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

| | | |
|---|---|---|
| **SHEILA G. MALRY, Appellant** | ) | |
| **and** | ) | **Docket No. 03-246** |
| | ) | **Issued: May 10, 2004** |
| **U.S. POSTAL SERVICE, POST OFFICE, BRENTWOOD STATION, Washington, DC** | ) | |

*Appearances:*
*Jules Fink, Esq.,* for the appellant
*Michelle C. Yau, Esq.,* for the Director

Oral Argument April 7, 2004

## DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

### ***JURISDICTION***

On November 8, 2002 appellant filed a timely appeal from the August 5, 2002 decision of the Office of Workers' Compensation Programs, which denied her claim that she sustained an injury in the performance of duty on December 12, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's August 5, 2002 decision. The Board has no jurisdiction to review Office decisions in 1998 denying appellant's claim that she sustained a psychiatric condition causally related to an accepted employment injury on June 9, 1997. More than one year has passed from the dates of those decisions to the filing of the present appeal and the Office did not adjudicate the issue in its August 5, 2002 decision.

### ***ISSUE***

The issue is whether appellant sustained an injury in the performance of duty on December 12, 2000, as alleged.

## ***FACTUAL HISTORY***

On December 22, 2000 appellant, then a 43-year-old mail processor, filed a claim alleging that she sustained an injury in the performance of duty on December 12, 2000. She explained that this injury went back to her employment injury in June 1997, when a piece of equipment fell on her and she was treated for injuries and a post-traumatic stress disorder. She stated:[1]

> "On Monday December 12, 2000 when I got sick the same symptoms occurred. Nausea, chills, hands began to perspire, ringing of bells from the machine in my head. The noise from the machines just wouldn't stop. I began to feel dizziness as if I was going to pass out. I went to Melvin Harmon and told him I had to leave because the noise of the machines was making me sick. He said noise? because he was puzzled. He didn't understand what I meant and I didn't have time to explain because I thought I was going to throw up so he notified my leave slip and I left."

On May 4, 2001 the Office requested that appellant submit additional information to support her claim, including a physician's report that provided the following:

> "[D]ates of examination and treatment; history of injury given by you to the physician; detailed description of findings; results of all [x]-ray and laboratory tests; diagnosis and clinical course of treatment followed; the physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. This explanation is crucial to your claim."

In a decision dated September 19, 2001, the Office denied appellant's claim on the grounds that it lacked supportive factual and medical evidence. The Office noted that none of the medical documentation submitted provided an opinion, supported by medical rationale, concerning the relationship between the claimed condition and specific employment factors.

Appellant requested an oral hearing before an Office hearing representative. Through her attorney, appellant argued that her June 9, 1997 employment injury caused and precipitated a post-traumatic stress disorder. She submitted many documents and medical records relating to the June 9, 1997 employment injury. An unsigned treatment note dated December 12, 2000 related her complaint of noise at work, working conditions and supervisor staff contributing to her problem. Her diagnosis was given as "work-related stress."

At the hearing, which was held on May 20, 2002 appellant argued that she had a recurrence of the post-traumatic stress disorder she sustained in 1997. She clarified that her exposure to noise at work on December 12, 2000 aggravated or triggered her preexisting post-traumatic stress disorder. Appellant testified to the noise made by bar code sorters at work, to her proximity to the machines and to her reaction on December 12, 2000. The hearing representative allowed appellant 30 days to submit additional evidence. She submitted, among

[1] The record indicates that the Office accepted a physical injury occurring on June 9, 1997 but denied appellant's claim that she sustained a psychiatric condition as a result.

other things, a transcription of medical records from Dr. Ghislaine Fougy, a psychiatrist. On December 15, 2000 Dr. Fougy related appellant's history and diagnosed "[p]ost[-][t]raumatic [s]tress [s]yndrome -- prolonged, acute episode of recurrence job related." On December 22, 2000 she reported that appellant was having flashbacks about the accident she had at work.

In a decision dated August 5, 2002, the hearing representative affirmed the denial of appellant's claim. The hearing representative found that appellant was exposed to noise at work on December 12, 2000 but that the medical evidence was insufficient to prove that this aggravated a preexisting post-traumatic stress disorder.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[3]

## ***ANALYSIS***

The Office accepts that appellant was exposed to noise at work on December 12, 2000 that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination, therefore, is whether her occupational exposure to noise on that date caused an injury.

Causal relationship is a medical issue,[4] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty,[6] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[7]

---

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

Appellant has submitted no such medical opinion. On May 4, 2001 the Office requested that she submit additional information to support her claim, including a physician's report that contained an opinion, supported by a medical explanation, as to how the reported work incident caused or aggravated the claimed injury. The Office advised: "This explanation is crucial to your claim." No physician in this case has explained with a medical rationale how appellant's occupational exposure to noise from bar code sorters on December 12, 2000 would cause or contribute to her diagnosed emotional condition. It is not enough for a physician to relate the history given by appellant and then merely diagnose "work-related stress" or list an acute recurrent episode of post-traumatic stress disorder as "job related." The physician must well explain, to a reasonable medical certainty, the medical or psychiatric basis for how the accepted exposure caused or contributed to appellant's emotional condition. Dr. Fougy, appellant's psychiatrist, reported appellant's history, symptoms and complaints but never discussed the nature of post-traumatic stress disorder, how this diagnosis was established in appellant's case and how the noise from bar code sorters on December 12, 2000 affected her psychiatric condition. Because appellant has submitted no such medical opinion evidence to support that her accepted occupational exposure to noise on December 12, 2000 aggravated her preexisting post-traumatic stress disorder, she has not met her burden of proof to establish the essential element of causal relationship.[8]

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on December 12, 2000, as alleged.

[8] It makes no difference to appellant's December 22, 2000 claim whether her preexisting post-traumatic stress disorder was employment related, that is, whether it was caused or precipitated by her June 9, 1997 employment injury. Such a relationship is not a prerequisite to compensation in this case, which depends solely on whether the noise from bar code sorters on December 12, 2000 aggravated the condition.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the August 5, 2002 decision of the Office of Workers' Compensation Programs is affirmed.[9]

Issued: May 10, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] Nothing in the Board's decision prevents appellant from obtaining the medical opinion evidence needed to establish causal relationship and submitting it to the Office with a request for reconsideration within one year from the date of this decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3.b(1) (June 2002).