U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA K. HADENFELDT and U.S. POSTAL SERVICE,
POST OFFICE, Marengo, IA

Docket No. 02-719; Submitted on the Record;
Issued April 11, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether she established good cause for abandoning her limited-duty work.

This is the second appeal before the Board.[1] In the prior appeal, the Board affirmed the Office of Workers' Compensation Programs' termination of compensation benefits on the basis that appellant abandoned suitable work. The Board found, however, that the Office had abused its discretion in denying appellant's request for reconsideration as she had submitted new evidence relevant to the issue of whether she stopped work due to an employment-related emotional condition. On remand, the Office was instructed to consider whether appellant's work stoppage was due to a subsequent work-related emotional condition. The law and facts as set forth in the Board's decision and order are incorporated by reference.

Appellant attributed her emotional condition to various incidents and harassment by coworkers which occurred during the period January 16 through July 17, 1996. Specifically, her limited-duty job added little value to the operation of the office; on January 16, 1996 she received a letter from the employing establishment asking her to explain why someone had seen her washing her car and doing her laundry when she was supposed to be on bed rest in late December 1995; she overheard Elaine Slaymaker on January 16, 1996 referring to doing the amount of mailings herself with "no handicaps" which appellant believed referred to her; on March 28, 1996 she learned postal investigators were interviewing people to determine whether she had ever injured her back while doing her ambulance work; appellant's supervisor denied her request to use annual leave on February 10, 1996 to attend a funeral; on March 9, 1996 a safety talk was given on violence in the workplace which appellant believed was directed at her; a talk given on employees getting along in the workplace on April 17, 1996; and John DeHoet's discussion with appellant and Dianne Kinzenbaw, a coworker, regarding their argument the day

[1] Docket No. 98-1447 (issued December 28, 1999).

before in which Mr. DeHoet stated that he found both at fault and that he did not want them arguing in the workplace; her supervisor threw a leave slip pad at her and raised his voice on April 1, 1996; an argument on May 14, 1996 involving appellant, Elaine Slaymaker, a coworker, and Dianne Kinzenbaw, a coworker, regarding a search for a mailbag which was found in Ms. Kinzebaw's locker; and Ms. Kinzenbaw's slamming trays and drawers in the desk next to appellant and refusing to give appellant hand-off mail until it was too late to put in that day's mail delivery.

In a September 22, 1997 report, Dr. Allyson Wheaton, an attending Board-certified psychiatrist, noted that appellant related she became very stressed due to harassment by two employees at the employing establishment. Appellant related that this harassment resulted in her being investigated by the employing establishment. Dr. Wheaton noted, "This was very, very stressful to the patient and eventually led to her resigning from the position in July 1996. That was probably when her symptoms were at their worst."

In a May 1, 2000 report, Dr. Wheaton related that she first saw appellant in September 1997 when she diagnosed major depression with anxiety symptoms. Dr. Wheaton noted that appellant had resigned in 1996 and stated that she "really can[not] comment on what was going on at that time although when I had seen her initially in September 1997 she told me about the difficulty that she had then with the harassment and reported that her depressive symptoms were at their worst around that time before she had resigned." As to the cause of appellant's depression, Dr. Wheaton opined that she believed "that her job at the [employing establishment] probably was a contributing factor to her depression but probably was [not] 100 percent causally related to that." She reiterated that, since she had not seen appellant in 1996, she could not "comment on whether her condition would have prevented her from doing light[-] or limited[-]duty work." However, Dr. Wheaton opined that generally "when people are having a significant depressive episode, they frequently need to take time off from work as they just are [not] functioning as well."

By decision dated July 18, 2000, the Office found appellant had established three compensable factors: that appellant's supervisor threw a leave slip pad at her and raised his voice; an argument on May 14, 1996 involving appellant, Ms. Slaymaker, a coworker, and Ms. Kinzenbaw, a coworker, regarding a search for a mailbag which was found in Ms. Kinzenbaw's locker; and Ms. Kinzenbaw's slamming trays and drawers in the desk next to appellant and refusing to give appellant hand-off mail until it was too late to put in that day's mail delivery. The Office found the medical evidence insufficient to establish that appellant's depression was causally related to any of the three compensable factors. Lastly, the Office found appellant had not established good cause for abandoning her light-duty job.

By decision dated October 17, 2001 and finalized on October 18, 2001, the hearing representative affirmed the Office's July 18, 2000 decision.

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

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 factors of her federal employment.[2] To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[3]

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 illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position or to secure a promotion. On the other hand, where 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 come under the coverage of the Federal Employees' Compensation Act.[4]

Regarding appellant's allegations that the employing establishment wrongly denied her leave, the Board finds that this allegation relates to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.[5] Although the handling leave requests, the assignment of work duties is generally related to the employment, they are administrative functions of the employer and not duties of the employee.[6] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[7] Appellant has submitted no evidence that the employing establishment acted unreasonably in denying her request for annual leave for February 10, 1996. Thus, appellant has not established a compensable employment factor under the Act with respect to administrative matters.

Appellant also alleged that harassment on the part of her coworkers contributed to her claimed stress-related condition. She alleged that she overheard Ms. Slaymaker on January 1996 commenting on "no handicaps," which she believed to be a reference to herself and a discussion

[2] *Edward C. Heinz*, 51 ECAB 652 (2000); *Martha L. Street*, 48 ECAB 641, 644 (1997).

[3] *Ray E. Shotwell, Jr.*, 51 ECAB 656 (2000); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[6] *Id.*

[7] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

Mr. DeHoet had with appellant and Ms. Kinzenbaw in which he found them both at fault in an argument. Mr. DeHoet instructed them that he did not want them arguing in the workplace. Appellant believed that talks given on getting along with coworkers on April 17, 1996 and violence in the workplace were directed at her. To the extent that disputes and incidents alleged as constituting harassment and discrimination by coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[8] However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.[9] In the present case, the employing establishment denied that appellant was subjected to harassment and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisors or coworkers.[10] Appellant alleged that supervisors and coworkers made statements and engaged in actions which she believed constituted harassment and discrimination, but she provided insufficient evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.[11] Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

Appellant alleged that her limited-duty job added little value to the operation of the office which contributed to her depression. The Board has held that an employee's dissatisfaction with work underload constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.[12] Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant also attributed her depression to investigations by the employing establishment regarding whether she had injured her back while working as an ambulance attendant and whether she was doing laundry and washing her car when she was supposed to be home in bed. The Board has held that investigations, which are an administrative function of the employing establishment, that do not involve an employee's regular or specially assigned employment duties are not considered to be employment factors.[13] However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[14] Although appellant has made allegations that

[8] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[9] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

[10] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[11] *See William P. George*, 43 ECAB 1159, 1167 (1992).

[12] *See Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

[13] *Jimmy B. Copeland*, 43 ECAB 339, 345 (1991).

[14] *See Richard J. Dube*, *supra* note 7.

the employing establishment erred and acted abusively in conducting its investigation, appellant has not provided sufficient evidence to support such a claim. A review of the evidence indicates that appellant has not shown that the employing establishment's actions in connection with its investigation of her were unreasonable. Appellant has not established a compensable employment factor under the Act in this respect.

The Office determined that appellant had established three compensable factors of employment with respect appellant's supervisor threw a leave slip pad at her and raised his voice; the argument on May 14, 1996 involving appellant, Ms. Slaymaker, a coworker, and Ms. Kinzenbaw, a coworker, regarding a search for a mailbag which was found in Ms. Kinzenbaw's locker; and Ms. Kinzenbaw's slamming trays and drawers in the desk next to appellant and refusing to give appellant hand-off mail until it was too late to put in that day's mail delivery. Appellant's description of the work incidents is uncontradicted and the record indicates that her supervisor raised his voice[15] and threw a leave slip pad at her and she was exposed to harassment by Ms. Kinzenbaw as part of her regular assigned duties.

However, a claimant's burden of proof is not discharged by the fact that he or she has established an employment factor that may give rise to a compensable disability under the Act. To establish an occupational disease claim for an emotional condition, a claimant must also submit rationalized medical evidence establishing that he or she has an emotional condition and that such condition is causally related to the accepted work factors.[16]

The issue to be resolved is whether appellant submitted sufficient medical evidence to establish a causal relationship between her employment factors and her emotional condition. The Board finds the medical evidence to be insufficient to carry appellant's burden of proof.

To be of probative medical value, a physician's opinion regarding the cause of an emotional condition must relate the condition to the specific incidents or conditions of employment accepted as factors of employment, must be based on a complete and accurate factual history and must contain adequate medical rationale in support of the conclusions.[17] Although Dr. Wheaton has opined that appellant's depression was probably work related, she does not specifically explain the nature of appellant's harassment by her coworkers or how that harassment is causally related to appellant's emotional condition. Without such supportive medical rationale, Dr. Wheaton's opinion regarding causal relationship is of diminished probative value.[18] Moreover, Dr. Wheaton indicated, in her May 1, 2000 report, that she could not comment on the cause of appellant's depression since she first saw appellant in September 1997. A medical opinion which is equivocal in nature or lacking in adequate

[15] Verbal abuse, when sufficiently detailed and supported by the evidence of record, can constitute a compensable factor of employment. *Garry M. Carlo*, 47 ECAB 299 (1996).

[16] *Janet L. Terry*, 53 ECAB ___ (Docket No. 00-1673, issued June 5, 2002); *Ronald C. Hand*, 49 ECAB 113 (1997); *Mary J. Ruddy*, 49 ECAB 545 (1998).

[17] *Mary J. Ruddy*, *supra* note 16.

[18] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

rationale is of limited probative value.[19] Appellant has failed to submit evidence to establish a causal relation between her depression and the accepted factors of her employment, she has failed to establish her claim.

The Board also finds that appellant has not established good cause for abandoning her limited-duty work.

Section 8106(c)(2) of the Act provides in pertinent part, "a partially disabled employee who refuses or neglects to work after suitable work is offered is not entitled to compensation."[20] However, to justify such termination, the Office must show that the work offered was suitable.[21] An employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified.[22]

In the prior appeal, the Board found that the Office met its burden in terminating appellant's compensation benefits on the grounds that she had abandoned suitable work. However, the Board remanded the case for the Office to consider whether appellant's work stoppage was due to a subsequent work-related emotional condition. As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that her work stoppage was due to a subsequent work-related emotional condition.[23]

Appellant has failed to meet her burden of proof. As noted above, the medical evidence submitted by appellant was insufficiently rationalized to support her contention that she had an emotional condition which prevented her from performing the suitable work on the date the Office terminated her compensation benefits. While Dr. Wheaton opined that appellant's depression was probably work related, she did not sufficiently explain the nature of appellant's harassment by her coworkers or how any harassment caused or contributed to appellant's emotional condition. Without such supportive medical rationale, Dr. Wheaton's opinion regarding causal relationship is of diminished probative value.[24] Furthermore, Dr. Wheaton stated that she could not comment on the cause of appellant's depression as she did not see appellant until September 1997. As noted above, a medical opinion which is equivocal in nature or lacking in adequate rationale is of limited probative value.[25]

[19] *Betty M. Regan*, 49 ECAB 496 (1998).

[20] 5 U.S.C. § 8106(c)(2).

[21] *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

[22] *See Carl N. Curts*, 45 ECAB 374 (1994); 20 C.F.R. § 10.517(a).

[23] *George Servetas*, 43 ECAB 424, 430 (1992).

[24] *Lucrecia M. Nielsen*, *supra* note 18.

[25] *Betty M. Regan*, *supra* note 19.

The decision of the Office of Workers' Compensation Programs dated October 17, 2001 and finalized on October 18, 2001 is hereby affirmed.

Dated, Washington, DC
April 11, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member