United States Department of Labor
Employees' Compensation Appeals Board

LORRAINE E. SMITH, Appellant	)	
	)	**Docket No. 04-1699**
and	)	**Issued: December 20, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Tamarac, FL, Employer	)	

Appearances:
Lorraine E. Smith, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 29, 2004 appellant filed a timely appeal of a June 9, 2004 decision of an Office of Workers' Compensation Programs' hearing representative, affirming a September 3, 2003 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she is entitled to compensation from February 22 to April 4, 2003 with respect to her accepted emotional condition.

FACTUAL HISTORY

On August 8, 1993 appellant, then a 36-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an adjustment disorder with depressed mood causally related to her federal employment. Appellant stated on the claim form that she became aware of the condition on April 20, 1993. The statement of accepted facts issued in this case reported that appellant had a prior claim of injury on August 17, 1991 for a dog bite, and the accepted conditions from this claim (OWCP File No. 06-522682) included a phobia of dogs.

After initially denying the claim, in a decision dated March 31, 1995, an Office hearing representative accepted the claim for adjustment disorder with depressed mood. The hearing representative found that a compensable work factor was established as administrative error or abuse was established by an arbitrator's decision regarding the suspension of appellant's pay during an investigation. With regard to the medical evidence, the hearing representative found that the reports of Dr. Arnold Zager, an attending psychiatrist, were sufficient to establish an injury in the performance of duty.

Appellant returned to work with restrictions. Dr. Zager reported that appellant was restricted from residential delivery in single family areas. He indicated in a January 16, 1997 report that appellant's restriction on delivering in residential areas was based on her fear of dogs.

On February 21, 2003 appellant filed a claim for compensation from January 31 to February 21, 2003. The record indicates that the Office paid compensation for the period January 31 to February 21, 2003. On April 4, 2003 appellant filed a CA-7 for the period February 22 to April 2, 2003.

In a February 5, 2003 report, Dr. Zager stated that he saw appellant on January 28, 2003. She reported that "her branch manager was trying to change her route and force her to work a portion of the day doing residential deliveries." He stated that appellant was treated on January 31, 2003 and, because of her marked distress and symptoms of developing major depression, she was disabled for work.

By letter dated May 6, 2003, the Office advised appellant that her claim for compensation commencing February 22, 2003 had not been approved and it appeared that she was claiming exposure to new work factors and should file an appropriate new claim. Appellant submitted a May 15, 2003 report from Dr. Zager, stating that appellant's condition was a manifestation of her April 20, 1993 injury and confirmed the restrictions against residential delivery. He stated that appellant's symptoms were prompted by an arbitrary disregard of her medical restrictions. Appellant also submitted a letter dated June 3, 2003, stating that for 10 years she had a medical restriction of no residential deliveries, but on January 27, 2003 she was instructed to deliver mail to a new residential portion of her route. Appellant stated that she informed her supervisor that she was restricted from residential delivery, but on January 31, 2003 was told that she would have to deliver to a residential area and her doctor placed her off work.

By decision dated September 3, 2003, the Office denied the claim for compensation from February 22 to April 4, 2003. The Office found that the medical evidence was insufficient to establish disability for the claimed period. Appellant requested an oral hearing, which was held on April 20, 2004.

By decision dated June 9, 2004, the hearing representative affirmed the September 3, 2003 decision. The hearing representative found that appellant did not establish a recurrence of disability as a result of the August 8, 1993 employment injury; she recommended that appellant pursue the claim by filing a claim for a new injury.

LEGAL PRECEDENT

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 the employment injury and supports that conclusion with sound medical reasoning.[1] The Office's implementing federal regulations define a recurrence of disability as an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[2]

ANALYSIS

Appellant filed a CA-7 for the period February 22 to April 4, 2003 and indicated that the claim number was 06-579166. This is the occupational disease claim that was accepted in 1995 for an adjustment disorder with depressed mood as a result of administrative error or abuse. Appellant did return to work[3] and the claim for compensation therefore is in the nature of a recurrence of disability.[4] The Board notes that the record indicates that there was a prior claim involving a dog bite and apparently a consequential injury of a dog phobia was accepted under OWCP File No. 06-522682. That claim is a separate claim with separate injuries.[5] The hearing representative found that a recurrence of disability related to the August 8, 1993 injury was not established. The Board will not address issues arising under 06-522682 on this appeal; the issue is whether appellant has established a recurrence of disability causally related to the accepted adjustment disorder with depressed mood. Although the Office paid compensation for the period January 31 to February 21, 2003, there is no indication that the Office accepted a recurrence of disability with respect to this claim. It is appellant's burden of proof to establish a specific period of disability causally related to the accepted injury.[6]

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[1] *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

[2] *See* 20 C.F.R. § 10.5(x).

[3] The modification of the job duties was apparently based on a dog phobia, not on the adjustment disorder with depressed mood resulting from administrative error.

[4] *See Alfredo Rodriguez*, 47 ECAB 457 (1996) (a CA-7 filed after a return to work was considered a claim for a recurrence of disability).

[5] It is not clear what evidence may have been submitted with respect to 06-522682. The Office may administratively combine the files for future adjudication if appropriate.

[6] *See Connie Johns*, 44 ECAB 560 (1993) (the payment of compensation pursuant to a CA-8 claim for compensation for a period after appellant stopped working did not itself constitute acceptance of a recurrence of disability and appellant must submit sufficient medical evidence to establish an employment-related disability for the period claimed).

The medical evidence from Dr. Zager is not sufficient to establish a recurrence of disability as of February 22, 2003. Although Dr. Zager stated that appellant's disability was a manifestation of an April 20, 1993 injury, he clearly indicated that appellant became upset when she was told that she had to deliver to a new residential area on her route. As the Office explained to appellant, if her claim is based on a new alleged work factor, she must submit a new claim.[7] This is particularly important in an emotional condition claim, as the Office must make findings as to whether the new work-related allegations constitute compensable work factors. Since Dr. Zager does not attribute disability on or after January 31, 2003 to the accepted injury but to a new work factor, appellant has not established a recurrence of disability causally related to the adjustment disorder with depressed mood.

CONCLUSION

The Board finds that appellant did not submit sufficient evidence to establish a recurrence of disability from February 22 to April 4, 2003 causally related to the accepted condition of adjustment disorder with depressed mood.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 9, 2004 and September 3, 2003 are affirmed.

Issued: December 20, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997), providing that in emotional stress cases a new claim should always be required if new incidents are alleged.