United States Department of Labor
Employees' Compensation Appeals Board

DANA C. BRUCE, Appellant	)	
	)	
and	)	**Docket No. 04-658**
	)	**Issued: September 2, 2004**
DEPARTMENT OF THE TREASURY, SOCIAL SECURITY ADMINISTRATION, Albuquerque, NM, Employer	)	

Appearances:
Gordon Reiselt, *Esq.,* for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 12, 2004 appellant filed a timely appeal from the November 21, 2003 merit decision of the Office of Workers' Compensation Programs, which denied her claim that she sustained an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty on or after August 29, 1999.

FACTUAL HISTORY

On December 15, 2000 appellant, then a 56-year-old contact representative, filed a claim for compensation alleging that her anxiety, depression and insomnia on or after August 29, 1999 were a result of her federal employment. She attributed her emotional condition to daily contact with verbally abusive clients. Appellant alleged difficulty grasping and retaining information

and instructions. Her concentration level was low, she stated, and the three months of training were difficult for her. She barely passed the class and came out feeling confused and unprepared to do her job. Appellant stated that she was required to work a 40-hour week January through April each year, and she was able to work through training and until March 2000, but at that point, she could not finish her full-time tour because she felt depressed, anxious, overwhelmed and exhausted. She stated:

> "The volume of calls, the fact that at least 50 percent of the people I speak with are upset either with the 'System' or their claims representatives and take out their frustrations on me. Clients do not hesitate to use profane language and are verbally abusive. Ask any [telephone service representative]. I am faced with having to make a decision on attempting to turn the situation around or terminating a call, which is frowned upon."

Appellant explained that one residual of her previous employment injury[1] was an inability to deal with negative situations. She had a difficult time controlling herself in adverse situations, especially when she felt threatened. Appellant stated that her position required her to work a full-time schedule while she was in training, which was a virtual impossibility for her. She was dismayed to have worked at the employing establishment for 16 months and without an established service computation date. Appellant alleged that she was not receiving the correct amount of sick leave. She stopped work on December 15, 2000.

Appellant's position description stated the following:

> "The employee interviews beneficiaries and inquiries by telephone and is required to explain and interpret laws, regulations, policies and procedures applicable to the individual situation.
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> "Callers represent all socioeconomic and intellectual levels and include a high proportion of the aged (often displaying the infirmities of age) and the disabled. Some are destitute. They are sometimes perturbed, irate, or confused about adverse decisions, misunderstood procedures, or delay or failure of the benefit payment system to make timely payments. Employees are expected to be especially tactful and restrained, but firm, in analyzing the facts and explaining the decision or determining the next indicated action; employees are expected to gain concurrence or cooperation through explanation and discussion to the extent possible.
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> "Work is ordinarily performed in an office environment. The employee must remain seated at a telephone work station for relatively extended periods. The volume of interviews, the variety of issues, and the dissatisfaction and helplessness of many callers create demands and pressures which require a high degree of resilience, tolerance and patience, while accentuating the difficulty of making correct decisions."

[1] The Office accepted her previous claim (No. 13-0708622) that she sustained a work-related major depression on or about April 27, 1983.

In a report dated May 16, 2002, Dr. Gerald S. Fredman, a Board-certified psychiatrist, indicated that appellant was still suffering anxiety and depression from her initial work injury. He noted that appellant attempted to work on a part-time basis for the Social Security Administration, stating:

> "Her duties consisted of working with the public solving problems on the telephone. She researched problems on a computer at her desk. This position was clearly less demanding and complex than the job she performed at the time of her work injury. Despite a strong effort to perform for the Social Security Administration, the symptoms of depression and anxiety became increasingly severe and pervasive as time went on. As a result, she stopped working there in December of 2000. Therefore, it is my opinion that she is not able to perform work on a full[-] or part-time basis in an alternative work setting at this time."

The employing establishment responded to appellant's claim for compensation, as follows:

> "As a contact representative, [appellant] received an eight-week basic service representative training course, which she passed. All newly trained employees work with a mentor for their first four weeks on the job. In addition, all newly trained employees receive daily downtime to discuss any issues or to clarify policies and procedures. As a supervisor in a training unit, I never held any production standards on any employee. [Appellant] was never expected to answer a certain number of calls per day. She would ask to see her [tele]phone statistics and they continually improved over time like with any new employee. [Appellant] received a rating of successful on October 26, 2000.
>
> "[Appellant] did not inform me of her prior injury until October 2000 when she told me that she was going to stop taking all medication to 'clean out her system' and would need time off to rest and deal with the side effects. Her leave requests were granted.
>
> "[Appellant] applied for the Teleservice center position. The vacancy announcement clearly states the duties and expectations. During the two-hour panel interview, all prospective employees are advised of the stress involved and given true to life examples of what to expect on the job. One condition of employment was that [appellant] work full time the first quarter of the year. She provided a statement from her physician requesting that her hours be reduced to [a] 24-hour weekly schedule, which we granted."

On September 9, 2002 the Office requested that appellant submit additional evidence to support her claim, including her doctor's opinion, with medical reasons, on the cause of her diagnosed condition. No response was submitted.

In a decision dated October 9, 2002, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that appellant failed to submit a complete statement describing the specific incidents and conditions that caused her emotional

condition, thus preventing the Office from performing its adjudicatory function of determining the truth of her allegations and whether the factors that caused her disability were compensable. The Office found it was unnecessary to develop the medical evidence because appellant had failed to establish a factual basis for her allegations.

On October 2, 2003 appellant requested reconsideration and submitted a statement detailing the employment factors to which she attributed her condition. Appellant submitted an affidavit from a coworker who attested to the difficulty of performing the duties of a teleservice representative. Her coworker confirmed that teleservice representatives dealt with abusive callers, stating:

> "Some are mentally ill and have a difficult time understanding instructions; some are verbally abusive; some are just generally upset and mad; and some even threaten suicide. Teleservice representatives are yelled at and cried to. Callers blame them if an overpayment is made, and they have to pay back Social Security."

Appellant also submitted treatment notes from Dr. Fredman. On September 27, 1999 Dr. Fredman noted that appellant was currently in training to be a teleservice representative and that she found the training to be difficult: "Every spare minute I get, I have to study." On November 1, 1999 he noted appellant's complaint that going through training at her new job was stressful "with increased symptom formation -- anxiety, depression." He noted that appellant was putting in a lot of hours at home and on weekends to perform homework." On November 22, 1999 Dr. Fredman reported: "The job is difficult but she likes the people with whom she works." On January 12, 2000 appellant complained that her new job was difficult because she had so much to learn, and as a result she was having trouble falling and staying asleep: "I just have to try and make it through the day." On February 18, 2000 she complained to Dr. Fredman that work pressures had become greater, that having to deal with irate individuals on telephone calls was very difficult. On March 29, 2000 appellant reported that she continued to find work difficult, that there was too much information and that she liked to feel that she had a hold on things. On August 23, 2000 Dr. Fredman reported that appellant was finding it difficult to perform her job. On September 9, 2000 he noted appellant's complaint that dealing with the public and with abusiveness was difficult: "She finds this particular aspect of job especially hard for her." On November 24, 2000 appellant advised Dr. Fredman that her job remained difficult but that she was "hanging in there." On December 5, 2000 appellant complained that her whole body was falling apart: "Decided she can't deal with stress and will likely stop working. Very concerned about her health. Depression has clearly worsened…."

In a medical report dated June 29, 2000, Dr. Fredman reported an increase in symptoms of anxiety and depression in the last few months: "This regression is related to starting a new job with the Social Security Administration (on a part-time basis)." In a report dated December 20, 2000, he noted that appellant regressed after she started her job with the Social Security Administration, with more serious symptoms of depression and anxiety. He stated that appellant gave notice on December 18, 2000 that she was stopping work due to the worsening of her

psychiatric condition. Dr. Fredman supported appellant's decision. On May 13, 2003 he reported as follows:

> "As a result of performing her duties as a teleservice operator, there was an aggravation of her psychiatric conditions with more serious symptoms and impairment. The duties of that job contributed to her condition (*i.e.*, worsening of mood disorder and anxiety disorder) and ultimately led to her leaving her position with the Social Security Administration. This was clearly a setback to [appellant] as she was highly motivated to return to work. [Appellant] continues to have disabling symptoms contributable in part to work duties as a teleservice operator for the Social Security Administration."

In a decision dated November 21, 2003, the Office reviewed the merits of appellant's case and denied modification of the October 9, 2002 decision. The Office found that appellant's record failed to show any activities or employment factors occurring in the performance of her duties.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[3] When an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of her work.[4]

ANALYSIS

Appellant attributed her anxiety and depression and insomnia on or after August 29, 1999 in part to the duties and requirements of her position as a contact representative. She described her basic service representative training and her interaction with beneficiaries on the telephone. It does not matter that she passed the training course, that she had a mentor for her first four weeks on the job, that she had daily downtime, that her telephone statistics improved, that she received a rating of successful on October 26, 2000, that her leave requests were granted, that she applied for the position, that the vacancy announcement clearly stated the duties and

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Lillian Cutler*, 28 ECAB 125 (1976).

expectations of the job or that all prospective employees were advised of the stress involved. Appellant alleged that her emotional condition occurred, or was aggravated, while she was performing the regular and specially assigned duties of her employment. The factual evidence, including the official position description and statements by appellant, her coworker and the employing establishment, described the demands and pressures of that position. The Board finds, therefore, that the evidence in this case establishes a compensable factor of employment under *Cutler*.[5]

The question for determination is whether the established duties and demands of appellant's position caused or aggravated her diagnosed emotional condition. Causal relationship is a medical issue,[6] 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,[7] must be one of reasonable medical certainty,[8] 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.[9]

Appellant's attending psychiatrist, Dr. Fredman, generally supported causal relationship. He demonstrated an understanding of the nature of appellant's position, and he reported that there was an aggravation of her psychiatric conditions with more serious symptoms and impairment. The duties of that job, he concluded, contributed to the worsening of her mood disorder and anxiety disorder and ultimately led to her leaving her position. It is well established that the aggravation of preexisting disease or defect is as compensable as an original or new injury.[10] Dr. Fredman supported an employment-related aggravation of appellant's preexisting emotional condition, and there is no medical opinion to the contrary; however, his opinion lacks sufficient medical reasoning to establish the element of causal relationship. Dr. Fredman did not fully explain how the demands and pressures of appellant's position affected her preexisting emotional condition and what findings in particular supported his conclusion. This diminishes the probative value of his opinion.[11] Nonetheless, the Board finds that the evidence in this case is

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[5] The evidence does not establish as factual that the employing establishment erroneously failed to set a timely service computation date or to credit appellant with the correct amount of sick leave. Those factors cannot serve as a basis for entitlement in this case.

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

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

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

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

[10] *E.g., Charles A. Duffy*, 6 ECAB 470 (1954).

[11] *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

sufficiently supportive of appellant's claim for compensation that further development of the evidence is warranted.[12]

The Board will set aside the denial of appellant's claim and remand the case to the Office for an appropriate statement of accepted facts, one that details the training appellant underwent and the duties and responsibilities of her position as a contact representative, including the established demands and pressures of that position as they are reflected in the official position description and in correspondence from the employing establishment. The Office shall provide Dr. Fredman a copy of this statement so that he may base his opinion on an accepted factual background. The Office shall ask him to provide a well-reasoned explanation of whether the duties and requirements of appellant's position aggravated her preexisting emotional condition. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation.

CONCLUSION

The Board finds that this case is not in posture for decision. The evidence establishes a compensable factor of employment, but the medical opinion evidence on causal relationship warrants further development.

[12] *See John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: September 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member