

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBIE D. DALY and DEPARTMENT OF VETERANS AFFAIRS,
ALVIN C. YORK MEDICAL CENTER, Murfreesboro, TN

*Docket No. 01-2115; Submitted on the Record;
Issued July 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

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

On December 6, 1998 appellant, then a 46-year-old audiologist, filed a notice alleging that she sustained depression and anxiety disorders in the performance of duty on or before November 10, 1998.

Appellant attributed her emotional condition to her inability to perform her assigned job duties due to accepted bilateral carpal tunnel syndrome.¹ She explained that following her return to limited duty in January 1998, persistent pain, weakness and diminished grip strength interfered with the fine motor tasks of manipulating audiometric testing equipment, forming hearing aid moulds, manipulating hearing aids and computer keyboarding. As of December 8, 1998, appellant was limited to working four hours per day, seeing a maximum of three patients. She also attributed her depression and anxiety to overwork beginning in early 1998, when she was the sole staff audiologist for five to six weeks although she was limited to working only four hours per day. Appellant was assigned additional duties due to a great increase in the number of patients and her status as sole audiologist.² She noted that a technical assistant assigned to the unit had to perform tasks for three other audiologists; thus, appellant often had to perform fine motor tasks herself. Appellant also alleged that she experienced "displeasure" from coworkers due to her taking sick leave. She stated that the stress of meeting deadlines, "utilizing [her] hands constantly ... the pain, swelling, loss of grip and strength constantly weighed on [her]....

¹ The Office accepted bilateral carpal tunnel syndrome, necessitating right carpal tunnel release on November 14, 1996 and left carpal tunnel release on May 8, 1997, under claim No. 060667768. An appeal of a wage-earning capacity determination under the carpal tunnel syndrome claim is pending before the Board as a separate appeal, docketed as 01-647.

² In a May 20, 1998 report, Dr. Rex E. Arendall, an attending Board-certified neurosurgeon, restricted appellant to seeing four patients in an eight-hour workday.

[Appellant] could no longer see [her]self as a productive person in [her] work.” Appellant also attributed her condition to an October 20, 1998 disagreement with coworkers Deborah Watson and Mitzi Walkup, an October 30, 1998 proposed admonishment and a November 10, 1998 disciplinary meeting at which she “began crying uncontrollably” and her husband was called to take her home.

By decision dated August 31, 1999, the Office denied appellant’s claim on the grounds that she had failed to establish that the claimed emotional condition occurred in the performance of duty. The Office found that appellant had not established a compensable factor of employment. The Office accepted as factual that appellant sustained work-related bilateral carpal tunnel syndrome, resulting in a four-hour per day schedule as of December 8, 1998. The Office also accepted that “work limitations imposed by the carpal tunnel condition” rendered appellant unable to perform her duties and “had trouble maintaining the requirements and expectations of her position.” The Office found that this “element cannot be used in the adjudication of this case since it would be considered as consequential to the earlier work injury covered under case 060667768.”

Appellant disagreed with this decision and requested reconsideration in an August 16, 2000 letter through her attorney representative. She submitted additional evidence.³

In a September 1, 1999 report, Dr. Rex Arendall, an attending Board-certified neurosurgeon, found appellant permanently disabled for work as an audiologist due to bilateral carpal tunnel syndrome.⁴

By decision dated July 10, 2001, the Office denied modification of its August 31, 1999 decision on the grounds that the evidence submitted was insufficient to establish a compensable factor of employment. The Office found that appellant had not established a workload increase, and that appellant’s perception that her coworkers were displeased with her was noncompensable. The Office further found that the October 20, 1998 incident, October 30, 1998 notice and November 10, 1998 meeting were disciplinary functions of the employer not within the performance of duty. The Office concluded that while the evidence established that the accepted carpal tunnel syndrome caused appellant “difficulty in performing [her] duties as an audiologist, that issue must be pursued under [her] carpal tunnel claim.”

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

³ In an undated memorandum, appellant, through her attorney representative, reiterated that her emotional condition was due, in part, to overwork. She asserted that she “was the only audiologist on staff for five to six weeks in January and February 1998 and that she felt “some degree of displeasure” from her colleagues who had to cover her patients while she was on sick leave. Appellant also alleged that her carpal tunnel syndrome made it difficult for her to perform her assigned duties and meet deadlines. She also submitted August 2000 affidavits from herself and her husband describing difficulties in daily living caused by the accepted bilateral carpal tunnel syndrome and asserting that those difficulties at work and at home caused appellant’s depression and anxiety.

⁴ Appellant submitted a February 2, 2000 deposition from Dr. Arendall regarding appellant’s treatment for carpal tunnel syndrome. This deposition does not address the emotional condition claim. She also submitted a carpal tunnel syndrome treatment chronology from September 1995 through early 1999 and treatment records from October 1996 to April 1999. These documents do not address appellant’s emotional condition.

Where disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as arising out of and in the course of employment and does not fall within the Federal Employees' Compensation Act's coverage.⁵ As part of its adjudicatory function, the Office must make findings of fact as to which working factors are deemed compensable and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are noncompensable and may not be considered.⁶ Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁷ To prevail, a claimant must also submit rationalized medical opinion evidence establishing a causal relationship between the claimed emotional condition and the established, compensable employment factors.⁸

Appellant attributed her claimed emotional condition, in part, to the sadness and loss of identity she experienced when accepted bilateral carpal tunnel syndrome rendered her unable to perform her regularly assigned duties as an audiologist. The Board has recognized the accepted principle of workers' compensation law that every natural consequence flowing from a primary, work-related injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause attributable to the employee's own intentional conduct.⁹

The Office accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty, necessitating right carpal tunnel release on November 14, 1996 and left carpal tunnel release on May 8, 1997. In a September 1, 1999 report, Dr. Rex Arendall, an attending Board-certified neurosurgeon, who prescribed permanent light-duty restrictions against fine motor activity beginning in 1996, found appellant permanently disabled for work as an audiologist due to bilateral carpal tunnel syndrome.

Appellant submitted detailed factual information corroborating her account of being unable to perform the duties of her position due to carpal tunnel syndrome. Dr. Russell Mills,¹⁰ appellant's supervisor, stated that appellant's accepted carpal tunnel syndrome interfered with her job performance. In a June 5, 1999 letter, Dr. Mills noted that appellant's carpal tunnel

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See Barbara Bush*, 38 ECAB 710 (1987).

⁷ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁸ *Bonnie Goodman*, 50 ECAB 139 (1998).

⁹ *Carols A. Marrero*, 50 ECAB 117 (1998); *John R. Knox*, 42 ECAB 193 (1990).

¹⁰ Dr. Mills is a doctor of audiology.

syndrome rendered her unable to perform “many critical job functions” requiring fine motor manipulation beginning in 1996.¹¹ In a July 15, 1999 memorandum, Dr. Mills concluded that appellant was unfit to perform the duties of an audiologist due to bilateral carpal tunnel syndrome and the depression and anxiety which he and appellant attributed to her sadness and frustration over the loss of fine motor function. Dr. Mills noted that a peer review of six of appellant’s patient recommendations revealed poor clinical judgment more than 60 percent of the time.

The Board finds that appellant has submitted sufficient factual evidence to establish a compensable employment factor based on her regular and specially assigned job duties.

The Board further finds that appellant has also established the compensable employment factor of overwork. The Board has held that overwork, as substantiated by sufficient factual information to corroborate the claimant’s account of events, may be a compensable factor of employment.¹²

Dr. Mills submitted several statements corroborating appellant’s allegations of overwork. In January 4 and June 6, 1999 statements, Dr. Mills stated that 1996 regulatory changes liberalizing eligibility for audiologic services had resulted in a two-year backlog for audiologic evaluations by late 1998 and that the audiology staff “had to work hard to meet the demand.... There has been staff turnover,” with short staffing through June 1999. Dr. Mills confirmed that for six weeks in January and February 1998, appellant “was the sole audiologist on duty” and there were additional “tasks that fell to her by default,” including completing automated reports, “checking supply stock levels, advising with scheduling, etc.” Dr. Mills noted that appellant’s position recently required additional computer data entry work to replace paper reports previously in use. The Board finds that Dr. Mills’ statements are sufficient to substantiate appellant’s allegations of overwork in January and February 1998.

The Board finds, however, that appellant has not established that disciplinary matters related to an October 20, 1998 verbal altercation constitute a compensable factor of employment.

In an October 22, 1998 interview, Ms. Watson recalled that at approximately 11:00 a.m. on October 20, 1998, appellant overheard her speaking to Ms. Walkup, a coworker, seeking clarification regarding a nonstandard instruction from appellant regarding patient care. Appellant then “burst in” and “immediately went off stating ‘I do not appreciate you going behind my back,’” then “stormed out of the office saying that she would just ‘get the hell out of [d]odge.’”¹³ In an October 30, 1998 letter of proposed admonishment, Dr. Mills alleged that on

¹¹ In a March 29, 2000 deposition, Dr. Mills noted some fine motor tasks, such as calibrating the audiometric equipment during testing, could only be performed by the evaluating audiologist and could not be assigned to a technician. Dr. Mills recalled that in the fall of 1998, appellant experienced an increase in symptoms of depression, as well as “deterioration in her fine motor abilities. It was getting harder and harder for her to manage that limited case load.”

¹² *Sandra F. Powell*, 45 ECAB 877 (1994); *William P. George*, 43 ECAB 1159 (1992); *Georgia F. Kennedy*, 35 ECAB 1151 (1984).

¹³ Appellant, Mr. Mills and Ms. Walkup submitted statements corroborating Ms. Watson’s account of events.

October 20, 1998, appellant confronted Ms. Watson and Ms. Walkup in a loud, angry, hostile and unprofessional manner.” At a November 10, 1998 disciplinary meeting, Dr. Mills agreed to hold the admonishment in abeyance for 12 months if appellant sought medical care, apologized to her coworkers and maintained a congenial, professional manner. Appellant began to cry uncontrollably and her husband was summoned to take her home. She returned to work four hours per day on January 4, 1999. In a May 19, 1999 memorandum, Dr. Mills found that appellant had met the proposed conditions and that no further action was required.¹⁴

Disciplinary matters, absent a showing of error or abuse, generally fall outside the scope of coverage.¹⁵ The Board has reviewed the evidence concerning the October 20, 1998 incident, and finds that the employing establishment did not commit error or abuse in proposing the admonishment and later determining that no formal disciplinary action was necessary. Thus, appellant has not established that the October 20, 1998 incident, October 30, 1998 proposed admonishment or the November 10, 1998 meeting as compensable factors of employment.

Also, appellant has not established that perceived “displeasure” or hostility from her coworkers due to her taking sick leave is a compensable factor of employment. She submitted no evidence corroborating that any hostility occurred. Mere perceptions are not compensable.¹⁶

Appellant has established overwork and that residuals of her accepted carpal tunnel syndrome impacted the performance of her work duties as compensable factors of employment.

Appellant submitted medical evidence from Dr. David J. Kapley, an attending Board-certified psychiatrist, who began treating appellant on November 11, 1998. He addressed appellant’s reaction to the accepted carpal tunnel syndrome in several reports. In a January 13, 1999 deposition, Dr. Kapley provided Axis I diagnoses of severe major depression with anxiety, Axis III diagnoses including carpal tunnel syndrome and Axis IV stressors of job stress and “dealing with her multiple medical illnesses,” including diabetes. He estimated appellant’s global assessment of functioning (GAF) at 40 out of 100, denoting a significant impairment in functioning. Dr. Kapley explained, in an August 10, 1999 report, that appellant’s severe “problems with concentration and organization” due to major depression and anxiety caused “repeated mistakes in her job,” resulting in her removal in mid-1999. Dr. Kapley submitted periodic reports through June 30, 2000 finding appellant intermittently unable to work.

Regarding causal relationship, in an August 17, 2000 report, Dr. Kapley stated that appellant’s “carpal tunnel syndrome ... aggravated her depression and anxiety.” Dr. Kapley explained that appellant “took her work seriously. Her identity as a professional at [the employing establishment] was important to her. She ... was unable to keep up with her work activities on account of her physical problems and her mental status changes that she suffered....

¹⁴ Appellant wrote a January 4, 1999 letter of apology to the audiology staff regarding behavior prior to November 10, 1998, stating that she “had a breakdown at work that day,” with a “diagnosis of severe depression.”

¹⁵ *James H. Botts*, 50 ECAB 265 (1999).

¹⁶ *Ruthie M. Evans*, 41 ECAB 416 (1990).

[T]he work[-]related stress of her job was a central contributing factor to the exacerbation of her depression and anxiety.”

The Board finds that while Dr. Kapley’s reports, are insufficient to meet appellant’s burden of proof in establishing causal relationship, they are sufficiently detailed to require further development. The Board notes that Dr. Kapley’s August 17, 2000 report contains medical rationale explaining the impact of the accepted carpal tunnel syndrome on the development of appellant’s emotional condition. The case will therefore, be remanded to the Office.¹⁷

On remand of the case, the Office should prepare a statement of accepted facts, including the two established, compensable employment factors of overwork and disability for work due to accepted bilateral carpal tunnel syndrome. The Office should refer this statement and the medical record to Dr. Kapley or other appropriate specialist to obtain an opinion as to whether appellant’s anxiety and depression are causally related to the two compensable employment factors. Following this and all other necessary development, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers’ Compensation Programs dated July 10, 2001 is hereby set aside and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
July 25, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

¹⁷ *John J. Carlone*, 41 ECAB 354 (1989).