United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 06-536**
	)	**Issued: November 24, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Elmwood Park, NJ, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant
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 January 9, 2006 appellant filed a timely appeal from the May 6 and October 13, 2005 merit decisions of the Office of Workers' Compensation Programs, which denied modification of a wage-earning capacity determination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the claim.

ISSUE

The issue is whether appellant has established a material change in the nature and extent of her injury-related condition, warranting modification of its July 12, 2001 wage-earning capacity determination.

FACTUAL HISTORY

On December 18, 1992 appellant, then a 38-year-old postmaster, filed a claim alleging that her post-traumatic stress disorder (PTSD) was a result of her federal employment. She explained that, when she was the superintendent of postal operations at the Ridgewood Post Office, she had an occasion to assist other supervisors in addressing certain problems initiated by

one of the employees, Joseph Harris. On one occasion appellant had a serious confrontation with Mr. Harris, who became vulgar and hostile when he was given a notice of suspension. Then, in her presence, he threatened to kill both her and his immediate supervisor. On another occasion, when they anticipated Mr. Harris' unauthorized return to work, appellant came to work at 3:00 a.m. to oversee the safety of the employees as they entered the building. Appellant had police cars surround the building, and she stood on the back platform of the post office with the mail handlers and waited until all scheduled employees were safely inside the building. Shortly thereafter, Mr. Harris was terminated from his employment. In June 1990 appellant was promoted to postmaster of the employing establishment.

The following year, Mr. Harris took hostages at the Ridgewood Post Office and killed four people. Appellant described how she heard the news and what she learned from the police:

> "On October 10, 1991 I was called at approximately 6:00 a.m., and informed of the hostage situation in the Ridgewood Post Office. I quickly turned on the radio and heard about the homicides in Wayne. As I prepared to enter my car, to drive to the police station, I experienced great fear that perhaps Mr. Harris had tampered with my vehicle, as I lived on a direct path to the post office. I checked all around my car as well as under it before I entered it. When I arrived at the police station, I was informed of the four murders committed by Mr. Harris. I was also informed that I was an intended victim of Mr. Harris, according to a list of names that he had in his possession. I spent the rest of the day talking to police, detectives and [p]ostal [i]nspectors, as well as with dealing with the media and attending crisis intervention meetings. I spent the following week working in the Ridgewood Post Office, assisting in trying to maintain the daily operation of the post office, despite a severe shortage of personnel. Many of the craft employees were unable to immediately return to work. In addition to work, I also attended the wakes, funerals and [m]emorial [s]ervice for the victims.…
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> "For the first few weeks following the murders, I was plagued by the inability to sleep, and recurring, graphic nightmares about the murders, the victims, Mr. Harris and the post office. I tried to put the incident out of my mind. However, over the next several months, I was often apprehensive, irritable, and preoccupied, with understanding why."

The Office accepted appellant's claim for PTSD and paid compensation for temporary total disability on the periodic rolls.

Appellant attended college at night and obtained a bachelor's degree in English and certification as a special education teacher. She applied for and was offered part-time employment as a special education teacher in July 1999. On September 1, 2000 appellant began teaching on a full-time basis.[1] As this position paid less than her pay rate for compensation purposes, effective September 1, 2000 her wage-loss compensation was reduced to reflect her

[1] By the terms of her employment contract, her employment ran from July 1, 2000 to June 30, 2001 with service beginning on September 1, 2000.

wage-earning capacity. On July 12, 2001 the Office issued a formal wage-earning capacity determination, finding that appellant's actual earnings as a special education teacher fairly and reasonably represented her wage-earning capacity. The Office advised that, effective the date of her reemployment, her compensation payments were based on two-thirds of the difference between her pay rate for compensation purposes and her ability to earn wages in her new position.

On August 3, 2001 appellant filed a claim asserting that she sustained a recurrence of total disability on June 30, 2001 as a result of her employment injury. She stated: "In late March 2001 I began to experience the same symptoms of the original disability. These symptoms have become progressively worse despite ongoing treatment."

In a decision dated September 19, 2001, the Office denied appellant's claim of recurrence. Noting that she submitted no supporting medical opinion, the Office found that the evidence did not establish a change in the nature or extent of her injury-related condition or a change in the nature and extent of her light-duty requirements.

On October 3, 2001 appellant requested reconsideration. She submitted the September 12, 2001 report of Dr. Patricia L. McGuire, an attending psychiatrist, who stated that appellant had been under her care since October 26, 1993, after being discharged from a hospital for treatment of PTSD and major depression. Dr. McGuire explained that the PTSD and depression were a direct result of the aftermath of the Ridgewood Post Office incident. She found appellant to be totally disabled, stating as follows:

> "As I continue to work with her as an outpatient she had extremely gradual improvement with frequent exacerbations of her depressive disorder. She remained emotionally fragile and despite a gradual reinstitution of a less stressful work schedule at the post office, she completely relapsed and it became clear that she would never be able to return to any position at the post office. We reinstated her long-term disability at my request and during that period of time she was able to attend school on a part-time basis and obtain a master's degree in elementary education. She was able eventually to get a part-time job working as a school teacher and eventually was able to work full time. However, in the stress and demands of the job she completely relapsed with her [d]epressive [d]isorder and has been completely disabled since June 30, 2001. Her symptoms at the present time include severe depression, insomnia, decreased helplessness and hopelessness."

In a December 31, 2001 decision, the Office reviewed the merits of appellant's claim and denied modification of the September 19, 2001 decision. The Office found that Dr. McGuire's report related appellant's disability for work to the stresses and demands of her teaching position and not to the federal employment injury.

Appellant requested reconsideration on January 7, 2002 and addressed the stressors that caused her relapse of disability. She stated:

> "I began my light-duty employment in September 1999, working part time as a Special Education teacher at a [m]iddle [s]chool, teaching students in [G]rades six [through] eight. Subsequently, in addition to my [m]iddle [s]chool position, my teaching assignment was expanded to include additional work as a Resource Center teacher for students in [G]rades one [through] four, and a reading teacher for a fifth [g]rade student. Despite my request to remain as a [m]iddle [s]chool teacher, in September 2000, I was reassigned as a Special Education teacher at the [h]igh [s]chool level for [G]rades 9 [through] 12, while continuing to teach classes at the [m]iddle [s]chool, in [G]rades 6 [through] 8. My teaching assignment was such, that in my first year as a teacher, I was eventually assigned to three different schools, providing Special Education curriculum instruction to students in grades one [through] eight. I did not anticipate my transfer to the [h]igh [s]chool the following year, where I was required to provide Special Education curriculum instruction to students in [G]rades 9 [through] 12, while continuing to teach students in [G]rades 6 [through] 8 at the [m]iddle [s]chool. This required intensive lesson preparation, as well as continual movement between the two schools.
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> "I continued to receive treatment for [PTSD] and [m]ajor [d]epression, including psychotherapy and medication, as a result of the original diagnosis. However, the demands of my teaching position became overwhelming, and the symptoms of the original condition worsened until I became totally disabled, and was advised by my physician that I could no longer work in any capacity. I subsequently filed a claim for recurrence of total disability as of June 30, 2001. The symptoms of [PTSD] and [d]epression had continued since the original onset in July, 1992. Despite every attempt to control these symptoms, coupled with the excessive demands of my teaching position, my condition continued to deteriorate, until I was unable to work in any capacity."

In a January 21, 2002 report, Dr. McGuire found appellant disabled as a result of a reexacerbation of her original diagnosis of PTSD. He noted:

> "Since her original diagnosis and treatment [appellant] has never been completely free of symptoms of PTSD. She has at times been able to sustain part-time employment but under the duress of increasing stresses at work she has consistently relapsed into symptoms of her original diagnosis, PTSD, complicated by symptoms of [m]ajor [d]epression.
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> "She began work as a part-time special education teacher in September 1999. Soon after during that fall additional responsibilities were assigned to her in a separate elementary school that created a highly demanding job. She began reexperiencing symptoms of [PTSD] and depression at that time. In September 2000 she was transferred to another school, the local high school, with another demanding curriculum in addition to continuing her work at the middle

school. During that year she had full resumption of depression and [PTSD] due to the increasing demand of her work and its increasing complexity."

In a decision dated June 17, 2002, the Office denied further merit review of appellant's claim. It found the worsening of appellant's condition to be a result of her teaching position and that the medical evidence was not relevant because a recurrence of disability must be caused by a spontaneous change in a previous injury without an intervening injury.

Appellant requested reconsideration on July 28 and September 5, 2002. She provided a more detailed description of her employment history and contended that her claim should not be denied on the basis of her new job duties.

In a decision dated December 6, 2002, the Office reviewed the merits of appellant's claim and denied modification of its prior decisions. The Office found that her claimed recurrence of total disability on June 30, 2001 was not supported by any medical evidence to be a result of her accepted federal work-related disability.[2] The Office noted that appellant's disability was from a private-sector injury and that she should be filing for workers' compensation on the state level.

On February 19, 2003 appellant again requested reconsideration. In a February 6, 2003 report, Dr. McGuire explained that appellant's first episode of PTSD never remitted, "therefore, all apparent relapses represent a manifestation of the original episode." Dr. McGuire found appellant totally disabled as a result of the "continuation" of the original diagnosis of PTSD.

In a decision dated May 15, 2003, the Office reviewed the merits of appellant's claim and denied modification of the December 6, 2002 decision. The Office found that appellant failed to show that her accepted medical condition had spontaneously worsened.

On June 30, 2003 appellant requested reconsideration and offered another statement. She argued that there was a change in her light-duty position. Appellant added that it was the nature of PTSD to recur with minimal stress: "It cannot be said that the minimal stresses are the cause of the post-traumatic stress."

In a decision dated September 26, 2003, the Office reviewed the merits of appellant's claim and denied modification of the May 15, 2003 decision. The Office found that the worsening of her condition was caused by her work as a special education teacher in private employment, not by the accepted work injury.

[2] In July 1992 a prosecutor informed appellant that Mr. Harris would be charged with five additional counts of attempted murder for each of the people on his "hit list" who were scheduled to work on the day of the murders, including appellant. This information was published the next day in the newspapers, which caused appellant a great deal of alarm, as she had not informed her family that she was an intended victim. Appellant explained that it was about this time that she began to experience a recurrence of nightmares relating to the murders.

On March 17, 2004 appellant again requested reconsideration and submitted the March 4, 2004 report of Dr. McGuire, who explained that it was the nature of PTSD to recur:

> "Although [appellant] continues to receive treatment for PTSD, she has suffered irreparable emotional, personal, professional and financial loss as a result of this disability. [She] has attempted to return to work in the [p]ostal [s]ervice and in the private sector, and suffered relapses. Employment in *any* capacity would have intensified the disabling symptoms of [PTSD] and [m]ajor [d]epression, which are directly related to the trauma [she] suffered [at] the Ridgewood Post Office."

In a decision dated March 25, 2004, the Office denied further merit review of appellant's claim. The Office found that the evidence submitted in support of appellant's March 17, 2004 request for reconsideration was repetitious and insufficient to warrant a merit review.

Appellant appealed to the Board. In a decision dated December 20, 2004,[3] the Board set aside the denial of appellant's recurrence of disability claim. The case was remanded for an evaluation of whether the July 12, 2001 wage-earning capacity should be modified.

In a decision dated May 6, 2005, the Office denied modification of its July 12, 2001 determination. The Office based its determination of wage-earning capacity on appellant's actual earnings in September 2000, when she first became a full-time teacher. The Office found that appellant's various statements supported that the many complexities and difficulties associated with the expansion of those teaching duties had worsened her symptoms of PTSD. The Office found that appellant's statements were substantiated by the findings of her psychiatrist, Dr. McGuire, who provided a rationalized correlation of how the expansion of teaching duties exacerbated appellant's PTSD. The Office stated:

> "Although the many reports from Dr. McGuire give credence that the PTSD condition later became disabling and that you could not perform your teaching duties, the factors cited in the contemporaneous medical reports of record, support that the work factors that worsened your condition were those involving your expanding duties as a teacher on the high school level concurrent with your duties as a middle school teacher. As such, you have not established that there was a worsening of the job-related disability at least in terms of your federal employment only that your condition had worsened as a result of your increasingly expanding and demanding duties as a teacher at the high school level in the private work sector."

The Office added that there was no evidence to substantiate that appellant's PTSD would have worsened if she had remained doing only those duties associated with teaching at the middle school level.

Appellant requested reconsideration and submitted a July 7, 2005 report from Dr. Peter M. Crain, a Board-certified psychiatrist, who reviewed the reports of Dr. McGuire and

[3] Docket No. 04-1382 (issued December 20, 2004).

other records. Dr. Crain related appellant's history of injury and subsequent history of employment. After describing his findings on mental status examination, Dr. Crain diagnosed major depressive disorder and residuals of PTSD, chronic. He noted:

> "[Appellant] resumed part-time work as a special education teacher, 20 hours a week, in a middle school during the first semester that commended in September 1999. She could do this job, despite experiencing symptoms of her condition related to the incident of October 10, 1991. Her symptoms exacerbated when she was asked to expand her duties in the same amount of time, which involved three schools, not one. This situation caused her to reexperience the same guilt that she had since the incident in the post office. Then, she failed to protect the postal workers, as promised, who got killed. Now, she failed in her duty to provide for the education needs of the children assigned to her. Unfortunately, the patient was assigned more responsibility during the second year of employment, responsible for 60 students, not 30, as had been the case during the second semester that preceded full-time employment. She also had to attend teacher committees. It was no longer possible to keep up with demands of the work. Symptoms of major depression and [PTSD] worsened further to the extent that they prevented her from performing her work and led to resignation by June 30, 2001."
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> "[Appellant] was not actually assigned an amount of work that exceeded the duties of a teacher employment by the Glen Rock School System. If she did not have a mental disorder, attributed to the incident of October 10, 1991, she would have coped with her responsibilities, just like the other teachers who had comparable workloads. The responsibilities of full employment did not constitute an objective stressor. [Appellant] reacted to the usual duties of a teacher, as if she was still the assistant postmaster at the Ridgewood Post Office. She felt responsible for the safety of the workers who got killed and since then lost self-confidence in her abilities to work. Likewise, when assigned the usual duties of a full-time teacher, she feared failing the students, which led to symptoms characteristic of her mental disorder, such as indecisiveness, problems with concentration, fatigue from lack of sleep -- which prevented her from dealing effectively with the challenges of being a teacher. Work as a teacher in itself did not cause her mental disorder. Just as what had occurred in Elmwood Park after the incident in Ridgewood, her mental disorder worsened and led to her resignation from the school system on June 30, 2001. Since then, she felt too impaired to seek employment in any work situation. Indeed, there was a material change in the nature and extent of her injury-related condition. Had the workload as a teacher been objectively stressful, in that any teacher would feel stressed by it, then I would agree that this would constitute an intervening cause of a new injury, but such was not the case, rather the worsening of her mental disorder constituted a spontaneous return of symptoms in a situation that teachers would not regard as objectively stressful. Due to the preexisting mental disorder, [appellant] created problems for herself in the Glen Rock School system, not the

other way around. The PTSD and major depression interfered with her ability to carry the workload, customary of a special education teacher.

"[Appellant] sustained a worsening of her condition in March 2001, which led to total disability, starting on June 30, 2001, based on the nature of [PTSD]/depression, attributed to the incident of October 10, 1991. Her work as a special education teacher was not an intervening cause."

In a decision dated October 13, 2005, the Office denied modification of its May 6, 2005 decision.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[4] "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[5]

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant's ability to earn wages.[6] Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.[7]

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous. The burden of proof is on the party attempting to show modification of the wage-earning capacity determination.[8]

ANALYSIS

The issue is whether appellant has established a material change in the nature and extent of her injury-related condition, warranting modification of the July 12, 2001 wage-earning capacity determination. The Office found that the evidence established a worsening of appellant's accepted PTSD but denied modification of its July 12, 2001 wage-earning capacity decision because the worsening or exacerbation was caused by her increasingly demanding

[4] 5 U.S.C. § 8102(a).

[5] 20 C.F.R. § 10.5(f) (1999).

[6] *See* 5 U.S.C. § 8115 (determination of wage-earning capacity).

[7] *Sharon C. Clement*, 55 ECAB 552 (2004).

[8] *Sue A. Sedgwick*, 45 ECAB 211 (1993).

duties as a teacher in the private work sector. This raises a question of whether the duress of appellant's teaching duties broke the chain of causation to her federal employment.

While the initial employment injury must arise out of and in the course of the claimant's federal employment,[9] later nonindustrial injuries may also be compensable. In *Howard S. Wiley*, the Board held the following:

> "It is an accepted principle of work[ers'] compensation law that a second, nonindustrial injury is compensable if it is the direct and natural result of an earlier compensable injury. Where an accident is sustained as a consequence of disability residual to a previous industrial injury, it is deemed because of the chain of causation to arise out of and in the course of employment."[10]

Larson states the basic rule of compensable consequences:

> "[W]hen the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based on the concepts of 'direct and natural results,' and of claimant's own conduct as an independent intervening cause.
>
> "The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[11]

It is accepted that once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause. If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances.[12]

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[9] *Bernard D. Blum*, 1 ECAB 1 (1947).

[10] *Howard S. Wiley*, 7 ECAB 126 (1954). The Board held that the employee's injury arising from a slip on the steps of his home was independent of a prior work-related injury and denied his claim for a recurrence of disability.

[11] 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW § 10.01 at p. 10-2 (2004).

[12] *Robert W. Meeson*, 44 ECAB 834 (1993). The employee claimed a recurrence of disability due to a prior injury to his lumbar spine. The Board found an intervening injury broke the claim of causation when his automobile struck a deer in a nonemployment-related accident.

The medical evidence establishes that the real operative factor[13] in this case was the expansion of appellant's duties as a teacher in the private sector. On September 12, 2001 Dr. McGuire, the attending psychiatrist, explained that appellant relapsed into total disability due to the stress and demands of her full-time teaching job. On January 21, 2002 she reported that under the duress of increasing stresses at work, appellant relapsed into symptoms of her original diagnosis, PTSD, complicated by symptoms of major depression. Dr. McGuire reported that, due to the increasing demands of her work and its increasing complexity, appellant had a full resumption of depression and PTSD.

The question turns not, as Dr. McGuire suggested in her February 6, 2003 report, on whether appellant still had residuals of her initial employment injury. The question turns on whether appellant's relapse was the direct and natural progression of her condition or whether it was instead triggered by an intervening factor arising independent of her federal employment. The answer is clear from the medical evidence and appellant's account of events leading to her disability.

Dr. Crain reported on July 7, 2005 that the expansion of appellant's teaching duties caused her to reexperience the same guilt that she had since the incident at the employing establishment. He explained: "If she did not have a mental disorder, attributed to the incident of October 10, 1991, she would have coped with her responsibilities, just like the other teachers who had comparable workloads." But it is not enough to report that appellant's preexisting PTSD was a necessary condition precedent for her relapse. The question is whether the preexisting PTSD was alone sufficient, without the stress of appellant's teaching duties, to have progressed directly and naturally to emotional decompensation, or whether the increasing stress of her teaching duties was the real operative factor.

In *Raymond A. Nester*,[14] the employee began experiencing mounting stress in 1995 due to the loss of his family unit, which gave rise to a recurrence of symptoms identical to those he first experienced with his employment as an air traffic controller. The Office had accepted a generalized anxiety disorder and anxiety neurosis. He stopped work in 1982 and returned to work in the private sector as a risk and insurance manager in 1989. This was consistent with the physician's account that the claimant's condition steadily deteriorated in response to a series of personal and financial losses. The Board found that the triggering episode for the claimant's recurrence of disability was the nonemployment-related stresses arising out of his family life, independent intervening events that interrupted the chain of direct causation. Therefore, his

[13] *See Robert J. Wescoe*, 54 ECAB 162 (2002) (finding that it was unreasonable for the claimant to play volleyball while on medical restrictions after he had been advised that he was prone to further shoulder dislocations); *Clement Jay After Buffalo*, 45 ECAB 707 (1994) (in which the claimant reinjured his knee playing basketball directly against medical advice only 24 hours after obtaining that advice); *John R. Knox*, 42 ECAB 193 (1990) (finding that basketball was not a reasonable activity, given the claimant's knowledge of the left knee condition). In these cases, the Board held that, because the triggering activity for the second injury was itself rash in light of the claimant's knowledge of his condition, the second injury could not be deemed to have arisen out of the employment, but rather was the result of an independent intervening cause attributable to the claimant's own intentional conduct.

[14] 50 ECAB 173 (1998).

recurrence was found not due to the natural progression of his prior employment-related emotional condition.[15]

The Board finds that the expansion of appellant's private-sector teaching duties constitutes an independent and intervening cause for her emotional decompensation and total disability in 2001. Appellant's condition worsened but not due to the direct and natural progression of the accepted employment injury. An intervening factor independent of her federal employment -- mounting stresses from her teaching duties in the private sector triggered the relapse and thereby broke the chain of causation to federal employment. As the relapse cannot be considered "injury related," appellant has not establish a material change in the nature and extent of her injury-related condition. The Board will therefore affirm the Office's May 6 and October 13, 2005 decisions.

CONCLUSION

The Board finds that appellant has not established a material change in the nature and extent of her injury-related condition, to warrant modification of the July 12, 2001 wage-earning capacity determination. Appellant's increasingly demanding duties as a teacher in the private sector triggered her emotional decompensation and thereby broke the chain of causation to her federal employment.

[15] *See also Dana Bruce*, 44 ECAB 132 (1992) (where medical evidence established that the claimant's emotional decompensation was due to stress encountered in her private-sector employment and with her family, both independent intervening causes, the claimant did not meet her burden of proof to show a modification of her loss of wage-earning capacity).

ORDER

IT IS HEREBY ORDERED THAT the October 13 and May 6, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 24, 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