

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY DILLARD and DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH CENTER, Fort Totten, ND

*Docket No. 99-1211; Submitted on the Record;
Issued September 18, 2000*

DECISION and ORDER

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

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On January 27, 1998 appellant, then a 55-year-old physician, filed a notice of occupational disease and claim for compensation alleging that she developed a respiratory condition and a depressive disorder caused by stress in the performance of duty. In a statement attached to her CA-2 claim form, appellant related that, following her resignation from after-hour call jobs and other emergency medical positions, her supervisor harassed her on a daily basis and called her at night on occasion to persuade appellant to once again resume what she characterized as "an impossible load to handle." Appellant attached letters dated January 5, 1998 and December 9, 1997 addressed to Dr. Montaneil that stated appellant's position as to why she was no longer able to resume her previous work load or act as a clinical director in Dr. Montaneil's absence. She indicated that during the weeks proceeding the January 5, 1998 letter she experienced headaches, insomnia, shortness of breath, left shoulder and back pain, gastrointestinal disorder and exacerbation of psoriasis. Appellant was off work from January 9 to 14, 1998.

Medical records from Mercy Hospital indicate that appellant presented to the emergency room on January 9, 1998 complaining of chest pain and indigestion over the last three to four weeks with the symptoms becoming increasingly more severe. It was stated on appellant's discharge summary that she was undergoing a great amount of stress, and that appellant "resigned from her seven-day-a-week 24-hour-call duties and feels some harassment because of this." The doctor diagnosed chest pain most likely due to gastrointestinal problems with other risk factors being obesity, hyperlipidemia and stress.¹

¹ Appellant also submitted medical records from the Altru Clinic indicating that she received treatment on

In a January 12, 1998 report, Dr. Robert J. Olson, a Board-certified psychiatrist, reported that appellant was evaluated for symptoms of depression. He noted that appellant's job stressors were substantial, that she worked and lived on an Indian Reservation where she was involved in after-hour clinic, 24-hour on-call ambulance services and obstetric services. Dr. Olson related that appellant resigned her extra positions and felt harassed by her supervisor to take the jobs back. He diagnosed depression, psoriasis, hypothyroidism, asthma, migraine headaches, irritable bowel syndrome, peptic ulcer and esophageal reflux, status post hysterectomy and cholecystectomy.

In a report dated January 21, 1998, Dr. Paul R. Vandersteen, a Board-certified dermatologist, noted that appellant was seen for follow-up treatment for psoriasis. He related that appellant was having difficulty at work with her supervisor, in that he would not allow her to go home over her lunch hour as recommended by her physician to tend to her skin condition. He recommended that appellant take time off of work to treat her psoriasis with medication and ultraviolet light.

In a July 30, 1998 report, Dr. Olson advised that appellant suffered from continued depression, irritable bowel syndrome and headaches. He noted that appellant attributed all of her conditions to ongoing conflicts with her supervisor and administrative chief executive officer. Dr. Olson also related that appellant complained of ongoing harassment as a result of her efforts to cut back on her excessive responsibilities.

By letter dated September 2, 1998, the Office advised appellant of the factual and medical evidence required to establish her claim.

In a report dated September 21, 1998, Dr. Olson noted that appellant was treated for recurrent depression and job stressors with medication. He also noted that appellant complained of considerable fatigue, irritable bowel symptoms and muscle tension, "all of which she can attribute to a pressure applied from both local and regional administrative personnel tactics that these administrators have used with the medical staff which are very problematic and not helpful, and threatening in nature." He further noted that appellant was at the point where she might leave the clinic unless she saw some change in the administration.

In a letter dated October 4, 1998, appellant stated:

"Extraordinary stress on the job continues in the form of ongoing harassment of all physicians to lower our standards of practice and attempts to intimidate doctors by having representatives of area office threaten doctors with closure of the IHS facility and personal financial responsibility for debts of the IHS/federal government -- in the presence of the Deputy Area Director who voiced no objection or disagreement with these methods/content and who attempted to prevent any contact with our elected representative ... by referring to the Hatch

January 13, 1998 for chest pain and indigestion.

Act which does not pertain to matters of harassment, intimidation and retaliation on the job....”

The Office prepared a statement of accepted facts finding the following work connected events as factual and compensable factors of employment: (1) Field Health Director for Tribal Health Department since 1993; (2) Medical Director for Emergency Medical Services (EMS) since 1994; (3) medical consultant for Mental Health since 1992; (4) medical consultant for Tribal Court since 1993; (5) child abuse evaluation and consultant; (6) HIS representative on child protection; (7) medical consultant for elderly home 1993 to November 1997; (8) urgent care center (after-hour clinic) May to December 1997. The Office also noted that on December 9, 1997 appellant provided written resignation of all uncompensated after-hour calls and those duties for which no time had been allowed during working hours. It was noted that none of the duties were reassigned and that appellant continued to receive after-hour calls and daytime calls from EMS, mental health and call/office visits from public health nurses. Additionally, the Office found that the following incidents were not accepted as factual: (1) following appellant’s resignation she was subjected to harassment and daily pressure by her clinical director and another administrator to continue with her jobs; and (2) that HIS physicians experienced ongoing harassment to lower their standards and the doctors were intimidated with threats of closure of the HIS facility and personal financial responsibility for HIS debts.

The Office referred appellant for a second opinion evaluation with Dr. Thomas Gratzer, a Board-certified psychiatrist, on November 13, 1998. He reviewed appellant’s medical record, social history and symptoms. Dr. Gratzer reported that appellant’s perception of harassment by her supervisors was not responsible for her chest pain or psoriasis. He indicated that appellant had a history of issues of victimization dating back to her childhood which might account for her perceptions of mistreatment; however, Dr. Gratzer noted that he had no opinion about the accuracy of appellant’s account of harassment. Dr. Gratzer noted that appellant’s depressive disorder had responded well to medication and that she was capable of working full time as a physician.²

In a decision dated December 22, 1998, the Office accepted that developed pneumonia as a result of factors of her federal employment. The Office, however, also found that appellant failed to establish that her emotional condition was sustained in the performance of duty. The Office noted that the medical evidence was insufficient to show that appellant’s depression was related to the accepted compensable factors of her employment as set forth in the Office’s statement of accepted facts.

On February 5, 1999 appellant filed a request for a hearing.

² Dr. Gratzer attributed appellant’s development of pneumonia in December 1997 to being overworked and therefore considered the condition causally related to a compensable work factor. Dr. Gratzer noted, however, that there was a seasonal component to appellant’s depression such that he did not consider that condition to be work related. He further indicated that appellant’s psoriasis was exacerbated when she stopped taking an over-the-counter medication and not be factors of her employment.

In a decision dated March 12, 1999, the Office determined that appellant's hearing request was untimely filed. The Office further noted that the issue in the case could be equally addressed by the reconsideration process.

The Board finds that the case is not in posture for decision due to a conflict in medical opinion.

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 Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁴

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's 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 Federal Employees' Compensation Act.⁵ 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.⁶ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.⁷ To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁸

In the instant case, the Office properly determined that appellant alleged both compensable and noncompensable factors of employment as the cause of her emotional

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

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁷ *William P. George*, 43 ECAB 1159 (1992).

⁸ See *Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

condition. In the first instance, the Office correctly identified appellant's various after-hour jobs as compensable factors of employment in the statement of accepted facts, as this pertains to her regular and specially assigned duties.

In analyzing the medical evidence, the Office credited the opinion of the Office referral physician and found that appellant's depressive disorder was not causally related to her job duties. The Board, however, notes that Dr. Olson, appellant's treating physician, diagnosed that appellant suffered from depression and identified several "work stressors." The Board considers Dr. Olson's opinion to be supportive of appellant's claim and in conflict with the opinion of Dr. Gratzner, the Office referral physician, as to whether appellant's depression is due to her factors of her employment. Dr. Gratzner opined that appellant's depression was seasonal and did not consider it to be work related.

Section 8123(a) of the Act provides that, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁹ There is a conflict of medical opinion evidence as to whether appellant sustained an emotional condition causally related to the compensable factors of her federal employment. The case will be remanded in order that the Office may obtain an examination of appellant with an impartial medical specialist. After such further medical development as the Office deems appropriate, the Office shall issue a *de novo* decision.¹⁰

⁹ 5 U.S.C. § 8123.

¹⁰ Given that the case is being remanded, the second issue on appeal is moot.

The decisions of the Office of Workers' Compensation dated March 12, 1999 and December 22, 1998 are hereby set aside, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
September 18, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member