manager. She stated that the general manager had requested that she translate Spanish to English for the taxpayer service department and examination division, which resulted in time lost from her regular work. She stated that the translation was not part of her job description. Appellant further stated that her wallet was stolen on November 20, 1995 while she was at work and that this incident aggravated her "emotional/distress" state. A copy of the investigation report reporting the stolen wallet was submitted along with an April 8, 1996 memorandum appellant wrote to her general manager concerning her denial to work with a specific group within the employing establishment.

By decision dated April 21, 1997, the Office denied appellant's request for further merit review of her claim.<sup>1</sup>

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

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<sup>1</sup> The Board notes that, subsequent to the Office's April 21, 1997 decision, it received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

Under workers' compensation law, when an employee experiences an emotional reaction to his or her regular or specially assigned work duties or to a requirement imposed by the employment, or has fear and anxiety regarding his or her ability to carry out his or her duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment and comes within the scope of coverage of the Federal Employees' Compensation Act.<sup>2</sup> 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.<sup>3</sup>

To establish appellant's occupational disease claim that she sustained an emotional condition 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 conditions;<sup>4</sup> (2) rationalized 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.<sup>5</sup>

In this case, the Board notes that the Office denied appellant's claim on the grounds that the employment factors to which she attributed her condition were not compensable. Appellant explained that her condition arose from her prescribed duties and responsibilities as a GS-11, revenue officer, but that her work load significantly increased beyond the standards for her position. She noted additional duties, such as translating materials for the taxpayer department, as impacting her regular work duties. Appellant's day-to-day duties or the fact that other related duties may be assigned in addition to her prescribed duties is not in dispute. It is well established that a disability which results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment may be compensable.<sup>6</sup> To the extent that appellant implicates the duties she performed as a GS-11, revenue officer, she has implicated a compensable factor of employment, that is, a factor of employment that comes within the scope of coverage of the Act. However, the medical evidence of record is insufficient to support that these duties caused or contributed to her medical condition. Specifically none of the reports of Dr. Carluccio, in which he attributed appellant's irritable bowel syndrome and temporomandibular joint syndrome to her job pressures, provided a history, identified any of the claimed work factors, or presented a rationalized medical opinion on any relation between the medical condition and factors of appellant's employment. Without rationalized medical evidence establishing that her conditions were causally related to the performance of her federal employment, appellant has not made a *prima facie* case. For this reason, the Board will affirm as modified the Office's February 6, 1997 decision.

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Raymond S. Cordova*, 32 ECAB 1005 (1981).

<sup>4</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>5</sup> *See Donna Faye Caldwell*, 41 ECAB 730 (1990).

<sup>6</sup> *Lillian Cutler*, *supra* note 2 at 131.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on April 21, 1997.

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.<sup>7</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>8</sup> When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.<sup>9</sup>

Although appellant submitted an investigation report documenting the incident whereby her wallet was allegedly robbed while at work, this alone, without medical evidence to establish how this incident aggravated her "emotional/distressed state" is not enough to warrant merit review. The Office, therefore, properly found that this evidence was insufficient to warrant a merit review because there was no supportive medical evidence to establish that the incident aggravated or affected appellant's medical condition. In regards to the other evidence appellant submitted, appellant essentially reargued the fact that she was overworked and performing additional duties, which the Office had previously considered.

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<sup>7</sup> 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

<sup>8</sup> 20 C.F.R. § 10.138(b)(2).

<sup>9</sup> *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

The decision of the Office of Workers' Compensation Programs dated April 21, 1997 is affirmed and the decision dated February 6, 1997 is affirmed as modified.

Dated, Washington, D.C.  
January 10, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member