U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE TARON and DEPARTMENT OF THE ARMY, TOOELE ARMY DEPOT, Tooele, UT

Docket No. 98-2342; Submitted on the Record;
Issued June 15, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's temporary total disability compensation.

On March 2, 1993 appellant, then a 47-year-old painter, filed a claim for occupational stress. In an accompanying statement, appellant indicated that in 1980 she was assigned to the parts room to work with a coworker. She reported that this coworker masturbated in front of her many times. She noted that he did little work and made many mistakes which gave her additional work to perform correcting his mistakes. She noted that when a new program began with new parts, her work load increased with more people complaining that they could not get the parts they need for work. Appellant indicated that she was away from the supply duties from December 1984 through October 1985. She stated that when she returned, the coworker was worse in his actions and inability to perform work. She noted that she unofficially supervised two female mechanics who complained that the coworker masturbated in front of them. Appellant reported that the coworker began to come up behind her and watch her which made her nervous. She indicated that finally, on one occasion, the coworker came up behind her, put his arms around her so that she could not move her arms and began rubbing his groin against her. Appellant stated that she reported the incident but the supervisor just smiled. She indicated that when a male coworker witnessed the coworker masturbating at work, he stated that he was going to stop such behavior. Appellant stated that the coworker was taken away for testing shortly thereafter and never returned.

Appellant indicated that when she was assigned to central hardware at the employing establishment in 1986, her superiors informed her that when the position was upgraded she would be able to compete for the position. She stated that reorganization at the employing establishment delayed efforts to upgrade the position. Her superiors were replaced. Appellant initiated several efforts thereafter to have her position upgraded but none were successful. She noted that she was assigned three people to supervise in putting away parts, two of whom had higher grades than she did. Appellant was treated for anemia in June 1989 and subsequently

underwent surgery for breast cancer. She indicated that, upon her return to the employing establishment, she found that three people were performing the duties she had performed previously. She was assigned to less strenuous duties as requested by her physician. Appellant stated she requested a downgrade so that she could remain in a position performing desk work. After visiting her mother-in-law, she returned to find that she had been assigned as a heavy mobile mechanic. She attempted to perform the duties of the position but found that she could not use a heavy impact wrench. In 1991 she applied for medical retirement.

Appellant indicated that in 1986 she was working approximately 25 feet from the paint booth door. She indicated that her lungs began to hurt periodically. She subsequently began complaining of coughing, chest pain, fatigue, nausea, blurred vision and pain in the kidneys. Appellant also developed bronchitis and occasional rashes on her legs. She stated that the paint booth was not working properly due to a poor ventilation system. She indicated that she was exposed to fumes from chemical agent resistive coating (CARC) paint, which was used on military vehicles to prevent the absorption of chemicals. Appellant noted that the employing establishment issued periodic warnings about exposure to CARC paint, such as instructing employees not to bring food into the work areas where it might be contaminated by the paint. She was moved to another building but continued to have pain in her lungs and fatigue. Appellant noted that fumes from the CARC paint came from an adjoining building through her window. In October 1990, appellant was assigned a position as a heavy mobile mechanic. She was eventually assigned light duty of masking generators before they were painted and doing touch up painting on the generators with CARC paint. She noted that the generators on which she worked were freshly painted and she was not given any instructions on wearing safety clothing. Appellant started to have severe headaches which were not relieved by medication and developed chest pain. In May 1991 she was taken to the hospital from work due to chest pain. She returned to work on June 26, 1991 but had trouble breathing due to paint fumes. Appellant used sick leave the next day but returned on June 28, 1991. She again had trouble breathing. She then began the process for a medical retirement from the employing establishment.

The Office accepted appellant's claim for post-traumatic stress disorder, depression and aggravation of her diabetes. The Office began payment of temporary total disability compensation effective June 28, 1991.

In an April 28, 1998 decision, the Office terminated appellant's compensation effective May 23, 1998 on the grounds that the weight of the medical evidence of record established that appellant's employment-related disability had ceased.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[1]

[1] *Jason C. Armstrong*, 40 ECAB 907 (1989).

In several reports, Dr. Alan F. Heap, a Board-certified psychiatrist, stated appellant was totally disabled for work. He diagnosed post-traumatic stress disorder, severe depression, generalized anxiety and panic attacks without agoraphobia. In a November 3, 1993 report, Dr. Richard D. Cannon, a Board-certified endocrinologist, diagnosed diabetes mellitus, which he indicated was poorly controlled. He stated that appellant's work environment contributed significantly to the lack of blood glucose control and thus to the development of complications of the diabetes. He also noted that appellant's inability to lose weight and tightly control her diabetes was beginning to cause chronic complications such as eye disease and peripheral neuropathy.

The Office prepared a statement of accepted facts, setting forth factors of the employing establishment which were considered to be compensable and those found to be not within the performance of duty. The Office indicated that appellant's problems with her coworker, including his masturbation in front of others, the increase of work load for appellant, and his rubbing against appellant, were compensable factors of employment, as was her work duties in the central hardware division of the employing establishment. The Office found that appellant's attempts to have her position upgraded and her request for a downgrade were not accepted as compensable factors of employment. The Office did not accept as factual appellant's reassignment as a heavy mobile mechanic, the failure to be informed that she had to wear protective clothing when doing touch up painting and her exposure to CARC paint and the failure of management to take steps to protect employees.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. 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.[2] When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.[3] In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.[4]

The Office properly determined that the incidents involving the coworker and appellant's increased work load in her positions were compensable factors of employment because these incidents directly related to the performance of appellant's assigned duties. The Office properly found appellant's efforts to upgrade her position and her request for a downgrade not to be compensable factors of employment because these actions involved administrative actions of the employing establishment and were not part of appellant's assigned duties. There was no evidence that the Office's actions were abusive or taken in error. The evidence of record does establish that appellant was exposed to CARC paint at work. Such exposure would be related to appellant's assigned duties as she was exposed while she was performing her assigned duties. However, if appellant did not establish that she had sustained any physiological effects from the paint, her reaction to the exposure to CARC paint would be considered fear of future injury. The possibility of a future injury does not constitute an injury under the Act.[5]

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Kelley Thueson, an internist, and Dr. Steven Teynor, a psychiatrist, for examinations and second opinions on whether appellant continued to be disabled due to the compensable factors of her employment. In a September 29, 1997 report, Dr. Thueson diagnosed insulin-dependent diabetes mellitus, hypertension, status post breast cancer and radiation therapy, sleep apnea, anxiety, depression, post-traumatic stress disorder and concern regarding toxic exposure. He stated that he agreed with Dr. Cannon's assessment that appellant's diabetes was worsened and made more difficult to control by her stress and anxiety. Dr. Thueson noted that appellant currently had complications of her diabetes including retinopathy and nephropathy. He commented that appellant's disability related to her diabetes was still active. Dr. Thueson stated, however, that appellant was completely unable to work because of her unresolved anxiety and depression. He indicated that, although poorly controlled, appellant's diabetes was not the limiting issue regarding her ability to return to work.

In a September 26, 1997 report, Dr. Teynor, a psychiatrist, diagnosed recurrent major depression with psychotic features. He commented that the diagnosis of post-traumatic stress disorder was not documented adequately in the medical records or in appellant's history but was quite likely in the information given to him. Dr. Teynor noted that psychological testing was needed to confirm whether appellant's presumed psychotic symptoms were not the manifestation of a subcultural brief present in a minority of people who believed that the federal government had deliberately exposed citizens to chemical agents to determine their effects on the human condition. He commented that if post-traumatic stress disorder was currently present, appellant did not report any current difficulties regarding the sexual molestation and exhibitionism that she endured at work. Dr. Teynor expressed reluctance in finding that post-traumatic stress disorder was not present because appellant's current psychotic symptoms might be masking the symptoms of the post-traumatic stress disorder.

[4] *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[5] *Dominic M. DeScala*, 37 ECAB 369 (1986).

In a December 14, 1997 report, Dr. Teynor stated that the psychological testing showed evidence of a strong psychiatric overlay to appellant's reported problems, including significant depression and anxiety and a tendency to magnify her illness to the point that it was difficult to know to what extent she was affected by her problems, even her diabetes. He noted that there was no evidence for psychotic processes but appellant did show a tendency to become disorganized and show deteriorated functioning under stress. Dr. Teynor diagnosed recurrent major depression and passive-dependent personality traits. He stated that he was unable to document the existence, past or present, of a post-traumatic stress disorder. He concluded that there was no suggestion that appellant's current psychiatric status was influenced or perpetuated by appellant's compensable work factors. Dr. Teynor commented that what he presumed to be psychotic symptoms were a subcultural belief that the government was willing to expose its citizens to chemical agents. He stated that appellant clearly attributed her current depression to the presence of chemical exposure at the employing establishment. He noted that toxic exposure was not listed as a compensable work factor. Dr. Teynor indicated that appellant's psychiatric and psychological condition had worsened since she stopped working. He stated that it was not uncommon for major depression or an anxiety disorder to become chronic after acute stressors. He commented, however, that it was tremendously uncommon for a depression to significantly worsen due to the work-related stressors when appellant had been off work for such an extended period. Dr. Teynor stated that appellant was unable to return to work due to the current severity of her depressive and anxiety features as well as her documented neurocognitive deficits.

The reports of Dr. Teynor and Dr. Thueson were extensive, well-rationalized reports discussing appellant's condition. Dr. Thueson indicated that, while appellant was developing complications of diabetes, her inability to work was not due to her diabetes. Dr. Teynor indicated that the medical evidence of record did not demonstrate that appellant had post-traumatic stress disorder. He concluded that appellant's worsening emotional condition was due to her belief that she had been deliberately exposed to toxic chemicals at work by the employing establishment. While the exposure to chemicals would be related to appellant's assigned duties, she has not established that she had any specific physiological conditions arising from exposure to CARC paint, even though she noted feelings of fatigue, rashes, and other assorted pain. The evidence showed that appellant's reaction to the exposure to CARC paint was a self-generated emotional condition that has not been established to be causally related to any actual condition arising from the exposure to CARC paint. The weight of the medical evidence established that appellant's disability was no longer causally related to the accepted conditions for which compensation was paid. The Office therefore met its burden of proof in terminating appellant's compensation.

The decision of the Office of Workers' Compensation Programs, dated April 28, 1998, is hereby affirmed

Dated, Washington, D.C.
June 15, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member