U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN M. SCHMITT and U.S. POSTAL SERVICE,
POST OFFICE, Danboro, PA

Docket No. 99-636; Submitted on the Record;
Issued July 25, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has sustained a loss of wage-earning capacity effective July 5, 1997 due to her accepted condition of acute depression.

On February 19, 1997 appellant, then a 48-year-old postmaster, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on August 15, 1996 she first realized that her stress was due to her employment. The Office of Workers' Compensation Programs accepted the claim for acute episode of depression and paid appropriate compensation. Appellant stopped work on January 23, 1997, returned to working 20 hours per week on March 10, 1997 which was increased to 40 hours per week on March 24, 1997.

In treatment notes dated February 24, 1997, Dr. Edward J. Mea[1] diagnosed anxiety and depression and that appellant would be able to return to work on March 10, 1997 working limited hours. On March 24, 1997 Dr. Mea noted that appellant's depression and anxiety were improving and that appellant had the opportunity to be transferred to a post office much closer to her home which would require less traveling time and less hours at work. He noted that at the time appellant "was supposed to be working 20 hours, she worked in the neighborhood of 35 [hours] and she is now back doing close to between 50 and 60 hours a week." Dr. Mea noted that he would write a letter to the employing establishment requesting that they comply with appellant's transfer request. In notes dated June 5, 1997, Dr. Mea noted appellant's depression had improved although she still needed to be on medication.

On June 20, 1997 appellant requested a permanent downgrade for personal health reasons to an EAS-11 postmaster position at Salfordville, Pennsylvania.

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[1] Appellant's attending physician, an osteopath, specializing in family practice.

In a claim for continuing compensation dated September 5, 1997, appellant requested compensation for her loss of wages from July 5, 1997 due to the permanent downgrade in position she took due to the stress in her position as postmaster at Danboro, Pennsylvania.

The record contains copies of appellant's earning statement for pay period 7 in 1996 through pay period 14 in 1997 indicating that appellant was working more than 80 hours in a pay period for the majority of the time noted.

In a letter dated February 20, 1998, Dr. Mea diagnosed acute anxiety and depression due to stress from appellant's employment at the employing establishment. Regarding appellant's downgrade in position, Dr. Mea related that it had been his recommendation that appellant seek a transfer and indicated:

> "[H]er transfer from the [employing establishment] to her present post was at my medical recommendation. It was not a voluntary transfer of her own volition. This was done for medical reasons because she was being overworked at the Danboro Post Office, working too many hours in a week's period of time and unable to have any time off from work in regards to vacation, a situation that had gone on for an extended period of time with no end in sight."

In a letter dated February 23, 1998, the employing establishment contested appellant's request for wage-loss compensation on the basis that she had voluntarily requested a downgrade for personal reasons.

By decision dated March 18, 1998, the Office denied appellant's claim for wage-loss compensation on the basis that the evidence failed to establish that it resulted from her accepted employment injury.

On March 23, 1998 appellant requested reconsideration and submitted evidence in support of her request as well as supplementing it with letters dated March 21 and 25, 1998.

By merit decision dated June 23, 1998, the Office denied appellant's request on the basis that the evidence was insufficient to warrant modification of the March 18, 1998 decision.

On July 31, 1998 appellant requested reconsideration and submitted evidence in support of her request.

In an October 29, 1998 decision, the Office denied appellant's request for modification of the prior decision.[2]

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

[2] Appellant again requested reconsideration, but also filed an appeal with the Board on November 28, 1998. The Board and the Office do not have concurrent jurisdiction. 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993). Therefore, the Office's January 28, 1999 decision denying appellant's request for reconsideration is null and void, and the Board will not consider any evidence received by the Office subsequent to October 29, 1998 decision. *Cf. Douglas E. Billings*, 41 ECAB 880, 893 (1990) (finding that the Office had jurisdiction to issue a decision on a matter unrelated to the issue on appeal before the Board).

It is a well-settled principle of workers' compensation law that if the medical evidence establishes that the residuals of an employment-related impairment are such that, from a medical standpoint, they prevent the employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[3] The general test of loss of wage-earning capacity is whether a claimant's work-related impairment prevents him from engaging in the kind of work being performed when injured.[4]

In the instant case, Dr. Mea diagnosed acute anxiety and depression due to employment-related stress and stated that he recommended that appellant seek a transfer from her position at Danboro to one where she would not be required to work as many hours and be able to take vacation time, but he failed to explain in detail why appellant needed to seek a permanent transfer and how this was causally related to her accepted employment injury of acute episode of depression. Dr. Mea's March 24, 1997 treatment notes, noting appellant's desire to transfer to another post office and his notation that he would write a letter on appellant's behalf requesting the employing establishment comply with her request, are not inconsistent with the statements Dr. Mea stated in his February 20, 1998 letter where he indicated that appellant sought the transfer based upon his medical advise.

Proceedings under the Federal Employees' Compensation 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.[5] This holds true in recurrence claims as well as in initial traumatic and occupational injury claims. In the instant case, although Dr. Mea's report fails to address in detail or contain rationale sufficient to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she was unable to work her regular employment as postmaster due to her accepted employment injury which necessitated her requesting a permanent downgrade, the evidence raises an uncontroverted inference of causal relationship between her inability to work regular duty as of July 5, 1997 and her February 19, 1997 accepted employment injury of acute episode of depression, sufficient to require further development of the case record by the Office.[6]

As there is no contradictory medical evidence of record suggesting that appellant's request for a permanent downgrade effective July 5, 1997 was due to her inability to perform her regular job duties, the Office should to request further clarification from appellant's treating physician. On remand, the Office should further develop the medical evidence as appropriate on the issue of whether appellant was unable to perform her usual job duties which caused appellant to request a permanent downgrade in position on and after July 5, 1997.

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[3] *Bobby W. Hornbuckle*, 38 ECAB 626, 630 (1987).

[4] *Ellis Loveless, Jr.*, 40 ECAB 368, 373 (1988).

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

[6] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle, supra* note 3 (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).

The decisions of the Office of Workers' Compensation Programs dated October 29, July 23 and March 18, 1998 are hereby set aside and the case remanded for further proceedings consistent with this opinion.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member