

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIFER L. BESS and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, VA

*Docket No. 00-2243; Submitted on the Record;
Issued July 17, 2001*

DECISION and ORDER

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

The issue is whether appellant established that she sustained an emotional condition after February 1998.

On May 22, 1998 appellant, then a 34-year-old mailhandler, filed an emotional claim, alleging that a coworker, Lewis Martin, stalked her from April 1 through September 30, 1997 at work and while she was at home making it necessary for her to change tours, work hours, telephone numbers and even hide at work. She stated that the stalking caused her chronic paranoia, severe depression, anxiety and bad nerves.

Appellant submitted medical documents to show that she was suffering from anxiety and depression due to being stalked by a coworker on the job.

In a report dated January 20, 1998, appellant's treating physician, Dr. Pannala J. Reddy, a Board-certified psychiatrist and neurologist, stated that the last two months appellant started having serious problems with a coworker who started stalking her. He stated that she had anxiety panic attacks and feared going back to work and facing him daily. Dr. Reddy stated that she had trouble sleeping, concentrating and doing her chores. He noted that, even after the court found him guilty of harassing appellant and he was no longer harassing appellant "anymore openly," appellant's reaction to the situation continued to be "pretty bad due to her having to work in the same place daily with this person." Dr. Reddy stated that people at work were making comments towards appellant "in a very passive aggressive way and she had difficulty coping with it." He stated that appellant should be moved away from the person who had been stalking her. Dr. Reddy stated that appellant did not have "these problems" prior to the stalking incident and that a lot of her problems were directly related to the "incident she had gone through with this person on the job."

By decision dated September 11, 1998, the Virginia Employment Commission found that appellant's unemployment was due entirely to the employer being unable to place her in accordance with the medical restrictions on her ability to work.

By decision dated January 7, 1999, the Office of Workers' Compensation Programs denied benefits, stating that the evidence of record failed to establish that the injury occurred in the performance of duty.

By letter dated January 13, 1999, appellant requested an oral hearing before an Office hearing representative, which was held on November 10, 1999. At the hearing, she explained that, after undergoing surgery for a nonwork-related injury, she worked light duty at the annex commencing April or May 1997. Appellant stated that, when she complained to management about Mr. Martin stalking her, they kept her at the annex instead of returning her to her usual job at the PDA (Postal Distribution Annex), a different building from the annex, approximately six miles away from it, in order to avoid him.

Appellant stated that she and Mr. Martin had started together as coworkers in 1993. She had put an ad up in the workplace to sell her washing machine and he responded and bought it from her. Mr. Martin also recommended a contractor to her to do her bathroom and after she hired the contractor and did the work, he paid the contractor without letting her know. Appellant stated that she had that interaction with Mr. Martin in January 1997 and he began stalking her at that time. She stated that he would call her, follow her around, and be in his car outside in the postal parking lot. Appellant stated that she told management and they "pretty much alerted him" and told him to stay away from her. She told him herself to leave her alone but she stated that he got worse, that he called her at home and would sing crazy music to her over the telephone. Appellant stated that he would call her at the annex and tap on the [tele]phone.

Appellant stated that until July 14, 1997 she and Mr. Martin had been working in the same area, but after that date management placed her in the open warehouse floor at the PDA building. She stated that she worked the morning shift but Mr. Martin's shift overlapped with hers for two to three hours and he was "in front of [her] at all times," "... he was there constantly." In response to her physician's writing a note that she had to be moved, management moved her to the annex where Mr. Martin did not work but still he followed her there. Appellant stated that Mr. Martin would park his car at the employing establishment, then stand before the gate and ask employees to get her to come out to talk to him even while management told him to stay away. She stated that he would come to her work area daily and that he bothered her until he was convicted. Appellant stated that, after he was convicted, he was moved to the Richmond office for one week but then "ended up" back at the PDA.

Court documents show that on June 8, 1997 Mr. Martin was arrested for stalking appellant and found guilty as charged on June 26, 1998.

At the hearing, appellant also stated that in August 1997 she was at the PDA because management told her that she had to report to her bid job and if she did not like the fact that Mr. Martin was there, she had no right to complain. She stated that she was treated like the stalker as though she was the one that was the problem. At the PDA, appellant changed her hours to avoid Mr. Martin, but he still came in and, in one instance, actually broke the locks of the postal inspector's catwalk and stayed for hours on end. She stated that she was very afraid and felt that it was "the end of her life on that particular day," as after all she had been through, he was continuing to bother her. Appellant stated that she last observed his stalking behavior in October 1997. She stated that, in October 1997, she went to the Hopewell jurisdiction and Mr. Martin was issued a *habeas* for violating the noncontact order as in showing up at her

subdivision in work and calling her. Appellant stated that he had been calling her as many as 60 times in an 8-hour work shift.

Appellant stated that just going into her work building would cause her to experience extreme anxiety attacks and stated she could not breath “from the recurrences of the environmental stimuli from being in that work area.” She stated that she stayed out of work from May through November 1998. Appellant stated that she returned to work in November 1998 with a suitable accommodation from management but when her claim was denied in 1999, management had her go back to the PDA where Mr. Martin worked. She stated that she refused to go back and then they put her in the Richmond office in the basement by herself, six hours a day and harassed her by following her to the bathroom, constantly coming down into the facility and making “sure that [her] life was miserable.” Appellant stated that knowing Mr. Martin was going in and out of the building worried her. She stated that management blamed her problem with Mr. Martin on her and told her “to get a job at McDonald’s.” Appellant stated that she was terminated as of September 12, 1999.

Appellant submitted additional evidence. In a witness statement dated November 9, 1997, a coworker stated that in August 1997 Mr. Martin showed up where she and appellant worked at the PDA in Richmond. On May 15, 1999 appellant filed a recurrence of disability, Form CA-2a, stating that since the original injury she continued to have post-traumatic stress syndrome and severe spastic irritable colon severely aggravated by her job. She stated that she also had severe anxiety and depression. Appellant stated that she stopped working or worked less than 30 hours a week commencing February 4, 1999. In the supervisor’s part of the form, management stated that since the original injury, it accommodated appellant’s requests for time changes and responded to her request to change her duty station. Management stated that appellant had been working at the main office, the PDC (Processing and Distribution Center) under the supervision of another supervisor. Management further stated that appellant had preexisting bowel problems in 1997 and attached a health form dated March 4, 1997 which contained the diagnosis that appellant had pelvic pain and bowel problems.

In a form labeled, “disability/return to work medical certificate,” dated September 27, 1999, appellant’s treating physician, Dr. Reddy diagnosed post-traumatic stress disorder with depression and anxiety following stalking incident. He opined that appellant could not return to work at the Richmond plant or PDA and could work eight hours a day in a sitting position.

In another disability certificate form dated November 8, 1999, Dr. Reddy stated that appellant had been treated for post-traumatic stress disorder related to the incident of stalking at work. He stated that appellant could not work in the same building environment with the same man around at the workplace. Dr. Reddy reiterated that appellant could not work at Richmond or the PDA but could work at another place in sitting position up to eight hours.

In a report dated November 9, 1999, Dr. Reddy considered appellant’s history of injury and noted that the stalking of her by a fellow employee caused her “a great deal” of anxiety and depression. He stated that he recommended that appellant request to be relocated at work so she would not have to deal with or see Mr. Lewis as she felt like people were harassing and laughing at her. Dr. Reddy performed a mental status examination and stated that appellant had been extremely anxious, depressed, unable to concentrate and unable to sleep, that, since the stalking took place in 1997, her problems escalated over the period of time. He stated that her depression was much worse and she had trouble sleeping and eating and her irritable bowel syndrome

worsened. Dr. Reddy diagnosed post-traumatic stress disorder, major depression, recurrent with anxiety, irritable bowel syndrome and social and job stressors. He stated that appellant “would benefit ... a lot if she was given some opportunity to work in a different set up where there is not the kind of stress she was going through particular[ly] with the individual who stalked her.” Dr. Reddy stated that there was no previous psychiatric history and no previous physical problems except for her irritable bowel syndrome.

By decision dated January 13, 2000, the Office hearing representative modified the January 7, 1999 decision, stating that appellant had a temporary employment-related anxiety disorder through February 1998 but failed to establish that her condition or disability was active in May 1998 when appellant filed her claim. The Office hearing representative noted that appellant testified that she had not seen Mr. Martin since October 1997 and the medical evidence established that appellant sought psychiatric treatment in August 1997 and January and February 1998 regarding the stalking. The Office hearing representative found that Dr. Reddy’s disability slips from May to November 1998 did not explain how her disability related to her stalking behavior, given that the stalking had stopped seven months prior to appellant’s filing her claim. He therefore denied appellant compensation benefits after February 1998.

By letter dated February 23, 2000, the Office informed appellant that her claim was accepted for temporary anxiety disorder through February 1998.

By letter dated February 16, 2000, appellant requested reconsideration of the Office’s decision and submitted additional evidence. In a report dated March 20, 2000, Dr. Reddy noted that appellant went through a stalking incident by a fellow employee in 1997, and that it had been “a consistent emotional and somewhat physical and mental harassment on her by the employee’s in her mind and by him.” He stated that appellant had been having difficulty since May 1998 to work in the same environment. Dr. Reddy stated that his recommendation that her request to transfer to another location was not granted. He stated:

“She went back to work and tried, but everytime she tried her depression, anxiety, paranoia and her irritable bowel syndrome became much worse. She continued to have the same problems in terms of her anxiety, depression, paranoia, trouble sleeping and irritable bowel syndrome. She has no previous psychiatric history prior to the incident in 1997, the stalking incident by the fellow employee. Since then she has become extremely agitated and depressed and senses paranoia toward him and people around him.”

He reiterated that appellant should be relocated to another place.

In an attending physician’s report dated March 21, 2000, Dr. Reddy diagnosed major depression, post-traumatic stress syndrome, and irritable bowel syndrome. He checked the “yes” box that these conditions were work related and stated that they started with stalking by a fellow employee. He stated that appellant was temporarily totally disabled from May 1998 through March 20, 2000 and could work if the location was changed.

By decision dated June 12, 2000, the Office denied appellant’s request for reconsideration.

The Board finds that the case is not in posture for decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ 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 her frustration from not being permitted to work in a particular environment or to hold a particular position.²

To the extent that disputes and incidents alleged as constituting harassment by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.³ However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.⁴

However, appellant's burden of proof is not discharged by the fact that she has identified an employment factor, which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the identified compensable employment factor.

In the present case, the Office initially denied the claim by decision dated January 7, 1999. Upon appellant's submitting additional evidence establishing that Mr. Martin stalked her and testifying at the hearing, in the January 13, 2000 decision, the Office hearing representative found that appellant had been stalked by her coworker which had caused her to develop a temporary anxiety disorder. He found, however, that, because appellant was last stalked in October 1997 and sought medical treatment for her emotional condition through February 1998, she was entitled to compensation only through February 1998. The Office hearing representative found that, because there was no indication of stalking incidents when appellant filed her claim in May 1998, she was not entitled to medical benefits at that time. The Office hearing representative therefore modified the January 7, 1999 decision to award appellant benefits for a temporary anxiety disorder through February 1998.

The Office hearing representative, however, did not rely on any medical evidence in finding that appellant's temporary anxiety disorder or other emotional conditions consisting of depression and post-traumatic stress syndrome had resolved. In fact, the Office did not even address Dr. Reddy's diagnoses of depression and post-traumatic stress syndrome. The Office is required to address all relevant facts.⁵ In numerous reports, from January 20, 1998 to

¹ 5 U.S.C. §§ 8101-8193.

² *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

³ *Clara T. Norga*, *supra* note 2 at 481; *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

⁵ See 20 C.F.R. § 10.130.

November 9, 1999, Dr. Reddy consistently diagnosed either post-traumatic stress disorder, depression or anxiety following the stalking incident and restricted appellant from working in the same environment as Mr. Martin. There is no medical evidence in the record that Dr. Reddy's restrictions were lifted. The Office hearing representative cannot substitute his judgment for that of a physician. Nonetheless, while Dr. Reddy's opinion that appellant continued to suffer from post-traumatic stress syndrome, depression or anxiety or all of these conditions is supportive that appellant's emotional condition continued after the stalking stopped, his opinion contains insufficient medical rationale to establish that appellant had an ongoing work-related disability after February 1998.

It is well established that proceedings under the Act are not adversarial in nature,⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁷ The case will therefore be remanded for appellant to be referred to a second opinion physician with the case record and statement of accepted facts for another medical evaluation. The referral physician should determine whether appellant's emotional condition arising from being stalked by her coworker continued after the stalking stopped and she was no longer working and provide appropriate medical rationale. Upon such further development as it deems necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated July 27 and January 13, 2000 are hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
July 17, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁷ See *Shirley A. Temple*, 48 ECAB 404, 409 (1997).