

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN L. JOBSON and U.S. POSTAL SERVICE,
POST OFFICE, Vassar, MI

*Docket No. 01-2147; Submitted on the Record;
Issued June 3, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

This is the second appeal in this case.¹ On the first appeal, the Board reviewed a March 29, 1996 decision, by which the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish an injury in the performance of duty. The Office found that appellant had not alleged any compensable factors of employment. By decision dated May 26, 1999, issued after oral argument, the Board found that the case was not in posture for decision. The Board specifically found that waiting on customers, answering the telephones, taking complaints, delivering accountables, responding to alarms that went off at the employing establishment and acting as the postmaster for a period of time during the summer constitute regular or specially assigned duties of appellant's position with the employing establishment and thus are compensable factors of employment under the Federal Employees' Compensation Act. Consequently, any emotional condition arising from appellant's performance of these duties would be compensable under the Act. The Board further found that the August 30, 1995 deposition from Dr. Walter Turke, a Board-certified psychiatrist and treating physician, in which he attributed appellant's depression, in part, to work stress which occurred when appellant waited on customers, answered the telephone, took complaints, responded to alarms at the worksite after hours and performed the duties of a postmaster for a period of time, while insufficiently rationalized, was supportive of appellant's claim and sufficient to require further development by the Office. The Board, therefore, set aside the Office's March 29, 1996 decision and remanded the case to the Office for preparation of a statement of accepted facts and further development of the medical evidence. The complete facts of this case are set forth in the Board's May 26, 1999 decision and are herein incorporated by reference.

¹ Docket No. 96-2095 (issued May 26, 1999).

By letter dated August 27, 1999, the Office provided Dr. Turke with the statement of accepted facts and the definitions of the various forms of causal relationship, including precipitation and temporary and permanent aggravation and asked that he provide his opinion, supported by a reasoned discussion as to the relationship between appellant's diagnosed major depression, the duties of her position and the compensable factors of employment. The statement of accepted facts prepared by the Office specifically indicated that only waiting on customers, answering the telephones, taking complaints, delivering accountables, responding to alarms that went off at the employing establishment and acting as the postmaster for three weeks in July 1993 are compensable factors of employment under the Act and that appellant's allegations of harassment and poor treatment by the postmaster were found to be either factually unsubstantiated or unrelated to factors of her employment. Although Dr. Turke had retired from his practice due to severe illness and no longer treated appellant, he provided a short note in which he stated:

"I have carefully reviewed the accepted definitions under the Act. Based upon six to seven years of therapy with [appellant] I would have to state that permanent aggravation existed between [her] and the postmaster. I have had numerous incidents told to me by [appellant] due to the postmaster's causing [her] a great deal of stress. [Appellant] has been unable to work since May 18, 1994."

By decision dated December 20, 1999, the Office denied appellant's claim on the grounds that Dr. Turke failed to specify what factors of appellant's employment caused her major depression and, therefore, failed to identify a medical connection between the accepted factors of employment and appellant's diagnosed condition.

By letters dated December 19, 2000 and March 14, 2001, appellant requested reconsideration of the Office's prior decision and submitted additional medical evidence and arguments in support of her request. In decisions dated March 16 and June 14, 2001, the Office found the newly submitted evidence and arguments insufficient to warrant modification of the prior decision.

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

The majority of the newly submitted medical evidence consists of treatment notes and medical records from various hospitals and physicians who treated appellant for major depression between 1994 and 2000. These treatment notes do not contain any discussion on the issue of causal relationship, except to note that appellant complained of a stressful environment at work and, therefore, are insufficient to support her claim.² She also submitted a June 10, 1999 letter from Dr. Turke, in which he stated that appellant's diagnosed depression was a direct result of the harassment she received from the postmaster, which crushed her entire self-worth and sense of being. However, Dr. Turke also stated that appellant's condition was in part due to the "impossible workload assigned to her by her supervisor, *i.e.*, she was to answer all telephone calls by the third ring, while simultaneously waiting on customers, also in a very timely fashion.

² Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship. *Vicky L. Hannis*, 48 ECAB 538 (1997); *Linda I. Sprague*, 48 ECAB 386 (1997).

Sometimes the line of customers became 20 deep at the same time the telephone was ringing.” Appellant also submitted an August 14, 2000 deposition from Dr. Kaushik J. Raval, a Board-eligible psychiatrist, who took over appellant’s treatment after Dr. Turke’s retirement. Dr. Raval stated that significant stressors in appellant’s job included her having to perform the postmaster’s duties as well as her own for a period of time and her being on the list of people called at night if the employing establishment alarm sounded. While Dr. Turke’s June 10, 1999 report and Dr. Raval’s deposition primarily relate appellant’s diagnosed depression to noncompensable factors of employment, such as her perceived harassment and poor treatment by the postmaster, the Board notes that the accepted compensable incidents need not be the sole cause or even the major cause of appellant’s conditions; it is sufficient, under the Act, if the injury in question is a contributing cause of appellant’s diagnosed major depression.³ In addition, while neither Dr. Turke nor Dr. Raval provided sufficient medical rationale, based on the statement of accepted facts, explaining how these accepted factors caused or contributed to appellant’s emotional condition, their reports, combined with Dr. Turke’s prior August 30, 1995 deposition testimony, are supportive of appellant’s claim and together are sufficient to require further development by the Office.⁴ Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁵ In the instant case, while the reports of appellant’s treating physicians are not completely rationalized, they are consistent in indicating that appellant’s diagnosed major depression is at least in part due to compensable factors of employment. Therefore, while the reports are not entirely sufficient to meet appellant’s burden of proof to establish the claim, they raised an uncontroverted inference of causal relationship and are sufficient to require the Office to further develop the evidence.⁶ Additionally, there is no opposing medical evidence in the record.

The case is, therefore, being remanded to the Office for a referral, accompanied by the complete case record, the statement of accepted facts and a list of questions to be answered, to an appropriate specialist for a second opinion as to whether appellant’s diagnosed major depression is causally related to compensable factors of her employment. After such further development as is necessary, the Office shall issue a *de novo* decision.

³ *Mohamed George Fasla*, 32 ECAB 743 (1981).

⁴ Medical reports not containing rationale on causal relation, or which are not based on a complete and accurate factual and medical history, are generally insufficient to meet an employee’s burden of proof. *Joseph M. Popp*, 48 ECAB 624 (1997); *Judith J. Montage*, 48 ECAB 292 (1997).

⁵ Proceedings under the FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. *Shirley A. Temple*, 48 ECAB 404 (1997); *Mary A. Wright*, 48 ECAB 240 (1996).

⁶ *Katherine J. Friday*, 47 ECAB 591 (1996); *Richard E. Konnen*, 47 ECAB 388 (1996); *John J. Carlone*, 41 ECAB 354 (1989).

The decisions of the Office of Workers' Compensation Programs dated June 14 and March 16, 2001 are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, DC
June 3, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member