

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

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MARION L. POLLINS, Appellant )

and )

U.S. POSTAL SERVICE, GENERAL MAIL )  
FACILITY, Brooklyn, NY, Employer )

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**Docket No. 04-1123  
Issued: August 19, 2004**

*Appearances:*  
*Marion L. Pollins, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On March 19, 2004 appellant filed a timely appeal from a January 29, 2004 merit decision of the Office of Workers' Compensation Programs' hearing representative, which denied appellant's claim for recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant established that she sustained a recurrence of disability on February 24, 2000 causally related to her August 25, 1999 employment injury.

**FACTUAL HISTORY**

On September 9, 1999 appellant, then a 38-year-old mail processor, filed a traumatic injury claim for employment-related stress. Appellant alleged that a maintenance man approached her from behind and put his hands around her.<sup>1</sup> She stopped work on August 30, 1999. On April 20, 2001 the Office accepted the claim for aggravation of post-

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<sup>1</sup> The record reflects that appellant was pregnant at the time.

traumatic stress disorder.<sup>2</sup> Appellant received appropriate wage-loss compensation through February 25, 2000.

On June 5, 2001 appellant filed a claim for recurrence of disability commencing February 24, 2000. Appellant alleged that she was angry and depressed, that she had no concentration level, mood swings, anxiety attacks and did not feel safe in the hostile environment. Appellant filed a claim for wage-loss compensation, citing retroactive disability beginning July 30 to September 4, 2000 due to her alleged recurrence of disability of February 24, 2000.

By letter dated June 22, 2001, the employing establishment controverted appellant's claim. In a letter dated July 26, 2001, the employing establishment indicated that appellant was not on light duty at the time of the alleged recurrence of disability and had returned to full duty on February 25, 2000.

In reports dated September 11 and 18, 2001, Dr. Martin Friedmutter, appellant's psychologist, indicated that appellant returned to work and had numerous recurrences of disability dating from February 26 to September 18, 2000, which were directly related to her August 25, 1999 employment injury.

By decision dated September 21, 2001, the Office denied appellant's claim finding that the evidence was insufficient to establish a relationship between her emotional condition and the claimed disability.

By letter dated September 29, 2001, appellant requested a hearing, which was held on October 30, 2003. During the hearing, appellant testified that she delivered a child on January 28, 2000 and returned to work on February 24, 2000. Appellant also testified that she was working on February 24, 2000 and overheard two coworkers teasing another employee who had "some sort of disability." Appellant testified: "And they had begun teasing him. 'Jerry, how long have you been in that green uniform? You've been in that green outfit for 20 years. When was the last time you had some pussy? Does your dick get hard?'" Appellant indicated that they went on and on and she began to feel very uncomfortable. She stated that people were laughing and describing other sexual positions and she finally moved across the aisle and tried to hold her composure throwing the mail. Appellant explained that after moving to a different section, her supervisor asked why she had moved and that she could report the incident. Appellant indicated that "[a]t that point, I didn't want to be seen, let alone heard." Appellant testified that she began to shake uncontrollably and started to cry. The hearing representative advised appellant that this particular incident would be considered a new injury if supported by the medical evidence. She was asked to submit witness statements in support of her testimony and medical evidence attributing her inability to continue working that day due to the events that occurred at her place

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<sup>2</sup> Appellant's claim was initially denied by decision dated November 1, 1999 on the grounds that the evidence was insufficient to establish that she sustained an injury in the performance of duty. Appellant subsequently made several requests for reconsideration which were denied by decisions dated December 29, 2000 and February 5, 2001. Appellant again requested reconsideration and, on April 20, 2001, the Office vacated the prior decisions and accepted the claim for aggravation of post-traumatic stress disorder.

of employment. Appellant was further advised that the record would remain open for 30 days for the submission of the requested evidence and the hearing was adjourned shortly thereafter.

The Office received statements on November 25 and December 3, 2003 from Mr. Newton and Marilyn Sanders, coworkers of appellant, who indicated that Jerry was teased on a daily basis.

In a report dated October 16, 2001, Dr. Friedmutter advised that appellant's prior marriage involved physical and sexual abuse, which did not require counseling. He explained that the employment incident of August 25, 1999 created unresolved feelings from the past and made the current incident more upsetting and debilitating. The doctor advised that, as a result, appellant had severe emotional problems and that each time she attempted to return to work, her emotional problems prohibited her from doing so.

By decision dated January 29, 2004, the Office denied appellant's claim for a recurrence of disability on the grounds that her claim did not meet the definition of recurrence of disability because there were intervening factors between her present condition and her accepted claim.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>3</sup>

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.<sup>4</sup> This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.<sup>5</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>6</sup>

### **ANALYSIS**

Appellant's claim was originally accepted for aggravation of post-traumatic stress disorder as a result of having been touched by a coworker on August 25, 1999. She subsequently alleged a recurrence on February 24, 2000. During the hearing, appellant testified that, on February 24, 2000, she overheard two employees teasing a coworker. The topic of conversation

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<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> 20 C.F.R. § 10.104(b) (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>5</sup> See *Helen K. Holt*, *supra* note 4.

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

was sexual in nature and this allegedly disturbed appellant. The Office hearing representative advised appellant that the February 24, 2000 incident and her emotional reaction, if established, would constitute a new injury. Additionally, the hearing representative advised appellant of the type of medical and factual evidence needed to establish her recurrence claim. However, appellant has not submitted any rationalized medical evidence.

In the instant case, appellant did not submit any medical reports which contained a rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that her claimed condition on or about February 24, 2000 was causally related to her August 25, 1999 employment injury.<sup>7</sup> As appellant has not submitted any medical evidence showing that she sustained a recurrence of disability beginning February 24, 2000 due to her accepted employment injury, she has not met her burden of proof.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a recurrence of disability on February 24, 2000 causally related to her August 25, 1999 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 29, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> See *Helen K. Holt*, *supra* note 4.