

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHELLEY A. SYROKA and U.S. POSTAL SERVICE,
POST OFFICE, Maumee, OH

*Docket No. 00-2547; Submitted on the Record;
Issued July 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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

On November 19, 1994 appellant, then a 33-year-old distribution/window clerk, filed a claim for a traumatic injury for a strained left shoulder and neck, sustained on October 29, 1994 when she rolled metal rope stands in the lobby of the employing establishment. The Office of Workers' Compensation Programs accepted that she sustained a left shoulder strain and a cervical spine strain.

On June 17, 1998 appellant filed a claim for an occupational disease for a right elbow and shoulder condition she attributed to sorting mail, lifting and repetitive motions. On June 30, 1998 the Office advised her that it had accepted her claim for right elbow epicondylitis, right rotator cuff tendinitis and right shoulder surgery. Appellant underwent an acromioplasty and Mumford procedure on her right shoulder on August 7, 1998.

On November 5, 1998 appellant filed a claim for an occupational disease for depression, anxiety and pain of both shoulders and elbows. She stated that as a result of her right arm injury she was assigned in January 1998 to lift, sort and work the window with only her left arm, which caused anxiety and depression. Appellant also attributed her condition to harassment and a delay by the postmaster from February to July 1998 in filing her initial claim. The employing establishment stated that she stopped work on May 19, 1998 due to her right elbow condition.

In a statement accompanying her claim, appellant stated that on December 11, 1997 she was treated for right arm pain, that on January 17, 1998 her right arm "froze up" at work, that her supervisor was unable to drive her to get care and that the doctor restricted her to left-hand work only. Appellant continued that on February 28, 1998 she placed her claim form on her postmaster's desk after her supervisor told her she could not accept it, that the postmaster said he did not have time to complete it, that on June 12, 1998 she had to file a new workers' compensation claim because the postmaster lost the one she filed with him on February 28, 1998

and that she personally delivered the form to the injury compensation office. Appellant stated that on March 18, 1998 she was pressured and harassed by her supervisors and coworkers to start sorting mail again and that the employing establishment did not seem to care about her restriction to left hand work, as she “was still ordered to sort, lift, reach and work the window four and even sometimes six hours a day. At times I was forced in on my day off which left me with little time to rest my shoulder and arm.” Appellant stated that the weakness of her arms and the difficulty in performing even the simplest of tasks had caused physical and mental difficulties and was “just plain exhausting and depressing.”

On September 30, 1998 the employing establishment denied appellant’s grievance regarding the delayed filing of her claim on the basis that she had not submitted any evidence to support her allegation that she filed the initial claim. In a letter dated November 10, 1998, appellant’s postmaster stated that, since her January 17, 1998 injury, appellant had performed modified duties with no sorting; she worked at the service counter and updated files on the computer. In a January 5, 1999 letter, the postmaster further described appellant’s limited duty, stating that she handled the business reply mail, on occasion was asked to work the service counter, that after a time her only duty was to enter data into the computer, that there was no pressure on her to complete her duties and that she was basically self-supervised.

On November 15, 1998 the employing establishment offered appellant a position as a modified distribution/window clerk for four hours a day, with duties of answering the telephone with a headset, entering data and typing labels. Appellant’s attending physician, Dr. Thomas R. Merritt, indicated that appellant could perform these duties beginning December 14, 1998. On November 18, 1998 appellant accepted the offer.

In a medical report dated October 22, 1998, Dr. Sonja S. Pinsky, a Board-certified psychiatrist, stated that she first saw appellant on May 6, 1998 for depressive symptoms that had been present for more than a year, increasing in severity. Dr. Pinsky noted that situational factors at home were stressful and stated that appellant could not return to work at the employing establishment, as her “job represents excessive stress and emotional trauma which would hinder her recovery.” In a report dated December 24, 1998, he stated:

“Though [appellant’s] depression had been present for about a year prior to her coming to see me, she noted an increase in symptoms following her injury and subsequent physical disability. When [appellant] returned to work she was not given light-duty work. This resulted in increased emotional stress and persistent physical pain. Working to get the disability claim filed was unnecessarily difficult. All of these factors have contributed to [appellant’s] psychiatric symptoms. ... I believe that the injury and its sequel are directly related to the increase in depression and anxiety.”

In response to a request from the Office for more information on the factors to which she attributed her emotional condition, appellant, in a January 10, 1999 letter, attributed her condition to continuous daily pain, her supervisor’s refusal to transport her for treatment on January 17, 1998 and the limited duty doing endorsements upon her return to work, which caused left shoulder pain. Appellant continued that she complained that her limited duty was causing left shoulder pain and that her duties were modified on January 23, 1998 to sorting

business reply mail with her left hand, which required her to lift trays of mail and was difficult to finish within the deadline, which upset a business customer so much that she gave appellant a hard time. Appellant again indicated that the postmaster impeded the claim she attempted to file on February 28, 1998, that coworkers made snide remarks about her handicap and that on March 18, 1998 her supervisor started pushing her to again sort mail and lift trays and tubs. Appellant stated that her supervisor and the postmaster ordered her to begin working the window again, which involved constant pulling and pushing of a heavy cash and stock drawer and lifting parcels on and off the scale. Appellant stated that the postmaster's delay in filing her claim resulted in unpaid medical bills, which an injury compensation specialist sent to her private insurance company, which paid them without her knowledge.

In a March 10, 1999 letter, appellant's supervisor stated that appellant asked her to take her to the hospital, that she explained that the policy was to take employees asking for medical treatment to Occupational Care Consultants and that appellant was asked if she could drive herself and she had no problem with that arrangement.¹ The supervisor continued:

“[Appellant] was given work to do within her restrictions. At no time was she asked or expected to work outside her restrictions. On many occasions, I reminded [appellant] not to pick up trays or tubs. With the confined area we worked in at the old Maumee employing establishment there was always someone close by to help her.

“Finally when you relieved [appellant] from doing any clerk duties, she spent her entire day working at the computer. She worked at her own pace unsupervised.”

In a letter dated March 24, 1999, appellant's postmaster stated that she volunteered for window duties and was not ordered to perform them, that he and the clerks personally assisted appellant in lifting, that he never received any complaints regarding the timeliness of business reply mail, that on May 20, 1998 appellant called in asking for family leave for problems with her son and that when family leave was denied on the basis that her son was over 18 years old, she stated that she was sick and was not coming in to work.

By decision dated April 9, 1999, the Office found that appellant failed to establish that she sustained an emotional condition in the performance of duty. The Office found that she had not established that a refusal of medical care or transportation to it, verbal confrontations with angry customers, work outside her limitations, inability to complete her assigned tasks or obtain assistance for lifting or delayed filing of her claim.

Appellant requested a hearing, which was held on January 24, 2000. She testified that she was unable to answer telephones using a headset, that she was unable to use the computer or type labels, that she was not provided with one-handed work from January 30 to March 1998 and that she lifted trays in processing business reply mail.

¹ The supervisor indicated that this occurred on July 17, 1997, but it appears she is addressing the January 17, 1998 incident in which appellant alleged that the supervisor refused to transport her to a doctor.

In a February 16, 2000 letter, appellant's postmaster commented on appellant's testimony at the hearing, stating that she worked as a distribution/window clerk from early 1994 to June 1997, as a mailing requirements clerk -- a position entailing only customer contact and data entry from June to November 1997 and again as a window/distribution clerk from November 1997 until January 17, 1998, when she complained to her supervisor of a "frozen" right shoulder. The postmaster continued that appellant was restricted by her physicians to no use of her right arm, that her duties were modified so she would not be allowed to use her right hand or lift more than 10 pounds, that there were no expectations or quotas placed on appellant while casing mail and that she worked at the service counter on occasion handling customers. The postmaster stated that a representative from one company asked appellant's supervisor on one occasion why her mail was not ready, that the situation was explained and no further complaints were received regarding the delay. The postmaster stated that he had never delayed, lost or not properly handled an employee's claim of an injury.

In a letter dated February 17, 2000, Louis J. Kerekgyarto, a human resources specialist in the employing establishment's injury compensation office, commented on appellant's testimony at the January 24, 2000 hearing, stating that it was not true that he had called her supervisor and the postmaster about stacks of medical bills for appellant and that he never sent bills to her health benefit provider.

Appellant submitted additional medical evidence. In a report dated August 16, 1999, Dr. Darice Zabak, a Board-certified family practitioner, stated:

"I have seen [appellant] for chest pain, stress, right rotator cuff and right epicondylitis, in addition to depression. I believe these were all directly caused by her job at the employing establishment. This job involved repetitive movements of [appellant's] arms and led to the rotator cuff and elbow injuries. Because this caused her to work less efficiently, [appellant] was told her work was n[ot] up to par, which caused her additional stress on top of the pain. Over time, this caused depression and she had to see the psychiatrist, Dr. Pinsky.

"All these led to [appellant] becoming disabled and unable to perform her job in any capacity."

In a report dated August 18, 1999, Dr. Pinsky stated that appellant could not return to work at the employing establishment because it could cause decompensation and increased depression and anxiety. In a report dated February 16, 2000, Dr. Pinsky stated that appellant was harassed by the employing establishment after her August 1998 right shoulder surgery, that her depressive symptoms increased after she filed a grievance against the postmaster for hindering her compensation claim and that her sleep disturbance increased in March 1999. Dr. Pinsky concluded:

"The shoulder pain which is secondary to the work-related injury and her subsequent inability to continue working at the employing establishment, as well as her overall diminished level of function, directly relate to the development and persistence of the depression and anxiety. The harassment and frustration which

she experienced with regard to getting the necessary paperwork filed for her claim have also contributed to her psychiatric symptoms.”

The employing establishment submitted a report of a fitness-for-duty evaluation done on January 19, 2000 by Dr. Michael K. Riethmiller, a Board-certified family practitioner, who concluded that appellant could return to her regular work as a distribution/window clerk and that she did not require any further treatment of her shoulder, neck or elbow conditions.

By decision dated May 11, 2000, an Office hearing representative found that appellant failed to substantiate that she was denied transportation for medical care, that she was required to work outside her limitations, that she had confrontations with customers, that her coworkers disparaged her, that her claim was lost and that her medical bills were submitted to her private insurance carrier.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

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 work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act. 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 Where appellant alleges compensable factors of employment, she must substantiate such allegations with probative and reliable evidence.³

Appellant has not substantiated her allegations of compensable employment factors. Her allegation that her postmaster lost her February 1998 claim for a right shoulder and elbow injury was adjudicated by the employing establishment in a grievance, which was denied on the basis that appellant submitted insufficient evidence to support her allegation. Appellant now insists that she made Mr. Kerekgyarto, a human resources specialist, sign and date the second claim form for this condition. This claim form is in the case record and it contains the signature of the postmaster, not the human resources specialist. This type of discrepancy casts doubt on appellant’s allegations.

Appellant’s supervisor and the postmaster disputed appellant’s allegation that she was forced to work beyond her limitations and they described the limitations and the work to which she was assigned. She testified at the January 24, 2000 hearing that she essentially was unable to do anything at work, including using a computer or answering telephones using a headset. Appellant has not submitted any evidence to substantiate that she was forced to work beyond her

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

limitations or any evidence to substantiate that she was forced to work on her days off. She also has not substantiated her allegation that a business customer gave her a hard time about their mail not being ready or her allegation that on March 18, 1998 she was harassed about sorting mail. Appellant's allegation that her medical bills were sent to her private insurance company was denied by the human resources specialist who allegedly did this and appellant submitted no evidence to support that this individual was lying about this matter and numerous others.

Appellant has cited one compensable employment factor: chronic pain and limitations from her employment injuries.⁴ This factor was cited by Dr. Pinsky, appellant's psychiatrist, in her February 16, 2000 report, as one of several factors contributing to the development of appellant's depression and anxiety. However, this report and Dr. Pinsky's previous reports also attribute appellant's emotional condition to such noncompensable or unsubstantiated factors as harassment, delay by the employing establishment in filing appellant's claim and failure by the employing establishment to accommodate appellant's restrictions. In addition, Dr. Pinsky does not provide rationale for the opinion that pain and limitations from an employment injury contributed to appellant's emotional condition.⁵ For these reasons, Dr. Pinsky's reports are not sufficient to meet her burden of proof.⁶

The May 11, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
July 12, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ *Arnold A. Alley*, 44 ECAB 912 (1993).

⁵ Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁶ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors. *Pamela R. Rice*, 38 ECAB 838 (1987).