

**United States Department of Labor
Employees' Compensation Appeals Board**

DENISE A. GRENIER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Providence, RI, Employer**

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**Docket No. 03-2207
Issued: August 23, 2004**

Appearances:
Katherine Smith, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 5, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 31, 2003, denying her claim for recurrence of an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issue on appeal is whether appellant established that she sustained a recurrence of disability on May 4, 2001 causally related to her September 18, 1998 employment injury. On appeal appellant's counsel contends that it is the Office's burden to prove that appellant no longer has any residuals from her accepted employment injury, and that appellant sustained a consequential injury related to the September 18, 1998 employment injury.

FACTUAL HISTORY

On October 2, 1998 appellant, a 30-year-old clerk, filed a traumatic injury claim alleging that she was sexually assaulted by Mister Wright, a coworker, when he touched her genital area from behind on September 18, 1998. The Office accepted appellant's claim for post-traumatic stress disorder on December 15, 1999.

On May 23, 2001 appellant filed a recurrence of disability beginning May 4, 2001 due to her September 18, 1998 employment injury.¹ She attributed her condition to receipt of a May 3, 2001 letter from the employing establishment which noted "that it will be necessary to assign you to a residual vacancy" as a clerk which would be located in the Providence station, where appellant had been sexually assaulted by a coworker which resulted in acceptance of her claim for post-traumatic stress disorder and transfer out of the Providence station. It informed appellant to return the preference sheet and that, if it was not returned, she would be assigned to any position that remained open. This position was the only position listed on the preference sheet. Appellant stated that she "cannot work in Prov[idence] office, no contact with perpetrator and work daytime hours." She noted her post-traumatic stress syndrome had "been under control until [she] received the letter May 4, 2001" and her symptoms returned. Appellant stopped working on May 15, 2001 and returned to work on May 18, 2001. On the back of the form, the employing establishment noted that appellant had been moved from the Providence Post Office to the Coventry Post Office as an accommodation or adjustment of her employment injury.

By letter dated June 13, 2001, the Office advised appellant of the information needed to establish her claim for a recurrence of disability. This information included an explanation of why she believed the current condition was related to the original injury and a physician's opinion with supporting explanation as to causal relationship between appellant's current disability/condition and the original condition.

In a July 9, 2001 report signed by Dr. James J. Whalen, an attending Board-certified psychiatrist, and Brian Hickey, R.N., appellant was diagnosed with depression which was attributed to the sexual assault at the Providence station.

In a July 23, 2001 decision, the Office denied appellant's recurrence claim on the basis that she failed to submit a report by a physician and failed to provide the factual evidence requested by the June 13, 2001 letter.

Appellant requested reconsideration by letter dated October 9, 2001 and submitted evidence in support of her request including a May 24, 2001 report by Dr. Whalen and Mr. Hickey and a September 19, 2001 report by Mr. Hickey. In this report, Dr. Whalen opined that "it is clinically inadvisable" to transfer appellant to the Providence station where she would work near the coworker who had sexually assaulted her.

¹ On the form appellant noted the date of her injury as September 18, 2001 which appears to be a typographical error as the original injury occurred on September 18, 1998.

By decision dated December 26, 2001, the Office denied appellant's request for modification on the basis that the evidence submitted was insufficient to establish a recurrence of disability. Specifically, the Office found there was no evidence which established that appellant was reassigned or transferred to the Providence station, where she had been sexually assaulted by a coworker and her claim was accepted for post-traumatic stress disorder. The Office also noted that appellant was merely reacting to the notice of a potential transfer and fear of a new injury or recurrence of disability is not covered under the Federal Employees' Compensation Act.

In a May 1, 2002 letter, appellant requested reconsideration and submitted evidence in support of her request. In a March 18, 2002 report, Dr. Whalen provided recommendations regarding appellant's work condition which included not working in the Providence station and only working a daytime shift. Appellant also submitted a January 15, 2002 letter from the employing establishment informing her of her assignment to a "residual vacancy" and a routing slip dated January 29, 2002 informing her that she was assigned as an automated mark-up clerk at the Providence station working 6:00 p.m. to 2:30 a.m. with Sundays and Wednesdays off.

By nonmerit decision dated August 21, 2002, the Office denied appellant's request for a merit review. The Office found that the evidence submitted by appellant was irrelevant and repetitious and thus insufficient to warrant a merit review.

In a letter dated December 26, 2002, appellant's counsel requested reconsideration and submitted evidence in support of her request.

On March 31, 2003 the Office denied appellant's request for modification on the basis that the evidence showed that there was an intervening cause and therefore a recurrence of disability was not established. The Office also found that the evidence was insufficient to establish that appellant's reaction to the incident on May 4, 2001 was in the performance of duty and therefore could not be considered a compensable factor of employment.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

² *Joseph D. Duncan*, 54 ECAB ____ (Docket No. 02-1115, issued March 4, 2003); *Jackie D. West*, 54 ECAB ____ (Docket No. 02-1299, issued October 21, 2002); *Roberta L. Kaaumoana*, 54 ECAB ____ (Docket No. 02-891, issued October 9, 2002); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

ANALYSIS

In the present case, appellant alleged that she sustained a recurrence of her prior accepted emotional condition as a result of an employment incident. Appellant attributed the return of her post-traumatic stress syndrome to the receipt of a letter on May 4, 2001 from the employing establishment referring to her reassignment back to the Providence station, where the September 18, 1998 sexual assault by a coworker occurred, resulting in the acceptance of her claim for post-traumatic stress disorder. Appellant was transferred to the Coventry Post Office from the Providence station as an accommodation following the September 18, 1998 sexual assault.

There is evidence in the record demonstrating that the employing establishment withdrew appellant's light-duty job by issuing the May 4, 2001 letter advising her of her reassignment to the Providence station and changing her tour of duty to from the day shift which she worked at the Coventry Post Office to the night shift. In so doing, the employing establishment has in essence withdrawn appellant's light-duty job at the Coventry Post Office. This withdrawal of her light-duty job at the Coventry Post Office is in effect a change in the nature and extent of her light-duty job as the employing establishment reassigned her to the very facility where the sexual assault occurred. Based on the preference sheet, appellant had no other preference to select as the clerk position at the Providence Post Office was the only position listed. Thus, appellant has met her burden of proof in establishing a change in the nature and extent of her light-duty job as a cause of her claimed recurrence of disability beginning May 4, 2001.³

CONCLUSION

The Board finds that appellant has established that she sustained a recurrence of disability on May 4, 2001 causally related to her September 18, 1998 employment injury by showing a change in the nature and extent of her light-duty job. Therefore, the case must be returned to the Office for appropriate medical development and further development regarding the type and amount of compensation benefits due to appellant, the prompt payment of those benefits to appellant, and the issuance of an appropriate decision accepting appellant's claim for recurrence of disability from May 4, 2001.⁴

³ As explained in Chapter 2.1500.3(1)(c) of the Office's procedures, a recurrence of disability is "a work stoppage" caused by: "Withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. This withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties." See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(1)(c) (May 1997).

⁴ In view of the finding that appellant has established a recurrence of disability, the Board need not address appellant's attorney's contentions or consider the medical evidence of record submitted to support that she sustained a consequential injury as a result of her accepted September 18, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2003 is reversed.

Issued: August 23, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member