U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE M. PETERS and U.S. POSTAL SERVICE,
MACON PLANT, Macon, GA

Docket No. 98-1991; Submitted on the Record;
Issued March 16, 2000

DECISION and ORDER

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

The issues are: (1) whether appellant has met her burden of proof in establishing that she has any disabling condition arising from her January 2, 1997 employment injury; (2) whether appellant sustained an emotional condition in the performance of duty; and (3) whether the Office of Workers' Compensation Programs properly denied one of appellant's requests for reconsideration as untimely and lacking in clear evidence of error.

On January 2, 1997 appellant, then a 42-year-old letter sorting machine operator, filed a claim for a lower back condition, which she related to lifting heavy trays of mail and excessive bending. On May 28, 1997 appellant filed a claim for bilateral inguinal hernias, which she related to lifting on her job on January 2, 1997. Appellant underwent surgery to repair the hernias on May 13, 1997. In an August 26, 1997 decision, the Office rejected appellant's claim on the grounds that, while the evidence of record established that the incident happened as alleged by appellant, the evidence did not establish that a condition had been diagnosed in connection with the incident.

On August 5, 1997 appellant filed a claim for stress, stating that she was placed on administrative leave on May 1, 1997 for no understandable reason. She indicated that she had not returned to work since she had been placed on leave. In an October 16, 1997 decision, the Office rejected appellant's claim on the grounds that, while appellant had actually experienced the employment factors, no medical evidence had been submitted to establish that a medical condition had been diagnosed as a result of these factors.

On September 16, 1997 appellant filed a claim for back and leg pain arising from the January 2, 1997 employment injury. On November 18, 1997 appellant filed a claim for recurrence of disability. She stated that, after she returned to work from the January 2, 1997 employment injury, she had back and leg pain, which gradually became worse. She indicated that she stopped working on May 5, 1997 and her pay stopped on June 9, 1997. In a January 6, 1998 decision, the Office rejected appellant's claim on the grounds that, while she had

experienced the actual incident, the evidence of record did not establish a condition had been diagnosed in connection with the incident.

In a December 23, 1997 letter, appellant requested reconsideration of the Office's October 16, 1997 decision. In a January 14, 1998 letter, appellant requested reconsideration of the Office's January 6, 1998 decision. In an April 6, 1998 merit decision, the Office denied appellant's January 14, 1998 request for modification. In a separate decision of the same date, the Office denied appellant's December 23, 1997 request for reconsideration on the grounds that she had not requested reconsideration within one year of the Office's June 19, 1996 decision and had not submitted sufficient evidence to establish clear evidence of error in the Office's decision.[1]

In a letter received by the Office on May 11, 1998, appellant again requested reconsideration. In a May 27, 1998 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitious and, therefore, insufficient to warrant review of the prior decision.

The Board finds that, in regard to appellant's back condition, the case is not in posture for decision.

In a January 6, 1997 report, Dr. William A. Williams, Jr., a Board-certified family practitioner and specialist in emergency medicine, stated that he saw appellant for acute back pain on January 2, 1997. He noted that she gave a history of lifting heavy trays of mail and bending frequently at work. He found on examination no tenderness over the lumbar spine and slight tenderness over the paraspinal muscles over the lumbar area bilaterally. He indicated appellant had slight pain on motion. He diagnosed acute lumbar strain. In a January 17, 1997 report, Dr. Gary Godlewski, a specialist in emergency medicine, diagnosed resolved lumbar strain.

In a July 25, 1997 report, Dr. Ada P. Wang, a radiologist, stated that a magnetic resonance imaging (MRI) scan showed moderate central/right paramedian disc herniation at the L4-5 level, which caused an impression on the right lateral aspect of the anterior thecal sac. Dr. Wang, however, did not discuss the cause of the herniated disc.

Appellant subsequently submitted office notes from Dr. Titus A. Taube, a Board-certified family practitioner. In a January 27, 1997 note, Dr. Taube indicated that he was treating appellant for a low back and groin strain secondary to a work-related injury. In an August 11, 1997 note, he diagnosed chronic lumbar disc disease. In a September 9, 1997 report, Dr. Taube noted that appellant developed back pain while working at one set of postal machines. He

[1] On December 15, 1995 appellant filed a claim for back problems beginning April 6, 1985. She noted that she also had been treated for emotional problems. The Office noted that appellant had previously filed a claim for an April 6, 1985 employment injury to the back, which had been accepted for lumbar strain and began payment of medical benefits. In a December 9, 1988 decision, the Office terminated entitlement to medical benefits on the grounds that the weight of the medical evidence showed appellant's disability due to the April 6, 1985 injury had ceased. In a June 19, 1996 decision, the Office denied appellant's December 6, 1995 claim on the grounds that fact of injury had not been established.

indicated that she was moved to letter sorting machines, which involved considerable stretching activities, including her legs but her back pain became worse. He commented that x-rays showed minor narrowing of the L4-5 intervertebral disc consistent with early degenerative changes. He noted that the MRI scan showed moderate central and right disc herniation at L4-5, which pressed on the right lateral aspect of the anterior thecal sac. Dr. Taube stated that appellant's problems with her back were related to injuries sustained at work. He commented that, although the etiology of appellant's problem might date back to as early as 1985, the condition was stable until January 1997. In an October 7, 1997 report, he diagnosed lumbar disc disease with right radicular symptoms. Dr. Taube's report related appellant's condition to her work on letter sorting machines. His report was not contradicted by any other evidence of record. Dr. Taube's report, while insufficient to establish causal relationship between appellant's employment and her back condition, is sufficient to require further development.[2] The case must, therefore, be remanded for referral of appellant, together with a statement of accepted facts and the case record, to an appropriate physician for an examination and rationalized opinion on whether appellant's back condition is causally related to his employment.

The Board finds that appellant has not established that her inguinal hernias are causally related to the January 2, 1997 employment injury.

A person who claims benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.[4] As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.[5] The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.[6] Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions, which are alleged to have caused or exacerbated a disability.[7]

Appellant claimed that her bilateral inguinal hernias were related to the January 2, 1997 employment injury. However, appellant only submitted the report of her surgery for repair of the bilateral hernias. She has not submitted any medical report relating the hernias to the employment injury. She, therefore, has not met her burden of proof in establishing a causal relationship between the bilateral hernias and the employment injury.

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[2] *John J. Carlone*, 41 ECAB 354 (1989).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

[5] *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[6] *Juanita Rogers*, 34 ECAB 544, 546 (1983).

[7] *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

The Board also finds that appellant does not have an emotional condition causally related to factors of her employment.

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 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 with 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.[8] 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.[9] 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 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.[10]

Appellant raised two factors as the cause of her stress; an affair with a supervisor in 1985 whom she subsequently learned was married to a coworker and her placement on administrative leave on May 1, 1997. She contended that the supervisor with whom she had an affair was instrumental in having her placed on administrative leave on May 1, 1997 by influencing the supervisor who instructed her to take leave. She stated that, at the time of the May 1, 1997 incident, she was carrying out her duties as an on-site instructor by checking letter cases and talking with coworkers. However, the employing establishment submitted statements from appellant's supervisor and witnesses that on May 1, 1997 appellant had left the letter case assigned to her without notifying her supervisor and refused to return to her letter case when her supervisor ordered her to do so. The supervisor then instructed appellant to go off the clock and go home. Appellant initially refused to leave but was eventually persuaded to do so. In an August 25, 1997 administrative investigative report, a senior labor relations specialist at the employing establishment indicated that appellant's former supervisor admitted that he had been involved with her in the past but had not been involved personally with appellant since 1985. He denied influencing her placement on administrative leave. Appellant's supervisor denied that appellant's former supervisor was involved in the decision to place appellant on administrative leave.

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

[9] *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).

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

The Office found that the incidents cited by appellant took place as alleged. The Office, however, did not consider whether the incidents constituted compensable factors of employment. The Board finds that the incidents did not involve appellant's assigned duties and, therefore, were not compensable factors of employment. Appellant's affair with a former supervisor did not occur within the performance of duty as it did not involve her assigned duties. Her placement on administrative leave was a disciplinary action taken after she refused to return to her duties as instructed by her supervisor. It, therefore, was an administrative action, which is not covered by the Act in the absence of any evidence of error or abuse.[11] Appellant has not established that this action was abusive or taken in error. Specifically, she has not established that there was any improper influence on her supervisor to place her on administrative leave. Appellant, therefore, has not established that she sustained an emotional condition within the performance of duty.

The Board, however, finds that the Office improperly denied appellant's request for reconsideration from the denial of her emotional condition claim as untimely.

Under section 8128(a) [of] the Act,[12] the Office has the discretion to reopen a case for review on the merits, on its own motion or on application by the claimant. The Office must exercise this discretion in accordance with section 10.138(b) of the implementing federal regulations,[13] which provides guidelines for the Office in determining whether an application for reconsideration is sufficient to warrant a merit review; that section also provides that "the Office will not review ... a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision."[14] In *Leon D. Faidley, Jr.*,[15] the Board held that the imposition of the one-year time limitation period for filing an application for review was not an abuse of the discretionary authority granted the Office under section 8128(a) of the Act.

In this case, the Office denied appellant's claim for stress in an October 16, 1997 decision. In a December 23, 1997 letter, appellant specifically requested reconsideration of the October 16, 1997 decision and submitted medical evidence in support of her request. The Office, however, erroneously treated appellant's request as a request for reconsideration from an unrelated June 19, 1996 decision. Appellant's December 23, 1997 letter was a timely request for reconsideration of the Office's October 16, 1997 decision. The case must, therefore, be remanded for reconsideration of the October 16, 1997 decision, to be followed by an appropriate decision.

The decisions of the Office of Workers' Compensation Programs, dated May 27, April 6, January 6, 1998 and August 26, 1997, are hereby affirmed insofar as they relate to appellant's claim for an inguinal hernia. The decisions are set aside insofar as they relate to appellant's

[11] *Janet I. Jones*, 47 ECAB 345 (1996).

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.138(b).

[14] 20 C.F.R. § 10.138(b)(2).

[15] 41 ECAB 104 (1989).

claim for a back condition and the case is remanded for further development as set forth in this decision. The decision of the Office dated October 16, 1997, is hereby affirmed. The decision of the Office denying reconsideration based on appellant's December 23, 1997 request, dated April 5, 1998 is hereby reversed.

Dated, Washington, D.C.
March 16, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member