

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

C.S., Appellant)

and)

**DEPARTMENT OF LABOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
New York, NY, Employer**)

**Docket No. 06-1746
Issued: April 17, 2007**

Appearances:
Thomas R. Uliase, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 25, 2006 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs dated January 27, 2005 and March 1, 2006, denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established an emotional condition causally related to compensable work factors.

FACTUAL HISTORY

On October 4, 2004 appellant, then a 50-year-old occupational health nurse, filed a claim for an emotional condition alleging that she developed severe heart palpitations and abdominal pain due to a heavy workload. She alleged that her workload increased in August 2002 when

another nurse, Sarah Curry, retired and she had to perform the work of two nurses.¹ Additionally, the number of claimants had increased. Appellant sometimes worked more than eight hours a day in order to complete her work and sometimes ate lunch at her desk. She supervised 70 nurses. When appellant returned from a vacation, her workload greatly increased because there was no one to perform her duties while she was gone. The employing establishment did not provide full-time clerical assistance as it had promised her. Appellant reviewed 50 to 450 reports daily from field nurses and entered data into the computer from these reports. During the first week of June 2004 her supervisor, Zev Sapir, instructed her to review 71 cases for accuracy and coding which required five days and caused a delay in appellant completing other work. When a new computer system was installed, appellant had to spend more time processing reports and bills from field nurses.

Appellant alleged that there were several stressful cases for which she had difficulty obtaining authorization for medical treatment and payment for medications for injured workers. She had difficulty getting a seriously ill patient, Shirley Johnson, admitted to a hospital because of outstanding hospital bills and there were other problems obtaining authorization for treatment. Ms. Johnson was eventually admitted to a hospital. Appellant had difficulty getting a pharmacy to provide medication for Eddie Bauer prior to written authorization from the employing establishment. Appellant had difficulty getting an unnamed critically ill patient airlifted to a hospital. During the process, the claimant's wife cried and expressed concern that her husband would die. In another incident, a claimant's supervisor refused to authorize epidural injections and the claimant telephoned appellant and was crying. These difficult and stressful cases made her depressed and sad because the claimants were not receiving treatment in a timely manner and sometimes developed serious medical complications as a result. Appellant felt that the procedures at the employing establishment for authorizing medical treatment hindered her in assisting claimants.

Appellant alleged problems with her supervisor, Mr. Sapir. She alleged that he spoke to her in a condescending manner. On April 15, 2004 he requested a copy of a case status query report and stated: "I want it today." For several weeks in June 2004, he asked appellant on a weekly basis "How are the numbers?" and she always replied "Fine." In an August 23, 2004 letter, Mr. Sapir criticized her for failing to call in and directed her to call him every other day while she was on sick leave. By letter dated February 24, 2005, he advised appellant that she would be allowed to return to part-time work for only one month and would then perform full-time work. She was advised that she had been in absent without leave (AWOL) status since December 13, 2004 and continuing in this status could result in disciplinary action up to and including removal from her position.

In a November 5, 2004 statement, Mr. Sapir stated that appellant was the staff nurse for the New York District Office and was responsible for the nurse intervention program. Since the inception of the nurse intervention program, there had been only one staff nurse who administered the program without any clerical assistance. Appellant was hired to replace Ms. Curry, who was retiring and with the understanding that she would be the only staff nurse when Ms. Curry retired. When appellant complained of too much work, an assistant was

¹ Appellant began working at the employing establishment in May 2002.

assigned in August 2003 to help with clerical duties. The employing establishment also provided a summer intern in 2003 to assist her clerical tasks. Although appellant complained about her workload, she never told Mr. Sapir the specific tasks or duties that she was not able to perform. She did not fall behind in her work. Mr. Sapir stated that the workload for the staff nurse had remained steady over the past several years. He stated that, when appellant was on vacation, an assistant provided essential clerical services so that appellant would not return to an unmanageable workload. Mr. Sapir denied that he had been condescending to appellant.

In reports dated September 2 and November 14, 2004, Dr. Charles E. McDermott, an attending psychiatrist, indicated that appellant had depression and anxiety caused by having to perform the work of two nurses by herself.

By decision dated January 27, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that her emotional condition was causally related to a compensable work factor.

Appellant requested an oral hearing that was held on December 12, 2005.

In a report dated February 5, 2005, Dr. McDermott diagnosed an adjustment reaction with physical symptoms and agoraphobia with panic. He indicated that these conditions were caused by a doubled workload and feelings of unpredictable and unappreciative responses from supervisors. In a December 11, 2005 report, Dr. McDermott stated that appellant had been overwhelmed at work because she was performing the work of two nurse supervisors after Ms. Curry left. Appellant was hospitalized several times in 2004 and 2005 for stress-related gastrointestinal problems and chest pain and palpitations.

By letter dated October 31, 2005, Mr. Sapir stated that appellant supervised 50 field nurses, not 70. Regarding appellant's claim that she worked more than eight hours a day, her timesheets revealed that she averaged a little over one hour of credit time each two-week pay period for pay periods 1 to 13 in 2004. She also used credit time during that period and her credit balance never exceeded 10 hours. Mr. Sapir never discouraged appellant from taking her lunch break and other breaks. Appellant received between 10 and 30 reports a day, not 50 to 450. Regarding her problems in obtaining authorization for medical care for claimants, she did not provide sufficient details for Mr. Sapir to verify the extent of her work on those cases.

By decision dated March 1, 2006, an Office hearing representative affirmed the January 27, 2005 decision.

LEGAL PRECEDENT

To establish a claim that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or

incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.²

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 illness has some connection with 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 employment duties or to a requirement imposed by the employing establishment, the disability comes within 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 reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.⁴

Administrative and personnel matters, although generally related to the employees' employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.⁵ However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment, in what would otherwise be an administrative matter, coverage will be afforded.⁶ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁷

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 work 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 compensable factors of employment and may not be considered.⁸ If a claimant does implicate a factor of employment, the Office should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim; the claim must be supported by probative evidence.⁹ Where the matter asserted is a compensable factor of employment and the evidence

² *Pamela D. Casey*, 57 ECAB ____ (Docket No. 05-1768, issued December 13, 2005); *George C. Clark*, 56 ECAB ____ (Docket No. 04-1573, issued November 30, 2004).

³ 5 U.S.C. §§ 8101-8193; *see Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁵ *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See William H. Fortner*, 49 ECAB 324 (1998).

⁷ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁸ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁹ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

of record established the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁰

ANALYSIS

Appellant alleged that she began performing the work of two nurses in August 2002 when Ms. Curry retired. Additionally, the number of claimants increased. Appellant sometimes worked more than eight hours a day in order to complete her work and sometimes ate lunch at her desk. She supervised 70 nurses. When appellant returned from a vacation, her workload doubled or tripled because there was no one to perform her duties in her absence. The employing establishment did not provide full-time clerical assistance as it had promised. Appellant reviewed 50 to 450 reports daily from field nurses. During the first week of June 2004 Mr. Sapir instructed her to review 71 cases for accuracy and coding, which required five days and caused a delay in appellant completing other work. When a new computer system was installed, she had to spend additional time processing documents.

Appellant's description of her work duties and workload was contested by the employing establishment. Mr. Sapir stated that appellant was the staff nurse for the New York District Office and was responsible for the nurse intervention program. Since the inception of the nurse intervention program, there had been only one staff nurse who administered the program without any clerical assistance. Appellant was hired to replace Ms. Curry who was retiring and with the understanding that she would then be the only staff nurse. There were two nurses only while Ms. Curry was training appellant to take over her job. When appellant complained of too much work, an assistant was assigned to help with clerical duties. Although appellant complained about her workload, she never told Mr. Sapir the specific tasks or duties that she was not able to perform. She did not fall behind in her work. Mr. Sapir stated that the workload for appellant's position had remained steady. He stated that when appellant was on vacation, an assistant performed clerical duties so that appellant would not return to an unmanageable workload. Mr. Sapir stated that appellant supervised 50 field nurses, not 70. Appellant received between 10 and 30 reports a day, not 50 to 450. Regarding her claim that she worked more than eight hours a day, her timesheets did not support this allegation. Mr. Sapir never discouraged appellant from taking her breaks. The Board finds that there is insufficient evidence to establish appellant's allegations regarding her workload as factual. The employing establishment disputed these allegations and appellant did not provide corroborating evidence to support them. Consequently, these allegations are not accepted as factual and therefore are not deemed compensable factors of employment.

Regarding Mr. Sapir's actions, appellant alleged that he treated her unfairly in supervising her job performance and spoke to her in a condescending manner. Mr. Sapir denied this allegation. She alleged that on April 15, 2004 Mr. Sapir requested a copy of a case status query report and stated: "I want it today." For several weeks in June 2004 he asked appellant on a weekly basis "How are the numbers?" and she always replied "Fine." In an August 23, 2004 letter, Mr. Sapir criticized her and directed her to call him every other day while she was on sick leave. On February 24, 2005 he advised appellant that she would be allowed to return to part-

¹⁰ *Jeral R. Gray*, 57 ECAB ___ (Docket No. 05-1851, issued June 8, 2006).

time work for only one month and would then perform full-time work. Mr. Sapir advised her that she should avoid being in AWOL status which could result in disciplinary action. These actions by Mr. Sapir in supervising appellant are administrative matters which generally do not fall within coverage of the Act.¹¹ An administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment. The Board finds that appellant has provided insufficient evidence that the Mr. Sapir erred or acted abusively in handling these administrative matters. Therefore, these allegations are not deemed compensable employment factors.

Appellant alleged that there were several cases for which she had difficulty obtaining authorization for medical treatment and payment for medications for injured workers. She had difficulty getting a seriously ill claimant, Ms. Johnson, admitted to a hospital because of outstanding hospital bills and encountered other problems obtaining authorization for her treatment. Ms. Johnson was eventually admitted to a hospital. Appellant had difficulty getting a pharmacy to provide medication for Mr. Bauer prior to written authorization from the employing establishment. She had difficulty getting an unnamed critically ill claimant airlifted to a hospital. During the process, the claimant's wife cried and expressed concern that her husband would die. In another incident, a claimant's supervisor refused to authorize epidural injections and the claimant telephoned appellant and was crying. These difficult cases made appellant depressed and sad because the claimants were not receiving treatment in a timely manner and sometimes developed serious medical complications as a result. She felt that the procedures at the employing establishment for authorizing medical treatment hindered her in assisting claimants. As noted, where the disability results from an employee's emotional reaction to her regular or specially assigned employment duties or to a requirement imposed by the employing establishment, the disability comes within coverage of the Act. Appellant alleged that she was attempting to perform her job duties in these cases and had an emotional reaction to the difficulties and delays in obtaining medical treatment and medicine for these claimants due to employing establishment procedures.

The Board finds that appellant's allegations regarding her emotional reaction to cases where the employing establishment did not timely authorize medical treatment for claimants, such as the cases of Ms. Johnson and Mr. Bauer, could constitute compensable factors of employment if supported by the medical evidence. While appellant provided some specific information, such as the names of Ms. Johnson and Mr. Bauer, additional information is necessary for the Office to determine the nature of these incidents and whether the events in these stressful cases concerned her regular or specially assigned duties. On remand, the Office should further develop the factual evidence regarding these cases. If the Office determines that the allegations concerning the stressful cases constitute compensable employment factors, the Office should evaluate the medical evidence to determine whether appellant's emotional condition was caused or aggravated by these factors.

¹¹ *Michael L. Malone*, 46 ECAB 957 (1995).

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should further develop the factual and medical evidence concerning the stressful cases identified by appellant as contributing to her emotional condition. After such further development as the Office deems necessary, it should issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 1, 2006 and January 27, 2005 are set aside and the case is remanded for further action in conformance with this order of the Board.

Issued: April 17, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board