

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDY M. NAMBIAR and U.S. POSTAL SERVICE,
POST OFFICE, Stockton, CA

*Docket No. 00-303; Submitted on the Record;
Issued February 13, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's condition or disability after August 12, 1997 was causally related to her employment injury of August 11, 1997 or to compensable factors of her federal employment.

In a decision dated July 12 and finalized July 14, 1999, the Office of Workers' Compensation Programs found that appellant was not entitled to compensation after August 13, 1997 because the evidence failed to establish that her medical condition and disability after that date were causally related to her fume exposure of August 11, 1997. The Office also found that appellant's medical condition and disability after August 13, 1997 were not due to an injury sustained in the performance of duty.

The Board has duly reviewed the record on appeal and finds that the medical evidence is insufficient to establish that appellant's condition or disability after August 12, 1997 was causally related to her employment injury of August 11, 1997.

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury while in the performance of her duties and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³

The Office accepted that appellant's hypertension was aggravated when she was exposed to lubricant fumes on August 11, 1997. Dr. Corky J. Hull, Director of Occupational Health

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

Services at Dameron Hospital, examined appellant on the date of injury and reported that she had a preexisting hypertension that was temporarily aggravated by the chemical exposure. He concluded, however, that the persistence of uncontrolled high blood pressure after this incident “must be attributed to nonoccupational factors.” The Office accepted appellant’s claim for fume exposure and temporary aggravation of hypertension, resolved by August 12, 1997.

Appellant claims that her condition and disability after August 12, 1997 was causally related to her employment injury. She therefore bears the burden of proof to establish the element of causal relationship.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁴

Appellant submitted a September 5, 1997 report from her attending physician, Dr. Timothy L.H. Yeh, a family practitioner. When he saw appellant on August 14, 1997, Dr. Yeh stated that the gas leak as well as the stress created by the gas “clearly could have caused” elevation in her blood pressure. He was not aware of the components of the gas, however, and did no immediate tests. Dr. Yeh reported that appellant also felt stressed by a lot of the paperwork and comments made to her, which had aggravated her blood pressure.

On October 28, 1997 the Office requested additional information from Dr. Yeh. In a reply dated November 7, 1997, Dr. Yeh explained that on August 14, 1997 a physician had called him about appellant’s hypertension. Appellant’s blood pressure was fine prior to the date of injury, but the physician did not give Dr. Yeh the numbers. When Dr. Yeh saw appellant her blood pressure was 210/130, and it was high when she was treated at the hospital for gas exposure. Appellant was also treated for kidney stones. Dr. Yeh had not seen appellant since 1995. He reported:

“As far as I am concerned, her transient elevation in blood pressure certainly was attributable to the fumes as everyone is terribly upset, of course by the fumes and release of adrenaline. Subsequent to that point in time her blood pressure has remained high. To what degree and extent this persistent high blood pressure can be laid to rest at the foot of the gas fumes is not clear. Her blood pressure has been extremely high, however, subsequent to that, and especially more so under the litigation that is involved and the attendant duress. Any more than that, please refer to my previous letter.”

Dr. Yeh’s opinion is of little probative value in establishing a causal relationship between the occupational exposure of August 11, 1997 and appellant’s persistent hypertension after August 12, 1997. He had not seen appellant since 1995. Dr. Yeh had no detailed medical

⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

history and no clinical findings to compare with those obtained after the exposure. Without an accurate understanding of the state of appellant's condition prior to August 11, 1997, he could not render an informative opinion.⁵ Another physician had apparently advised Dr. Yeh that appellant's blood pressure was "fine" before the date of injury, but, as he reported, this physician provided no numbers. Dr. Yeh was therefore "not clear" to what degree or extent appellant's persistent high blood pressure could be attributed to exposure to the gas fumes. He has offered no reasoned opinion that the gas fume exposure of August 11, 1997 caused anything other than a transient elevation in blood pressure from the initial upset and release of adrenaline. Because the medical opinion evidence fails to establish that appellant's high blood pressure subsequent to that point in time was causally related to the exposure of August 11, 1997, appellant has not met her burden of proof.

The Board also finds that the evidence fails to establish that appellant's condition or disability after August 12, 1997 was causally related to compensable factors of her federal employment.

As Dr. Yeh reported, appellant felt stressed by a lot of the paperwork and comments made to her after the exposure, which had succeeded, in his opinion, in further aggravating her blood pressure. He reported that her blood pressure was extremely high after the exposure "and especially more so under the litigation that is involved and the attendant duress."

Appellant advised the Office that Ron Brooks, a supervisor, had interfered with her care by blocking her initially from any treatment other than at the Dameron Hospital. She stated that the lack of insurance coverage for extra medical expenses forced her to return to work while still having blood pressure problems. Appellant complained that hers was the only claim controverted by Mr. Brooks. She was frustrated by his negative attitude and filed a grievance.

Mark Villalpando, a supervisor, asked her to sign notification of absence requests indicating that she was off sick on her own and unrelated to the gas leak. She stated that he ignored her medical verification and kept asking for new documentation. Mr. Villalpando denied leave under the Family and Medical Leave Act (FMLA), which caused appellant to become very upset and file a grievance. She was denied union time to complete this grievance with her steward. Appellant had to ask another steward to submit an incomplete grievance. The anxiety she had in dealing with this made her ill. She requested an Equal Employment Opportunity (EEO) complaint form.

Appellant filed a grievance against Mike Ellerbee, a supervisor, for harassment on the workroom floor. She stated that she was harassed for silly things: "do n[o]t talk, do n[o]t do this, do n[o]t do that, do n[o]t go there, etc." She filed another grievance and EEO complaint charging that Mr. Villalpando changed her leave slips and stifled her efforts to use leave under the FMLA for illnesses resulting from the gas leak. In summary, appellant advised the Office as

⁵ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

follows: “I have run the gamut of emotional distress due to the harassment and detrimental conduct of the [employing establishment] prolonging the healing process.”

Workers’ compensation law does not cover each and every injury or illness that is somehow related to employment.⁶ An employee’s emotional reaction to an administrative or personnel matter is generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.⁷ Perceptions alone are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.⁸

Appellant asserts harassment and detrimental conduct by the employing establishment, specifically by supervisors Brooks, Villalpando and Ellerbee. As a general rule her emotional reaction to any of the administrative or personnel actions they may have taken is not covered by workers’ compensation. The record contains an abundance of documentation relating to appellant’s assertions, including the employing establishment’s response to her complaints, but none of this evidence substantiates error or abuse in the discharge of supervisory discretion or responsibilities. The evidence of record does not show a finding or decision favorable to appellant in any of her grievances or EEO complaints. Because appellant has failed to substantiate her allegations with probative and reliable evidence showing error or abuse by the employing establishment, she has not met her burden of proof to establish that her condition or disability after August 12, 1997 was causally related to compensable factors of her federal employment.

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Margreate Lublin*, 44 ECAB 945 (1993).

⁸ *Ruthie M. Evans*, 41 ECAB 416 (1990).

The July 12, 1999 decision of the Office of Workers' Compensation Programs, finalized July 14, 1999 is affirmed.

Dated, Washington, DC
February 13, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member