U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBY J. HILL and DEPARTMENT OF DEFENSE,
DEFENSE SECURITY SERVICE, Warner-Robins, GA

Docket No. 99-1630; Oral Argument Held April 6, 2000;
Issued June 22, 2000

Appearances: *Ruby J. Hill, pro se*; *Paul J. Klingenberg, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition causally related to November 5, 1985 or June 9, 1992 employment injuries or to an alleged August 1997 incident.

On March 6, 1998 appellant, then a 49-year-old special agent, filed an occupational disease claim, alleging that her emotional condition was caused by an August 1997 incident in which she was confronted by five males. She noted a history of an August 1992 employment-related sexual assault and previous employment-related motor vehicle accidents and stated that the combination of these events made it impossible to work.[1] Appellant had stopped work on January 30, 1998. By letter dated March 17, 1998, the Office of Workers' Compensation Programs informed appellant's attorney of the type evidence needed to support her claim and this was repeated in a letter dated July 24, 1998 addressed to appellant.

In a statement dated August 21, 1998, appellant related that her employment placed her in the position where she became injured. She described the previous employment injuries and stated that in August 1997 while returning to the employing establishment from an employment function held 100 miles away, she stopped for gasoline and food and was accosted. Appellant related that she was hospitalized for emotional problems in September 1997.

By decision dated October 2, 1998, the Office denied the claim, finding that the injury was not sustained in the performance of duty. On December 11, 1998 and February 26, 1999 appellant requested reconsideration and submitted additional evidence. In a March 11, 1999

[1] The record indicates that appellant sustained an employment-related acute cervical and lumbosacral strains, contusions of both knees, adjustment disorder with mixed emotional features, anxiety and depression following a motor vehicle accident on November 5, 1985. On June 9, 1992 she was sexually assaulted at work. This was accepted by the Office for contusion of the chest and breast.

decision, the Office denied modification of the prior decision. The Office noted that it had not been established that the August 19, 1997 incident resulted in an injury or that it occurred in the performance of duty and that there was no bridging evidence to establish that her emotional condition was causally related to the employment-related November 5, 1985 motor vehicle accident or the June 9, 1992 sexual assault. The instant appeal follows.

In an October 6, 1998 statement, Faye Stewart, a coworker, related that in the fall of 1997 appellant reported that, as she was returning home from a meeting in August 1997, she stopped to use the restroom and while waiting, some men came out of the ladies room and saw her. Ms. Stewart stated:

> "At this point [appellant] became fearful and froze as she suspected the men may have been involved in illegal substance use. The men appeared to have a desire to do her bodily harm due to the location of the restrooms but were distracted by someone else approaching. After this, I believe [appellant] returned to her car and proceeded home."

The record contains a letter dated July 31, 1998 in which Cassandra L. Crosby, Victim Advocacy Director, noted that appellant had been a client of the sexual assault outreach program since August 1997. A memorandum of a telephone call from appellant to the Office on February 24, 1999 indicates that there was no police report filed regarding the August 1997 incident.

The relevant medical evidence[2] includes an attending physician's report dated February 26, 1998 in which Dr. Paul R. Coplin, a psychiatrist, diagnosed post-traumatic stress disorder and checked "yes" indicating that appellant's condition was employment related. Dr. Coplin advised that she could not work. In a report dated March 31, 1998, he reported the history of the 1992 sexual assault and advised that she had flashbacks. Dr. Coplin noted that she had moved about 10 times in the last 5 years, an additional stressor and stated that while returning from a seminar in August 1997 she was "cornered" by 5 men who "threatened to attack her, thus causing her post-traumatic stress disorder symptoms to worsen." He also diagnosed depression and stated that appellant had been hospitalized in September 1997. In an August 18, 1998 report, Dr. Coplin stated that appellant had been his patient since August 18, 1997 and had been seen on a regular basis since that time with symptoms of depression, crying, irritability, fear

[2] Appellant also submitted clinic notes from Wendie Brannen, L.C.S.W. A report from a licensed clinical social worker is not medical evidence, as it is not the report of a "physician" as defined in section 8101(2) of the Federal Employees' Compensation Act. Such a report has no probative value on the question of appellant's mental competence. *Frederick C. Smith*, 48 ECAB 132 (1996).

of leaving her apartment, nightmares, poor sleeping, extreme paranoia and psychotic episodes. He concluded that she could not work. By report dated October 22, 1998, Dr. Coplin stated:

> "[Appellant] has experienced intrusive distressing recollections of the attack. She still has recurring nightmares where she has a sense of reliving the attack."

Dr. Coplin concluded that her condition continued to be very fragile.

In a February 8, 1999 report, Dr. H.D. Smith, a Board-certified psychiatrist, diagnosed severe post-traumatic stress disorder and advised that appellant could not work. Dr. Smith stated that appellant's life had been in a turmoil since 1992 when she was assaulted at work. He noted that she had fears of being attacked and had nonexistent stress tolerance and poor concentration. Dr. Smith concluded that she was unable to work.

The Board finds that appellant has not established that she sustained an emotional condition causally related to factors of employment.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[3] Workers' compensation law is not applicable to each and every injury or illness that is somehow related to employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within coverage of the Act.[4] On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must be determined whether "fact of injury" has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

In the instant case, the Board finds that appellant has not established that the August 1997 incident occurred as alleged. The employing establishment received no contemporaneous complaint of any such incident and there are no contemporaneous witness statements identifying

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

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[6] *See Geraldine Sutton*, 46 ECAB 1026 (1995).

with specificity at the time, place and in the manner and parties involved. As such, appellant's allegation constitutes a mere perception or generally stated assertion regarding the incident.

The Board further finds that appellant has not established that her emotional condition was caused by the employment injuries that occurred in 1985 and 1992 because she did not submit rationalized medical evidence explaining how these employment injuries caused or aggravated her emotional condition. By letter dated July 24, 1998, the Office informed appellant of the type of medical evidence necessary to establish her claim which was to include a comprehensive medical report from her physician. While she submitted reports from Drs. Coplin and Smith, the absence of documented bridging symptoms between the prior injuries and her current condition negated causal relationship.[7] As neither of the physicians reported that her condition was related to either of the previous employment injuries, appellant failed to meet her burden of proof.[8]

The decisions of the Office of Workers' Compensation Programs dated March 11, 1999 and October 2, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 22, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[7] *See Leslie S. Pope*, 37 ECAB 798 (1986).

[8] The Board notes that appellant submitted additional evidence subsequent to the oral argument held on April 6, 2000. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).