

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON E. SIMMONS and SMALL BUSINESS ADMINISTRATION,
Denver, CO

*Docket No. 03-1790; Submitted on the Record;
Issued November 13, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability, commencing April 23, 1996, due to the October 18, 1985 employment injury.

The Office of Workers' Compensation Programs accepted appellant's claim for an episode of adjustment disorder with anxiety and depression due to work factors on or before October 13, 1985.

On December 17, 2001 appellant filed a claim for a recurrence of disability, commencing April 23, 1996 in the Washington, D.C. District Office (WDO), due to the October 13, 1985 employment injury that she sustained in Denver, Colorado. Appellant stated that, after the initial injury, her physician wanted her to work half days but the employing establishment did not have any part-time positions so appellant had no limitations when she returned to work. She stated that, since April 23, 1996, she had been "under constant attack and harassment" by the district director, Wilfredo Gonzalez, the deputy district director, Martin Gold and the assistant district director for minority enterprise development, Hugh Wright, who was also her immediate supervisor. Appellant stated that these people were much worse than Robert Tamez who was involved in her original injury. She stated that they "singled her out" and treated her "differently than everyone else" in the district Office.

Appellant stated that when these members of management learned that she had bounced a check in 1992 to a merchant in Colorado she was immediately demoted. Appellant stated, however, that she paid the check, thereby correcting the situation and although the merchant filed theft charges against her in 1995, there was never a conviction. She stated that, even when a settlement was reached on December 17, 1996 regarding her demotion, she was suspended for 30 days. Appellant stated that when any males were guilty of official misconduct, "all they received was a slap on the wrist," as, for example, one coworker received a letter of admonishment for failing to give proper information that resulted in the firm's losing a contract. She stated that on April 23, 1996 she was detailed for 60 days to a nonsupervisory position under Sheila Thomas.

Appellant stated that her supervisors did not discuss the theft incident with her and Mr. Wright erroneously advised her staff that she was under investigation by the inspector general. She cited numerous other instances of harassment where on May 14, 1996 Mr. Wright placed a letter proposing her demotion on her keyboard while she was away from her desk, on July 8, 1996 she was assigned another nonsupervisory detail under Mr. Wright and on July 9, 1996 Mr. Wright gave her a “[I]etter of [I]eave” requirement with the result that when she took sick leave he placed her on absence without leave (AWOL) because she did not have the medical documentation that he asked for.

Appellant also stated that Mr. Wright made sexual advances and/or comments to her which she refused to accept and told her she was not a “team player” because she refused to violate regulations to support erroneous decisions he made. She stated that, on September 24, 1997, she was terminated for false charges of AWOL and insubordination. Appellant stated that she was exposed to hostile working conditions for 17 months and the members of management were “mean, vicious and evil.” She stated that her unemployment compensation was terminated based on the false testimony that Ms. Thomas gave at a hearing in that regard. Appellant submitted a letter dated April 15, 2002 to further substantiate her contentions that management mistreated her.

In a statement dated November 30, 2000, a coworker, Ruth D. Williams, stated that upper management “consistently harassed” appellant, that they “constantly humiliated” her and “made her look bad in the eyes of the entire staff.” Ms. Williams stated that appellant was denied a transfer to the central office and appellant was the only employee she was aware of who was refused a transfer to that office. Ms. Williams stated that, shortly after denying appellant the transfer, management demoted her and then terminated her for “no reason.” She stated that Mr. Gold and Mr. Thomas refused to discuss annual reviews with her and they denied appellant leave and wrote her up for AWOL.

By letter dated March 4, 2002, the Office noted that more information was necessary including a statement from her physician addressing how her current condition was related to the accepted condition.

By decision dated April 24, 2002, the Office denied appellant’s claim, stating that the medical evidence was insufficient to establish that her condition was caused by the injury.

By letter dated April 29, 2002, appellant stated that the Office overlooked evidence that she submitted on March 27, 2002 via Airborne Express consisting of a letter dated November 17, 1999 from a licensed clinical social worker, Betty Graves, therapy notes dated January 4, December 7 and December 21, 1999 and January 11, 2000 from a licensed social worker, Cathy Woods, medical reports from Dr. Young H. Moon, a Board-certified internist with a specialty in cardiovascular disease,¹ dated April 26, 2000 and from Dr. Luanne Ruona, a psychiatrist, dated March 25, 2002. Appellant stated that she forwarded a witness statement dated April 10, 2002, progress notes from Dr. Campbell and her letter dated April 15, 2002 to the Office. She also submitted statements dated February 26, March 27 and April 29, 2002.

¹ Dr. Moon’s letter is not in the record but, in her February 26, 2002 statement, appellant stated that Dr. Moon was her physician for high blood pressure and he prescribed Paxil for her depression.

In the November 17, 1999 letter, Ms. Graves diagnosed severe major depression based on symptoms including fatigue or loss of energy, inability to think or concentrate and recurrent thoughts of death. Ms. Wood's notes dated from January 4, 1999 through January 11, 2000 document appellant's depression. In his progress notes dated March 20 and April 3, 2001, Dr. Campbell considered appellant's symptoms of depression and stated that she was "resentful of work actions." He diagnosed depression and prescribed medication.

In her March 25, 2002 report, Dr. Ruona stated that she first treated appellant for her condition on December 5, 2001. She stated that appellant told her that she had "not been able to be completely free" of the problems and pain since the 1986 employment injury. Dr. Ruona stated that appellant told her that she worked in an "extremely hostile environment" and was illegally removed from her position. She stated that appellant had some periods of remission but "it came back again in 1996-97[,] [when] she suffered another incident which exacerbated her condition." Dr. Ruona stated that appellant, in her words, was "under attack and harass[ed] by her boss" and humiliated and embarrassed by supervisors in front of the entire office. She stated that, because appellant's self-esteem and self-worth was so tied to her perception of herself, as a "good and honest working "person, the incidents "very directly" affected her sense of self and resulted in the depression. Dr. Ruona concluded that appellant suffered from recurrent major depressive disorder directly related to the traumatic incidents that she experienced at work. She stated that appellant's condition also was post-traumatic stress disorder because appellant continuously related back to the "incidents" at work and felt unworthy and misunderstood.

By letter dated May 13, 2002, the Office noted that the material appellant sent via Airborne Express on March 27, 2002 had been considered and did not change the decision. He stated that, if appellant disagreed, she should exercise one of her appeal rights which accompanied her decision.

By letter dated August 2, 2002, appellant withdrew a request for an oral hearing that she had made on May 20, 2002 and instead requested reconsideration of the Office's decision. Appellant submitted an additional medical report from Dr. Ruona dated July 30, 2002. In her report, Dr. Ruona considered appellant's history of injury and performed a clinical examination. As in the March 25, 2002 report, Dr. Ruona stated that appellant told her that she had not been able to be "completely free" since the October 13, 1985 employment injury. Dr. Ruona stated that appellant had some periods of remission, but "came back again probably on April 23, 1996, when [appellant] was again exposed to a hostile work environment" by her employer.

Dr. Ruona noted that, because appellant's self-esteem and self-worth was so tied to her perception of herself as a "good and honest working" person, the incidents at work had "very directly" affected her sense of self and resulted in the depression. She stated that, while originally appellant was diagnosed with adjustment reaction/adjustment disorder, her condition was now more of post-traumatic stress disorder and that appellant continually related back to "these incidents" and felt "so unworthy and misunderstood." Dr. Ruona diagnosed post-traumatic stress disorder and major depressive disorder with recurrent episodes directly related to the traumatic incidents that she experienced at the employing establishment. She reiterated that appellant's current condition was directly caused by the October 13, 1985 employment injury.

By decision dated June 6, 2003, the Office denied appellant's request for modification of its April 24, 2002 decision stating that she did not provide sufficient information establishing that she had a recurrence of disability on April 25, 1996 causally related to the October 13, 1985 employment injury. Rather, the Office stated that new employment factors were the cause of her current condition.

The Board finds that appellant has not met her burden of proof that she sustained a recurrence of disability, commencing April 23, 1996, due to the October 18, 1985 employment injury.²

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

A recurrence of disability is defined as a spontaneous material change in the employment-related condition.⁵ An aggravation of a preexisting condition is compensable as a new injury.⁶

In this case, all the employment factors appellant described as contributing to her current emotional condition were different from those in the October 18, 1985 employment injury. She was working in a different office, in Washington, D.C. instead of Denver, Colorado and the alleged incidents of harassment and discrimination involved different members of management, *i.e.*, Mr. Gonzalez, Mr. Gold and Mr. Wright, than in her original injury. For instance, appellant described the check incident which was particular to her work performance in the D.C. Office, she described her subsequent demotion, suspension and reassignment to other positions and that Mr. Wright gave her a letter of leave requirement which resulted in her being placed on AWOL status. Moreover, in her March 25, 2002 report, Dr. Ruona referred to "another incident" which "exacerbated" appellant's condition. In her July 30, 2003 report, Dr. Ruona referred to the work factors that appellant had identified including appellant's correcting a returned check problem, being demoted and suspended for 30 days and having her unemployment compensation stopped due to a false charge of insubordination. Dr. Ruona stated that appellant was generally harassed,

² On February 13, 2003 the Office issued a decision rescinding the prior decision of April 24, 2002 although which decision it enclosed is unclear. On the same day, by order dated February 13, 2003, the Director of the Office of Workers' Compensation vacated the Office's February 13, 2003 decision, stating that the attached notice of decision contained the remainder of the essential findings of fact in the claim and were made "a part hereof by reference."

³ *Dominic M. DeScala*, 37 ECAB 369 (1986).

⁴ *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

⁵ *Carlos A. Marrero*, 50 ECAB 117, 119 (1998).

⁶ *See* 20 C.F.R. § 10.104(a); *Kathleen M. Fava*, 49 ECAB 519, 524 n. 10 (1998).

treated disparately and discriminated against. She stated that these work incidents further “exacerbated” appellant’s condition.

The other medical evidence that appellant submitted consisted of Ms. Graves’ November 17, 1999 letter in which Ms. Graves diagnosed severe major depression, Ms. Woods’ notes dated from January 4, 1999 through January 11, 2000 documenting appellant’s therapy treatment for ongoing depression and Dr. Campbell’s progress notes dated March 20 and April 3, 2001. This medical evidence does not contain any opinion on whether appellant’s current condition was a recurrence of the October 18, 1985 employment injury and, therefore, is of diminished probative value.⁷ Ms. Williams’ November 30, 2000 statement alleging that appellant was harassed and humiliated and that appellant was demoted and terminated for “no reason,” is insufficient to establish that appellant sustained a recurrence of disability. The evidence appellant submitted establishes that she did not sustain a recurrence of disability, but suggests that her preexisting injury was aggravated by new employment factors. Appellant has therefore, not established that she sustained a recurrence of disability, commencing April 23, 1996, due to the October 18, 1985 employment injury.⁸

⁷ See *Kenneth R. Love*, 50 ECAB 198, 199 (1998).

⁸ If appellant wishes to seek compensation based on aggravation of a preexisting injury, she should file another claim. See 20 C.F.R. §§ 10.101(a) and 10.104(a). She would need to establish that factors of employment aggravated her preexisting emotional condition. See *Robert W. Johns*, 51 ECAB 137, 141 (1999).

The June 6, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member