

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN M. SCHMITT and U.S. POSTAL SERVICE,
POST OFFICE, Danboro, PA

*Docket No. 02-314; Submitted on the Record;
Issued October 23, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had not sustained a loss of wage-earning capacity effective July 5, 1997 due to her accepted condition of depression.

This is the second appeal in this case. In the prior appeal,¹ the Board set aside the decisions of the Office dated October 29, July 23 and March 18, 1998 on the grounds that further development of the medical evidence was required to determine whether appellant sustained a loss of wage-earning capacity due to her employment-related depression. Specifically, the Board instructed the Office on remand to determine whether appellant's request for a permanent downgrade was due to her inability to perform her regular job duties due to her accepted depression. The facts and circumstances of the case up to that point are incorporated herein by reference.

In response to the Office's request for clarification, Dr. Edward Mea, appellant's attending physician, specializing in family practice, in an August 22, 2000 report stated:

“[Appellant] was cleared to return to full-time work. The discrepancy here is in the definition of full-time work, I had limited her to 40 hours of work in a 5 day period of time with appropriate lunch breaks, no Saturdays and no overtime, it is my belief that 40 hours a week is full-time work. These limitations were indeed in placed (sic) on [appellant] when she returned to work in March 1997. She was provided a note stating these instructions. These restrictions were placed because [appellant] was and in fact still is suffering from anxiety and depression from work-related stress, this stress was caused by excessive overtime and inability to get time off from her employment with the [employing establishment]. Hence these restrictions were in place to insure that she would not be overworked and

¹ Docket No. 99-636 (issued July 25, 2000).

thereby worsening her anxiety and depression when she returned to work. It is my understanding that these restrictions were not followed by the [employing establishment].”

By decision dated November 28, 2000, the Office found that appellant had not sustained a loss of wage-earning capacity due to her accepted condition of depression.

Appellant’s counsel requested a hearing by letter dated December 4, 2000. A hearing was held on April 24, 2001 at which appellant was represented by counsel and allowed to testify.

On August 8, 2001 the hearing representative affirmed the Office’s November 28, 2000 decision denying appellant’s claim that she suffered a loss of wage-earning capacity due to her accepted condition of depression. In reaching this conclusion, he found Dr. Mea’s opinion insufficient to support that she requested a downgrade because of her depression as the physician’s opinion did not contain detailed medical rationale and was not based on an accurate history. He also noted that appellant requested the transfer to be closer to her home and not for medical reasons.

The Board finds that the Office properly determined that appellant had not sustained a loss of wage-earning capacity effective July 5, 1997 due to her accepted condition of depression.

It is a well-settled principle of workers’ compensation law that, if the medical evidence establishes that the residuals of an employment-related impairment are such that, from a medical standpoint, they prevent the employee from continuing in the employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.² The general test of loss of wage-earning capacity is whether a claimant’s work-related impairment prevents her from engaging in the kind of work being performed when injured.³

In this case, the Board instructed the Office on remand to request clarification from Dr. Mea as to whether request for a permanent downgrade was due to her inability to perform her regular job duties due to her accepted depression and to “further develop the medical evidence as appropriate.” The Office found that appellant had no loss of wage-earning capacity as her request for a permanent downgrade was not related to her depression.

The Board finds that the medical evidence is insufficient to establish that appellant’s transfer to the Salfordville Post Office from the Danford Post Office was for medical reasons. The only relevant medical evidence is Dr. Mea’s August 22, 2000 supplemental report. In his report, Dr. Mea stated that appellant had been released to full-time work, which he determined was forty hours over a five-day period with no work on Saturday. Dr. Mea did not provide any opinion that appellant was permanently disabled from performing her duties at the Danford Post Office or that her subsequent transfer to the Salfordville Post Office was medically necessary due to her accepted employment injury.

² *Merle J. Marceau*, 53 ECAB ___ (Docket No. 00-1995, issued November 1, 2001).

³ *Ellis Loveless, Jr.*, 40 ECAB 368, 373 (1988).

As the medical evidence of record fails to establish that appellant's transfer to the Salfordville Post Office and permanent downgrade were due to her inability to perform her regular job duties due to her accepted depression, the Office properly determined that appellant had not sustained a loss of wage-earning capacity due to her accepted July 5, 1997 employment injury.

The decision of the Office of Workers' Compensation Programs dated August 8, 2001 is hereby affirmed.

Dated, Washington, DC
October 23, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member