

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH HARRISON-KHATANA and U.S. POSTAL SERVICE,
POST OFFICE, Capital Heights, MD

*Docket No. 01-1778; Oral Argument Held November 21, 2002;
Issued March 3, 2003*

Appearances: *Deborah Hanson-Khatana, pro se, Miriam D. Ozur, Esq.*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On February 9, 2000 appellant, then a 39-year-old custodian, filed an occupational disease claim asserting that she sustained an emotional condition causally related to her federal employment. In documentation accompanying her claim, appellant attributed her job-related stress to the actions of her supervisor, Edwina Brown, who appellant alleged verbally harassed her in the workplace.

Appellant submitted medical evidence, including treatment notes, which related that she was stressed after an encounter with “[Ms.] Brown” and complained of physical symptoms of chest pain and dizziness. Appellant also submitted a February 9, 2000 report from Dr. Marcus Nadler, an attending physician who stated: “she has been suffering from severe anxiety resulting in physical pain/distress due to conflicts with her current supervisor. I would advise she be reassigned to a different work environment/supervisor given the severity of this situation.” Appellant further submitted a March 9, 2000 report from Dr. Neil Bien, a psychologist, in which he stated: “diagnosed reactive depression as a consequence of feeling harassed by her supervisor in the [p]ostal [s]ervice.”

By decision dated July 11, 2000, the Office denied the claim on the grounds that the evidence failed to demonstrate that the claimed injury occurred in the performance of duty. Appellant requested reconsideration on July 26, 2000 and submitted additional factual and medical evidence.

Following development of the evidence, the Office in a memorandum dated October 17, 2000 accepted that appellant was exposed to certain incidents, which occurred in the

performance of duty. Specifically, the Office accepted that appellant was verbally harassed by her supervisor, Ms. Brown. The Office accepted that Ms. Brown told appellant that she had to get out of the break area or she would write her up, and appellant had to get medical evidence to show that she had to sit down every 15 minutes when her leg was bothering her. The Office also accepted that, on one occasion, appellant's original supervisor approved appellant's leave request, however, after the approval Ms. Brown was transferred from Tour One to Tour Two as the new supervisor and changed the scheduled leave to unscheduled leave. The Office noted as factual that after so many days of unscheduled leave an employee could be written up. The Office further accepted that when appellant discussed the situation with Ms. Brown, the supervisor never changed the leave record to reflect scheduled leave, thus, appellant went to Ms. Brown's supervisor who told Ms. Brown to check into it and correct it. Further, the Office accepted as factual that Ms. Brown did not make the correction, thus appellant went to the union and Ms. Brown told the union she was not changing anything.

By decision dated December 19, 2000, the Office modified the prior decision on the grounds that appellant had identified the above-compensable factors of her employment. The Office found, however, that appellant failed to establish that her emotional condition for which compensation was sought was causally related to the accepted employment factors. Attached to the decision was a notice of appeal rights, specifying the procedures necessary for reconsideration, a hearing before the Office or an appeal to the Board.¹

The Board finds that appellant has failed to establish that she developed a physical condition due to factors of her federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.²

In this case, the Office in its December 19, 2000 decision modified the July 11, 2000 denial decision in part finding that appellant was exposed to certain incidents, which occurred in the performance of duty. Although the Office accepted that the incidents outlined above

¹ The Board notes that following the December 19, 2000 decision, appellant requested reconsideration and submitted new evidence with the Office on January 30, 2001 and subsequently filed an application for review with the Board on July 13, 2001. The Board and the Office, however, may not have concurrent jurisdiction over the same issue in the same case. *Douglas E. Billings*, 41 ECAB 880 (1990).

² *Lourdes Harris*, 45 ECAB 545, 547 (1994).

occurred in the performance of duty, the Office found that appellant failed to establish that the emotional condition for which compensation was sought was causally related to the accepted employment incidents. While the Office accepted the above factual aspects of appellant's claim as compensable factors of employment, the Board concurs that appellant has failed to submit sufficient medical evidence to establish that her emotional condition was causally related to the accepted employment factors.

In support of her claim, appellant submitted reports from her treating physicians Drs. Nadler and Bien, who noted that appellant was being treated for emotional and physical conditions related to her feelings of being harassed by her supervisor at work.

In a report dated January 4, 2000, Dr. Bien stated:

"I am a clinical psychologist and primary care provider who has been seeing [appellant] intermittently for supportive therapy since January 26, 2000. I diagnosed her with reactive depression as a consequence of her ongoing conflicts with her supervisor, Ms. Brown, in the [p]ostal [s]ervice. According to [appellant], Ms. Brown would not correct her leave record and was verbally harassed by Ms. Brown. [Appellant's] symptoms include insomnia, trouble concentrating, limited appetite, crying spells, headaches and diminished pleasure in the activities of life. She has also been experiencing physical symptoms -- headaches, diarrhea, dizziness, and left axilla pain radiating down her arm -- that may be caused by stress on the job. In my opinion, [appellant] does suffer significantly from stress on the job."

Dr. Bien's report noted above as well as the report of Dr. Nadler, however, are insufficient to establish appellant's claim, as neither Drs. Nadler nor Bien explain how or why specific employment factors caused or contributed to appellant's emotional condition and, therefore, their opinions are insufficiently rationalized and of little probative value.³

The Board, therefore, finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition while in the performance of duty.⁴

³ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980); *Neil Oliver*, 31 ECAB 400, 404 (1980); *Leontine F. Lucas*, 30 ECAB 925, 928 (1979).

⁴ The Board does not have jurisdiction to review evidence submitted by appellant subsequent to the Office's December 19, 2000 decision. The Board cannot review this evidence on appeal, as the Board's jurisdiction is limited to reviewing the evidence and arguments that were before the Office at the time of its final decision; see *Lloyd E. Griffin, Jr.*, 46 ECAB 979 (1995); *Carroll R. Davis*, 46 ECAB 361 (1994). Appellant may submit such evidence to the Office along with a request for reconsideration.

The December 19, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 3, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member