

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAUREEN A. BECKWITH-SHIREY and U.S. POSTAL SERVICE,
GREATER MICHIGAN DISTRICT, Grand Rapids, MI

*Docket No. 00-1732; Submitted on the Record;
Issued July 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that her emotional condition was causally related to compensable factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before an Office hearing representative.

The case has been before the Board on prior appeal. In a decision dated March 22, 1999,¹ the Board affirmed Office decisions dated December 11, 1996 and February 14, 1997, denying appellant's claim for an emotional condition arising in the performance of duty. The history of the case and conclusions of law are contained in the Board's prior decision and are incorporated herein by reference.

On August 13, 1999 appellant's counsel requested reconsideration and submitted a March 22, 1999 final agency decision which found that the employing establishment had retaliated against appellant when it involuntarily reassigned her from Labor Relations to personnel. An administrative judge issued a finding that appellant did not establish her allegations of discrimination or retaliation on five out of six other allegations.

On September 23, 1996 the Office referred appellant, together with a statement of accepted facts, medical records and a list of questions, to Dr. Kenneth W. Beroza, a second opinion Board-certified psychiatrist, for an opinion as to whether appellant's emotional condition was causally related to her involuntary reassignment from Labor Relations to personnel.

In a report dated October 22, 1999, Dr. Beroza diagnosed major depression with psychotic features and possible paranoid disorder and that appellant was totally disabled due to her emotional condition. He concluded that appellant's emotional condition was not caused by her involuntary reassignment from Labor Relations to personnel. Dr. Beroza noted that "lack of

¹ Docket No. 97-1600.

aggressive treatment to control panic and paranoia contributed to work disability, her chronic illness course and declining prognosis.” He also noted that there was no reference to appellant’s involuntary reassignment in any of the medical records he reviewed and indicated that appellant “focuses on denial of promotion and subsequent harassment and discrimination at work as the cause of depression and anxiety. She makes no reference to reassignment.”

By decision dated November 15, 1999, the Office found that appellant had established a compensable factor, but the medical evidence of record failed to establish a causal connection between appellant’s depression and the compensable factor.

In a letter dated November 26, 1999, appellant’s counsel requested an oral hearing.

On December 20, 1999 the Office denied appellant’s request for a hearing on the basis that she had previously requested reconsideration.

In a report dated December 27, 1999, Jerry B. Van Leeuwen, Ph.D. a clinical psychologist, stated that he first met appellant in 1992 when he was involved in training postal employees “due to interpersonal conflict among the employees, primarily the postal employee and management” and that female employees had been treated in a devaluative way. Dr. Van Leeuwen opined that appellant’s disability was due to her reassignment. Specifically, he noted:

“[Appellant] was seen by me for a psychological consultation due to the excessive stress and her level of emotional dysfunction which had been brought upon by mistreatment while employed by the post office and subsequent attempts to resolve her personal devaluation by Chester Cross, Human Resource Manager. The ideological factors for [appellant’s] present emotional condition appear directly related to the devaluative way she was treated in the workplace and the emotional harassment she received during the last months of her tenure, especially being threatened by manager Cross in February 1996 and later being reassigned by Cross in May 1996.”

On March 21, 2000 appellant requested reconsideration and submitted evidence in support of her request.

By decision dated March 31, 2000, the Office denied appellant’s request for reconsideration on the basis that the evidence was insufficient to warrant modification of the prior decision.

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.² 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.³

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.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 An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.⁶ 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.⁷

In the instant case, the Office properly determined that appellant alleged both compensable and noncompensable factors of employment as the cause of her emotional condition. Following the Board's prior decision of March 22, 1999, evidence was introduced which established error on the part of the employing establishment in involuntarily reassigning appellant from Labor Relations to Personnel.⁸ An administrative judge found retaliation to be a motivating factor in this personnel matter. Appellant's allegations of harassment and discrimination in other matters have not been factually established.

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. Van Leeuwen, appellant's treating psychologist, diagnosed that appellant suffered from depression and identified appellant's May 1996 involuntary transfer as a causative factor. The Board considers Dr. Van Leeuwen's opinion to be

² *Donna Faye Cardwell*, 41 ECAB 730 (1990).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Sheila Arbour (Vincent E. Arbour)*, 43 ECAB 779 (1992).

⁶ *William P. George*, 43 ECAB 1159 (1992).

⁷ *Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *See William H. Fortner*, 49 ECAB 324 (1998).

supportive of appellant's claim and in conflict with the opinion of Dr. Beroza, the Office referral physician, as to whether appellant's depression is due to the compensable factor of her employment. Dr. Beroza opined that appellant's depression was unrelated to the compensable factor of involuntary job transfer.

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

The decisions of the Office of Workers' Compensation dated March 31, 2000 is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
July 6, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁹ 5 U.S.C. § 8123.

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