



## **FACTUAL HISTORY**

On November 19, 2002 appellant, then a 50-year-old management analyst, filed an occupational disease claim for stress and anxiety. She alleged that her condition was caused by an increasing workload due to downsizing at the employing establishment, inappropriate or inadequate communication, working for inexperienced supervisors and management personnel, and frustrations relating to employee's rights, obligations and position restructuring. Appellant became the division director for the Property and Inventory Division in 1999. She stated that her division lost personnel and she was not allowed to replace them. Appellant noted that this action increased the workload for the remaining staff. She described a massive reorganization resulting in her removal from her supervisory position which was given to an employee from another office that was dissolved in 2002. In August 2002, the employing establishment announced that it had to reduce personnel by 485 people by the fiscal year 2003-2004. Early retirement was offered but appellant did not meet the requirement for an early retirement. She stated that, ever since she was shifted in a 1997 reorganization, she had been experiencing ongoing health problems. Appellant submitted copies of the memoranda she had received concerning the closing down of her employing establishment and her reassignment to another employing establishment.

In an undated response, Jerry Gregg stated that he had been appellant's supervisor since October 2002. He noted that appellant's workload was no more than any of the other workers he supervised. Mr. Gregg suggested that appellant's workload was less than her GS-13 rating should warrant. He commented that appellant should understand that there was a certain amount of stress associated with getting a paycheck. Mr. Gregg indicated that, although appellant complained that her job description was inappropriate, the employing establishment was undergoing a massive reorganization. He noted that he was probably the inexperienced supervisor that appellant referred to because she had been in charge of the branch before he was assigned to head that branch. Mr. Gregg stated that appellant had not experienced any more or less work-related stress than any of his other employees.

Appellant submitted a November 19, 2002 report from a nurse practitioner who stated that her diagnosis was hypertension affected by stress. She indicated that appellant had been unable to work from November 12 to 19, 2002. The nurse listed the medications that appellant was taking for her emotional condition and her hypertension.

In a January 2, 2003 letter, the Office asked appellant to submit further information. The Office asked appellant to describe in detail the employment-related conditions or incidents which she believed contributed to her illness, being as specific as possible. The Office indicated that appellant should discuss quotas, deadlines, training or experience for her positions, and whether she was requested to work overtime or take work home. The Office requested appellant to describe the development of her condition. The Office informed her that she needed to provide a comprehensive medical report which described her symptoms, results of examinations and tests, diagnosis and her physician's opinion, with medical reasons, on the cause of her condition. The Office allotted appellant 30 days within which to respond. Appellant did not respond within the time allotted.

In a May 21, 2003 decision, the Office denied appellant's claim on the grounds that she had not submitted any medical evidence in support of her claim.

In an October 22, 2003 letter, appellant stated that she had not received any information concerning her claim, despite many telephone calls in which she left messages. When she finally spoke to a representative of the employing establishment, she was informed that her claim had been denied. She commented that she had no idea why her claim was denied and requested reconsideration.

In support of her request, appellant submitted documents from an Equal Employment Opportunity (EEO) complaint she filed. She submitted a March 20, 2002 EEO counselor's report which stated that appellant had alleged discrimination on the basis of sex and race which had been occurring since October 1999. The counselor noted that appellant complained that she had not received a promotion to GS-13 while all other division heads had been promoted to GS-13 or higher. The counselor stated that, when appellant became a division director, she was not given the authority to hire new employees or contractors or to promote her employees. The counselor indicated that appellant had lost four employees in the prior year that had not been replaced. Appellant claimed that the most recent incident of discriminatory treatment occurred on December 12, 2002 when her supervisors announced plans to abolish her division and reassign her employees to other divisions. She was reassigned to work under another division director. Appellant contended that her new supervisor, Sue Austin, had made comments suggesting that she would discriminate against individuals based on race or national origin. Appellant stated that Ms. Austin used profanity with her employees.

The EEO counselor interviewed Mary Lou Rakosky, appellant's superior, on March 14, 2002. Ms. Rakosky indicated that appellant's division was eliminated due to poor interaction between appellant's division and the Facilities Division by a merger of the two divisions. After the employees were moved from appellant's division to the Facilities Division, it was no longer a viable stand-alone division. Ms. Rakosky denied that the proposed reorganization constituted discrimination against appellant on the basis of race and sex. She noted that the goal of the reorganization was based strictly on creating the most efficient management structure. The EEO counselor reported that resolution attempts were unsuccessful.

In a May 22, 2002 statement, appellant offered corrections to the EEO counselor's report. She stated that she was not alleging discrimination since October 1999. She declared that the reasons for her discrimination complaint was that she was not given the same opportunities to manage her employees as far as recruitment, promotions or hiring; her division had been managed in the past by black female directors at a GS-12 level; and that many of her division's functions were reassigned to other officers or divisions to keep her from receiving promotions.

In a February 11, 2004 nonmerit decision, the Office denied appellant's request for reconsideration because the submitted evidence was irrelevant to the issue upon which she was denied. The Office explained that appellant had not met the requirements to submit medical evidence to show she had sustained an injury in her employment.

### **LEGAL PRECEDENT**

When working conditions are alleged as factors in causing a condition or disability in emotional condition cases, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which factors are not deemed factors of employment and may not be considered. If a claimant does implicate a compensable factor of employment, the Office should then determine whether the evidence substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>1</sup>

### **ANALYSIS**

The Office, in its May 21, 2003 decision, found that appellant had not submitted any medical evidence to support her claim that she sustained an emotional condition due to factors of her employment. The Office, however, did not describe any factors of appellant's employment or make any findings on whether appellant had established any compensable factors of employment. The Office is required to first make the findings of fact on the alleged compensable factors of employment before it addresses the issue of whether medical evidence shows a causal relationship between appellant's emotional and hypertensive conditions and compensable factors of employment. Prior to the May 21, 2003 decision, appellant only identified a few factors of employment, an increase in workload because employees had left and were not replaced, the lack of supervisory authority, disparate treatment in promotion and the loss of her supervisory position. The Office made no effort to develop those factual allegations to determine whether appellant had established any compensable factor of employment. The Office just assumed that appellant had set forth a set of compensable factors of employment and then found that she had not submitted any medical evidence in support of her claim. The Office, therefore, failed to develop the record to determine whether the factors identified by appellant constituted compensable factors of employment.<sup>2</sup>

### **CONCLUSION**

The case is not in posture for decision and will be remanded for findings of facts on whether appellant had compensable factors of employment. After further development as it may find necessary, the Office should issue a *de novo* decision.

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<sup>1</sup> *Dinna M. Ramirez*, 48 ECAB 308 (1997).

<sup>2</sup> As the Board has found that the case must be remanded for further development, the issue of whether the Office properly denied appellant's request for reconsideration is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 11, 2004 and May 21, 2003 be set aside and the case remanded for further action as set forth in this decision.

Issued: October 22, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
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