

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA L. DUBUQUE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Bay Pines, FL

*Docket No. 03-2246; Submitted on the Record;
Issued January 6, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

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

On May 8, 2003 appellant, then a 45-year-old nurse, filed an occupational disease claim alleging that on February 3, 2001 she became aware of pain and depression which she related to her employment.

Appellant stated that she underwent a spinal fusion at L5-S1 on April 2, 2002 and returned to work under her doctor's recommendation on November 4, 2002. She alleged that she was still in pain and was forced to seek medical attention from her psychiatrist for depression due to chronic pain. Appellant stated that her physician, Dr. Michael Piazza, placed her on light duty, sedentary restrictions as of October 30, 2002. These restrictions allowed lifting up to 20 pounds for 2 hours a day. Appellant alleged that she was placed on a job where she had to answer telephones for eight hours a day in a patient examination room near an adjacent bathroom. She found it disturbing to speak on the telephone while listening to patients "eliminate" and the toilets flush. Appellant stated that individuals on the telephone asked if she were on the toilet and she had to explain the situation. She stated that her supervisors were aware of the situation but no action was taken.

On April 29, 2003 a nurse manager, Randi Milne, informed appellant that, starting the next day she was to report to "5A," the medical floor with neurology rehabilitation, for her new work assignment. Appellant stated that it was one of the heaviest floors to work on and that she felt "devastated." She asked the chief nurse, Debbie Williams, if there were any other positions available. Ms. Williams advised appellant that she was needed in 5A. Appellant stated that she was "never asked how [she] felt or if [she] thought [her] back could handle the work load or anything." She stated that she checked the bulletin board for job openings and noted several other jobs for which she was qualified that did not involve heavy lifting. She felt "an injustice" had occurred.

Appellant noted that she had been through several unpleasant experiences at the employing establishment which caused her to seek medical attention by a psychiatrist. She was diagnosed with severe depression and an anxiety disorder for which she took medication.

In a report dated May 6, 2003, Dr. Luis A. Herrero, a Board-certified psychiatrist, stated that he first evaluated appellant on January 5, 2000 and diagnosed a panic disorder with agoraphobia and an obsessive disorder. He noted that there was a history of depression in appellant's family. Dr. Herrero stated that appellant was on light duty as a triage nurse and was asked to return to full-time work with no limitations. He noted that she had back surgery performed by Dr. Piazza on May 2, 2002. Dr. Herrero stated that the result had been less than satisfactory since appellant was in constant pain and her condition was aggravated by heavy lifting, which she was unable to do. This caused her severe stress and an inability to cope.

By letter dated June 19, 2003, the Office of Workers' Compensation Programs informed appellant that additional evidence was necessary, including corroboration that the bathroom noise she could hear in her office was a problem. The Office requested medical evidence on how the stress from the limited-duty telephone work caused her condition and how the noise from the adjacent bathroom contributed to her stress.

By letter dated July 25, 2003, appellant reiterated the problem with the noises from the adjacent bathroom and stated that the odors were bothersome as well.

In a report dated July 25, 2003, Dr. Herrero stated that he had treated appellant since January 2000 for a panic disorder and that the stressors appellant experienced in answering the telephones in 2002 aggravated her condition. He stated that the stress appellant underwent from the bathroom noise, lifting and patient interaction had increased her back pain which "contributed to her severe anxiety and depression which were aggravated by the bathroom noise, flushing, etc." Dr. Herrero stated that appellant's family history and preexisting stress were not the main cause of her current clinical condition. He stated that her job stress increased her anxiety and depression, even though she had a familial predisposition to her condition. Regarding appellant's assignment to the neurological unit, Dr. Herrero noted that appellant was "very fearful" that lifting patients would increase her anxiety and make her more depressed. He stated that she was very fearful that she would reinjure her back and regress regarding the improvement that she had shown so far.

In a statement dated August 11, 2003, Ms. Milne stated that the office in the woman's clinic where appellant worked was next to a restroom with an adjoining door and that the door did not block out the noise or odors of someone using the facilities. She stated that a request had been made to soundproof the office, but the work had not yet started. Ms. Milne stated that appellant's desk was moved to allow a higher desk to buffer the sound. She noted that the women's clinic program manager was also in the process of trying to relocate the office to another room. Ms. Milne advised that appellant was not required to perform any lifting in the performance of her duties with the telephone. Appellant was informed that she was going to be reassigned to the medical-surgical area and was supposed to meet with the new nurse manager the day after she was informed of the transfer. Ms. Milne noted that it was unlikely that appellant would be required to lift patients in her new job and that she should discuss her concerns with the new nurse manager and give the nurse manager a chance to describe

appellant's new duties. Ms. Milne stated that appellant did not make it to the meeting as she called in sick that day and did not return.

By decision dated September 3, 2003, the Office denied the claim, stating that the medical evidence did not demonstrate that the claimed medical condition was related to an established work-related event.

The Board finds that appellant did not establish that she sustained an emotional condition in the performance of duty, as alleged.

To establish that she has sustained an emotional condition causally related to factors of federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but, nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.³

Appellant's contention that she sustained stress from being assigned to the neurological unit in violation of her medical restrictions could, if proven, constitute a compensable factor of employment.⁴ Appellant, however, did not establish that she was actually assigned to work which exceeded her physical restrictions. In a August 11, 2003 letter, Ms. Milne noted that it was unlikely that appellant would be required to lift patients in the medical-surgical unit and appellant was encouraged to discuss her concerns in a meeting with the new nurse manager the next day. The record indicates that appellant did not show up for the meeting or ever start work in the medical-surgical unit. Her reaction to the proposed reassignment to the medical-surgical unit therefore, constitutes a fear of future injury. Dr. Herrero noted appellant's fear that she would reinjure her back. The possibility of a future injury does not constitute an injury under the

¹ *Robert W. Johns*, 51 ECAB 137, 141 (1999).

² 5 U.S.C. §§ 8101-8193.

³ *Clara T. Norga*, 46 ECAB 473, 480 (1995); see *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *Virginia Dorsett*, 50 ECAB 478, 482 (1999).

Act.⁵ Appellant therefore has not established any compensable factors of employment in this regard.⁶

Ms. Milne corroborated that appellant's office in the woman's clinic was situated near a restroom and that appellant was exposed to bathroom noises and odors. The Board has held that when appellant encounters such conditions in the performance of her regular or specially assigned duties, they may constitute employment factors under the Act.⁷ Appellant encountered the noises and odors in the office where she worked in the performance of her regular or specially assigned duties. Therefore they constitute a compensable factor of employment. Appellant also contended that management acted unreasonably or abusively in failing to correct the problem. However, the record establishes that management took some measure to alleviate the problem, as in requesting that the bathroom be made soundproof, moving appellant's desk, and trying to relocate appellant to another work area. The evidence does not establish that management acted abusively or unreasonably.⁸

Appellant's burden of proof is not discharged by the fact that she has identified an employment factor which may give rise to a compensable disability under the Act. To establish her occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that she has an emotional or psychiatric disorder and that such disorder is causally related to the established compensable employment factor, in this case, exposure to the bathroom noises and odors.⁹

In a July 25, 2003 report, Dr. Herrero stated that the stress appellant experienced from the "bathroom noise, lifting, patient interaction" increased her preexisting back pain which "contributed to her severe anxiety and depression which were aggravated by the bathroom noise, flushing, etc." He noted that appellant's family history and preexisting stress were not the main cause of her current clinical condition and that her job stress increased her anxiety and depression. The Board finds, however, that Dr. Herrero's opinion is not well rationalized because he did not provide a detailed medical explanation addressing how such bathroom noises or odors caused or contributed to appellant's diagnosed emotional condition. He noted that appellant had a preexisting history of panic disorder with agoraphobia and obsessive disorder. The need for a medical report with a complete medical history, history of exposures and explanation of how the bathroom noise and odors specifically contributed to appellant's emotional status is necessary. Dr. Herrero performed no psychiatric testing and did not give a particularly detailed medical history. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.¹⁰ Dr. Herrero's opinion is therefore insufficient to

⁵ *Id.* at 482.

⁶ See *Ernest St. Pierre*, 51 ECAB 623, 625 (2000).

⁷ See *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

⁸ See *Sherry L. McFall*, 51 ECAB 436, 439 (2000).

⁹ See *Clara T. Norga*, 46 ECAB 473, 482-483; *William P. George*, 43 ECAB 1159 (1992).

¹⁰ *Caroline Thomas*, 51 ECAB 451, 456 n.10 (2000).

establish appellant's claim.¹¹ Appellant has therefore failed to establish that she sustained an emotional condition in the performance of duty, as alleged.

The September 3, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 6, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹¹ See *Kathleen D. Walker*, *supra* note 7.