

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRUDY A. SCOTT and DEPARTMENT OF HEALTH & HUMAN
SERVICES, INDIAN HEALTH SERVICES, Santa Fe, NM

*Docket No. 99-1670; Submitted on the Record;
Issued March 14, 2001*

DECISION and ORDER

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

The issue is whether appellant established that she sustained an emotional condition in the performance of duty.

On August 8, 1997 appellant, then a 51-year-old nurse specialist, filed a notice of occupational disease alleging that she suffered from acute depression with suicidal ideation secondary to job stress. She stopped work on July 25, 1997 and has not returned. Appellant had a prior history of alcoholism and mild bipolar disorder with episodes of depression and hyperactivity. She was hospitalized from July 26 to 30, 1997 for treatment of a depressive disorder. Appellant noted that she began work as a relief nurse supervisor and employee health nurse at the Indian Hospital on August 8, 1995. She indicated that 75 percent of her time was to be spent on nurse supervision and 25 percent on employee health. Appellant stated:

“In January 1996, a nursing supervisor resigned and her position was never filled. From that time on work stress gradually and subtly worsened. For at least 10 months, I worked 3 out of 4 weekends a month. I’ve worked 16 out of 19 federal holidays, all 3 shifts with never a rhythm to the varying shifts and never could take a 2 week vacation because I had to arrange my own replacement and there was none! I was expected to come in on days off for Nursing Administration meetings and other meetings pertaining to my job. I never felt that I was able to ‘recharge my batteries’ away from work or that there was time left over just for me.”

On October 9, 1996 appellant stated that she was required to come in for an 8:30 a.m. meeting, wait for her shift to start and work from 11:30 a.m. to 12:00 p.m., a 15-hour workday.¹ According to appellant, although she discontinued coming in on days off for meetings, she still felt drained because she was seen by the staff as the placator and diplomat when it came to conflicts and disagreements regarding staffing and schedules.

On July 25, 1997 she felt “powerless to intervene in a surgical case that needed to be performed in the sterile environment of an operating room and was instead performed in the ‘dirty’ environment of an Urgent Care stretcher.” She alleged that the stress of her duties made her want to commit suicide. Thereafter, she was admitted to Pinon Hills Psychiatric Hospital (Pinon Hills) on July 26, 1997.

Medical records from Pinon Hills indicated that appellant was treated by Dr. Philip S. Milstein, a psychiatrist, from July 25 to 30, 1997 for bipolar disorder with mildly manic episodes and alcoholism in remission. Dr. Milstein noted that “stressors just prior to admission” included “severe-inappropriate work demands and stress.” Appellant was prescribed medication for depression and mood swings and underwent a course of psychotherapy. He further recommended that appellant discontinue her work as a relief nurse supervisor since the inordinate amount of stress associated with the job could further deteriorate her emotional condition.

In a duty status report dated August 8, 1997, Dr. Milstein noted that appellant was totally disabled from July 25 to September 2, 1997.

In an October 21, 1997 letter, Mary Martinez, acting director of nursing, stated that on January 19, 1996 Margaret Moss, an registered nurse (RN) and house supervisor, transferred from the hospital and a key carrier (RN on the night shift) covered a majority of the night shift starting February 26, 1996. It was noted that appellant made out the schedule for the “[c]entral [n]ursing [o]ffice/[h]ouse [s]upervisor” and that the director of nursing approved the use of key carriers to fill in the gaps in the schedule. Accordingly to Ms. Martinez, “as much as possible appellant only worked 40 hours per week” and the “[d]irector of [n]ursing adjusted [appellant’s] EPMS to recognize the increase in [h]ouse [s]upervisor coverage.”²

By letter dated September 23, 1997, the Office of Workers’ Compensation Programs advised appellant of the factual and medical evidence required to establish her claim.

In response, appellant noted that although the employer hired a replacement, Ms. Sequist, for the supervisor position, she was still required to alternate scheduling duties with Ms. Sequist

¹ Appellant stated that at some point during the day she felt like her “gas tank” was empty and began to cry and could not stop. She noted that the director of nursing did hire a temporary supervisor after the October 9, 1996 incident but that “she quit without notice in January or February 1997. A full time federal employee was hired to fill one of the vacated positions in February 1997.” Appellant alleged that Ms. Sequist frequently made scheduling mistakes, for which she was held responsible. She alleged that she was often required to work numerous hours to cover gaps in the schedule due to these mistakes

² Ms Martinez noted that appellant received an award for nurse of the year on June 28, 1996. She also acknowledged that there was some difficulty finding people to work sick call on the weekends.

every four weeks since Ms. Sequist was not able to handle the job on her own. Appellant alleged that she was tasked with an impossible duty when asked to schedule nursing supervisors without working them more than 40 hours per week. She stated that sometimes when there was not enough staff, she had to call nurses at home to come in, but they refused. She alleged that having to tell the nurses on duty that there was no relief coming added to her stress. According to appellant, on weekends there was often no one scheduled to be in the operator or medical record offices and only one nurse was scheduled in the "ACU." She alleged that during such times she was required to answer telephones for both the hospital and ACU/Urgent Care Unit and to act as the second nurse in ACU. Appellant alleged that she did not have enough time to complete her work as the employee health nurse, which comprised 25 percent of her assigned duties, due to her duties as a supervisory nurse. She often skipped lunch breaks in order to handle telephone calls. On July 25, 1997 the hospital was understaffed for adequate patient care. She alleged that because of this understaffing, she told a physician that a surgical patient could not be admitted and should be routed to a different hospital. Appellant, however, related that the physician ignored her directions and proceeded to operate on the patient on a stretcher in the emergency room and made sarcastic remarks to appellant.

In a February 18, 1998 letter, Ms. Leslie D. Dye, director on nursing, denied that the departure of Ms. Moss caused an appreciable increase in appellant's workload. She noted that during the year preceding appellant's departure, appellant worked 28 weekends and was off 24 weekends, that all of her requests for leave were honored and that she worked less than 40 hours of compensatory time. Ms. Dye acknowledged that appellant worked 2 out of 10 holidays. With respect to meeting attendance, she reported that appellant was only required to attend two per year.³ Ms. Dye also noted that appellant had never been held responsible for scheduling mistakes made by Ms. Sequist or anyone else. She also related while it was at times difficult to provide house supervisor coverage during evenings, nights, weekends and holidays while meeting employee's special requests for time off, it was not impossible.⁴ Ms. Dye indicated that answering the telephone was a shared responsibility among staff members and there was no documentation that appellant missed lunch to answer the telephone as alleged. Appellant's position description called for 30 percent employee health, 60 percent house supervisory and 10 percent related duties as assigned. For the prior year of work, appellant worked only 25 percent of the time during hours that she might be called to assume the role of house supervisor; the rest of her hours allowed ample time for her to complete the employee health duties. With respect to the July 24, 1997 incident, Ms. Dye stated that the patient census that night was 71 percent of capacity and that there was adequate coverage. The surgeon performed a suture procedure, did not constitute surgery or require a sterile environment. Ms. Dye denied knowledge of anyone laughing at appellant.

In a decision dated May 22, 1998, the Office denied appellant's claim for compensation on the grounds that she failed to allege a compensable factor of employment.

On September 18, 1998 appellant requested reconsideration and submitted additional evidence.

³ The employer states that meetings were never mandated for satisfactory performance.

⁴ The employer denies that there is any corroborating documentation of staff refusing to come on duty.

In an affidavit dated September 10, 1998, Rachel Richardson, a registered nurse who worked under the supervision of appellant, stated that from July 24 to 25, 1997 she witnessed a physician performing an open reduction surgery in a nonsterile environment of the emergency room against the direction of appellant. Ms. Richardson noted that the physician performing the surgery made a comment about admitting the patient to the obstetrics ward if there were not enough beds in an attempt to make a joke but that appellant and others around her did not take it as being a particularly funny comment. She further stated that she remembered that appellant had to answer telephones in the medical records Office because there was no operator or staff person on duty in medical records to handle the job.

In a letter received by the Office on September 22, 1998 the employing establishment noted that the incident of July 25, 1997 could have been prevented and that the physician cited by appellant should not have performed surgery in the Urgent Care Unit. It was noted that in order for appellant to obtain an excellent or outstanding performance rating, she was required to come into work on her days off for meetings related to her position.

A performance evaluation for appellant for the period January 1 to December 31, 1997 indicates that she was required to serve on committees and to attend at least 75 percent of the nursing administration meetings in order to obtain a fully successful rating. The “progress review” section stated as follows: “[Appellant] continues to provide outstanding House Supervision for the SFIH. This year she was the only permanent HS and did an outstanding job making out the difficult schedules. She has worked two [to] three weekends a month, holidays and evenings.”

In a decision dated February 8, 1999, the Office denied modification following a merit review.

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

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.⁵ 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.⁶

⁵ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.⁷ 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.⁸ An employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred.⁹ 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.¹⁰ Likewise, an employee's frustration over not being able to work in a particular environment, with particular hours of attendance, is not a compensable factor of employment.¹¹

In this case, appellant alleges that she was required to take on extra duties when a house supervisory, Ms. Moss, left her job and that the extra duties, including the responsibility for staff scheduling, caused her to sustain an emotional breakdown. The employing establishment did not dispute that appellant's duties changed or that there was a staff shortage due to the departure of Ms. Moss. It is its position, however, that appellant's workload was not overly stressful.

The Board has held that conditions related to stress resulting from situations in which an employee is trying to meet his or her position requirements are compensable.¹² The record, consisting of appellant's performance evaluation and the affidavit of a witness, establishes that appellant had a heavy and demanding workload in part due to understaffing and hiring delays within the employing establishment. The Board finds that appellant's increased workload with the requirement that she take over scheduling duties of a departed employee, is a condition of her specially assigned duties and is, therefore, to be considered a compensable factor of employment.

The Board also finds sufficient factual support in the record for appellant's allegation regarding the incident of July 24 and 25, 1997. As part of appellant's specially assigned duties, she was required to handle decisions regarding the admission of patients to Urgent Care. Since appellant's emotional condition is alleged to have arisen in part from having her instructions for not admitting a patient ignored by a physician, she has alleged a compensable factor of employment and may be entitled to compensation if the medical evidence is deemed sufficient to carry her burden of proof on causal relationship.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

⁹ *William P. George*, 43 ECAB 1159 (1992).

¹⁰ See *Anthony A. Zarcone*, 44 ECAB 751 (1993); *Frank A. McDowell*, 44 ECAB 522 (1993); *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹¹ See generally *Vaile F. Walders*, 46 ECAB 822 (1995).

¹² *Richard H. Ruth*, 49 ECAB 503 (1998).

Inasmuch as there is substantive evidence implicating appellant's increasing anxiety to her regular and specially assigned duties, the Board remands this case for consideration of the medical evidence with regard to whether appellant has established that her emotional condition is causally related to factors of her federal employment.

The decision of the Office of Workers' Compensation Programs dated February 8, 1999 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
March 14, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member