United States Department of Labor
Employees' Compensation Appeals Board

DELPHINE LYON-SCOTT, Appellant	)	
and	)	**Docket No. 05-1646**
	)	**Issued: January 5, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Carol Stream, IL, Employer	)	

Appearances:
Delphine Lyon-Scott, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 2, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 27, 2005 in which an Office hearing representative affirmed a November 23, 2004 decision denying her claim. 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 sustained an injury arising in the performance of duty causally related to factors of employment on September 6, 2004.

FACTUAL HISTORY

On September 14, 2004 appellant, then a 42-year-old supervisor of distribution operations, filed a claim alleging that she developed chest pains and had to be transported to an emergency room on September 6, 2004. She alleged that Donald Bell, the acting manager, had followed and yelled at her in an abusive manner that caused stress. The employing establishment asserted that appellant would not follow her supervisor's instructions and had engaged in abusive

language and conduct. In a September 7, 2004 incident report, Mr. Bell stated that on September 6, 2004 appellant appeared to have an attitude about being at work on a holiday and had told him she was not going to follow his instructions with regard to personnel matters. Appellant complained that he was following her and had walked away saying that she did not have to talk to him. Mr. Bell stated that he learned that the paramedics came as appellant was "threatening" a heart attack. The record reflects that appellant was hospitalized on September 6, 2004 and released the next day with a return to work date of September 9, 2004. Appellant did not return to work.

In a letter dated October 18, 2004, the Office advised appellant that the information submitted with her claim was not sufficient to make a determination on her claim and requested additional supportive factual and medical evidence.

In an October 23, 2004 statement, appellant provided details about the September 6, 2004 incident. She alleged that Mr. Bell approached her with a "loud aggressive abusive voice and pointed his fingers in her face in a threatening manner." She stated that Mr. Bell had followed and yelled at her. Witness statements noted that Mr. Bell was seen following appellant and yelling at her after she tried to end a conversation. Some of the witnesses reported hearing that appellant had told Mr. Bell to stop following her; other witnesses reported that the conversation appeared heated and that Mr. Bell had acted in an aggressive or harassing manner to appellant.

Appellant noted that she had a medical history of cardiac symptoms and submitted medical notes from Dr. Percy Conrad May, a general practitioner and a physician from Northwest Community Hospital. Dr. May's treatment notes dating from January 3, 2002, diagnosed angina pain and cardiomyopathy and indicated that appellant was hospitalized due to "cardiomyopathy and stress (job related)" from October 19 to 21, 2004.[1]

By decision dated November 23, 2004, the Office denied appellant's claim on the grounds that the evidence of record submitted failed to demonstrate a causal relationship between the established incident of September 6, 2004 and her claimed medical condition. The Office accepted as compensable the employment factor that Mr. Bell had followed and abusively yelled at her on September 6, 2004 but determined that she did not submit sufficient medical evidence establishing that the compensable employment factor caused an emotional condition or resulted in or affected her preexisting cardiac condition.

The Office received a statement from Mr. Bell concerning the September 6, 2005 incident. He acknowledged approaching appellant to give her instructions on September 6, 2005 and that, during the conversation, he had gestured with his finger, but denied putting it to her face. After he issued instructions appellant began "ramping and ragging" and told him to quit following her.

Appellant disagreed with the November 23, 2004 decision and requested a review of the written record. In a December 18, 2004 statement, appellant discussed the September 6, 2004 incident, outlined her medical care and submitted medical reports, which included a copy of the September 6, 2004 emergency service record, an October 18, 2004 emergency room report and

[1] Other material not associated with or relevant to the September 6, 2004 incident was also submitted.

hospital records leading up to and including a left heart catherization performed on October 20, 2004, which revealed normal coronary arteries.

In a September 7, 2004 report, Dr. John P. Rosanova, a Board-certified internist, diagnosed noncardiac chest pain, cardiomyopathy, anxiety disorder and obesity. He noted that during an argument with her supervisors, appellant developed chest pain. He presented his examination findings, noting that she was asymptomatic with negative markers and opined that the etiology of her chest pain did not appear to be cardiac in nature, but due to stress and anxiety. He further noted that appellant would be discharged to resume home medications and follow-up with her primary care physician. In a medical note also dated September 7, 2004, Dr. Rosanova stated that appellant could return to work on September 9, 2004.

In an October 19, 2004 cardiology consult attending report, Dr. Eva Chomka, a Board-certified internist, noted that appellant had been experiencing chest discomfort for about a year, which was either due to exertion or stress. Dr. Chomka noted that appellant worked for the employing establishment and had indicated that she was under stress at work. On examination, Dr. Chomka noted that she felt chest discomfort when she was near appellant, which was her clinical diagnostic sign for emotional/psychological discomfort.

In an October 27, 2004 report, Dr. May stated that appellant was seen at the hospital on September 6, 2004 with chest pain after an altercation on the job. He advised that the diagnosis was stress, which was job induced. In a November 30, 2004 disability note, Dr. May reported that appellant was under his care for a cardiomyopathy and could return to work on January 10, 2005.

In a December 9, 2004 medical note, Dr. Stacy A. Morgan noted that appellant had been under her care since October 13, 2004.[2] She diagnosed major depressive disorder and post traumatic stress disorder and opined that appellant was totally disabled.

In a December 10, 2004 letter, Dr. Arthur G. Jones, a Board-certified internist, advised that he had seen appellant intermittently since November 7, 2002. She had noncardiac chest pain that was related to stress (panic attacks), for which counseling was recommended. Appellant stated that her supervisor repeatedly harassed her on September 6, 2004 which resulted in chest pain for which she was hospitalized. Dr. Jones reviewed the medical records of her hospitalization and agreed that she had stress induced chest pain.

By decision dated April 27, 2005, an Office hearing representative affirmed the November 23, 2004 decision. The hearing representative found that appellant submitted insufficient medical evidence, addressing the causal relationship of her heart or stress-related condition as arising out of the accepted employment factor.

LEGAL PRECEDENT

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

[2] Dr. Morgan's credentials are not of record.

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.[3] 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.[4]

An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.[5] This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.[6]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, 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 working conditions are not deemed factors of employment and may not be considered.[7] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[8]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[9] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10] Neither the mere fact

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[6] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[7] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[8] *Id.*

[9] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[10] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11]

ANALYSIS

Appellant alleged that on September 6, 2004 she experienced chest pains due to harassment by Mr. Bell, her supervisor. She stated that Mr. Bell had approached her in an aggressive and abusive manner, pointed his fingers in her face and had followed her and yelled at her. With regard to her allegations of harassment by her supervisor, the Board notes that to the extent that disputes and incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[12] However, for harassment to give rise to a compensable factor of employment, there must be evidence that the implicated acts did, in fact, occur as alleged. Mere perceptions of harassment are not compensable under the Act.[13] In the instant case, Mr. Bell acknowledged that, during the conversation with appellant, he had gestured with his finger and that appellant had told him to stop following her. The record contains statements from appellant's coworkers indicating that Mr. Bell had followed appellant and had yelled at her in what appeared to be an abusive manner. The Board finds that appellant has established a compensable factor of employment with regard to Mr. Bell's actions. The weight of the evidence of record establishes abuse by her manager.

Appellant's burden of proof, however, is not discharged by the fact that she has established an employment factor which may give rise to a compensable disability under the Act. To establish her 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 or any other diagnosed medical condition is causally related to the accepted compensable employment factor.[14]

Appellant submitted various medical records indicating medical treatment for a heart condition prior to September 6, 2004. The Board notes that the medical evidence of a preexisting condition is not relevant as to whether appellant sustained an injury on September 6, 2004. Although the disability notes from Dr. May and Dr. Rosanova dated September 7 to October 26, 2004 address appellant's diagnoses and disability, they fail to provide any discussion of causal relationship. There is insufficient discussion of how the alleged incident caused or aggravated her heart condition or precipitated an emotional condition. Dr. Morgan provided appellant's diagnosis and opined that she was totally disabled, but failed to provide an opinion regarding the cause of appellant's condition. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's

[11] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[12] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[13] *Ruth C. Borden*, 43 ECAB 146 (1991).

[14] *Ernest St. Pierre*, 51 ECAB 623 (2000).

condition is of diminished probative value on the issue of causal relationship.[15] The Board therefore finds that this evidence is insufficient to meet appellant's burden.

Dr. Rosanova opined in his September 7, 2004 report that the etiology of appellant's chest pain did not appear to be cardiac in nature, but was due more to her stress and anxiety. The Board finds this opinion to be speculative and equivocal.[16] Dr. Rosanova failed to offer an unequivocal and reasoned opinion on causal relationship. Dr. May stated in an October 27, 2004 report that appellant's chest pain followed an altercation on the job on September 6, 2004 and resulted from job-induced stress. No medial discussion was provided for his stated conclusion. Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.[17] The reports of Dr. Rosanova and Dr. May are insufficient to establish appellant's burden of proof.

The other medical reports of record do not specifically address how the accepted employment incident caused or aggravated any particular medical condition. Appellant has not met her burden of proof in establishing that a factor of her employment caused or aggravated a claimed condition.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury or an emotional condition causally related to factors of her federal employment on September 6, 2004.

[15] *Michael E. Smith*, 50 ECAB 313 (1999).

[16] *Samuel Senkow*, 50 ECAB 370 (1999).

[17] *Albert C. Brown*, 52 ECAB 152 (2000).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board