

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

S.I., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Reno, NV, Employer**

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**Docket No. 06-2134
Issued: January 24, 2007**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 22, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 6 and September 7, 2006 merit decisions denying her claim for an employment-related sleep disorder. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a sleep disorder in the performance of duty.

FACTUAL HISTORY

On August 27, 2005 appellant filed an occupational disease claim alleging that she sustained an employment-related sleep disorder. She alleged that she could not sleep more than

three or four hours per night due to the fact that her work shift was changed from the 2:00 p.m. to 10:50 p.m. shift to the 7:50 p.m. to 4:00 a.m. shift.¹ Appellant did not stop work.

By letter dated October 6, 2005, the Office requested that appellant submit additional factual and medical evidence in support of her claim. The employing establishment did not contest her description of the change in her work shift, but argued that such a change did not constitute an employment factor.

By decision dated February 6, 2006, the Office denied appellant's claim for an employment-related sleep disorder on the grounds that she had not established a compensable employment factor. It determined that she claimed her condition was due to the administrative decisions made by management to change her work shift, rather than the direct effect of the shift change itself. The Office found that appellant had not shown error or abuse by management in this administrative decision.

On March 13, 2006 appellant requested an oral hearing before an Office hearing representative. By decision dated May 11, 2006, the Office denied appellant's hearing request as untimely.²

Appellant submitted an October 20, 2005 report in which Dr. Janie Konakis, an attending Board-certified family practitioner, stated that she had evaluated appellant on three occasions for insomnia. Dr. Konakis stated:

“[Appellant's] initial visit with complaints of insomnia was on February 13, 2004. At that time she complained of difficulty sleeping, overwhelming fatigue and shoulder pain. I felt, at that time, that [her] insomnia was largely due to her shoulder pain. [Appellant's] insomnia improved some with a change in her work hours and better sleep hygiene practices.

“[Appellant] was then seen again on August 26, 2004 and July 27, 2005. At both of these visits she continued to complain of significant insomnia. [Appellant] relates her problems with insomnia to her shoulder pain and shift hours.

“[Appellant] has been treated for shoulder injuries that have been diagnosed as job related. She is under another physician's care for this problem. [Appellant] continues to deal with significant pain in her shoulders. I believe it is primarily [her] shoulder pain that has precipitated her problems with insomnia. Additionally, [appellant's] late night shift hours have made it increasingly difficult for her to get adequate sleep and still attend physical therapy sessions in the morning.”

¹ Appellant suggested that pain from a March 6, 2001 employment injury contributed to her sleep disorder. She indicated that management changed her shift as punishment for sustaining the March 6, 2001 injury. Appellant noted that she had filed Equal Employment Opportunity (EEO) claims and grievances against management in a unsuccessful attempt to have her shift changed back to her original shift.

² Appellant has not appealed the hearing denial to the Board and the matter is not currently before the Board.

By decision dated September 7, 2006, the Office affirmed its February 6, 2006 decision indicating that the basis for the denial of appellant's claim remained the same.

LEGAL PRECEDENT

The Board has held that a change in an employee's duty shift may, under certain circumstances, be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty.³ These cases involve a fluctuating or rotating work schedule or a distinct reassignment from an existing shift, such as a day shift to a night shift. Such changes may disrupt circadian rhythms and a claimant's ability to sleep.⁴ However, appellant's reaction to management's administrative decision to change her work shift would generally not be covered. A claimant would have to show error or abuse by management with respect to a given administrative action in order to establish a compensable employment factor.⁵ The Board has held that a condition related to chronic pain and limitations resulting from an employment injury is covered under the Federal Employees' Compensation Act.⁶

An employee seeking benefits under the Act⁷ has the burden of establishing the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.⁸ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the

³ *E.g., Charles J. Jenkins*, 40 ECAB 362, 366 (1988).

⁴ *See Gloria Swanson*, 43 ECAB 161, 165-68 (1991).

⁵ *Id.* at 168.

⁶ *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, *supra* note 3.

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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

ANALYSIS

Appellant alleged that she sustained a sleep disorder because her work shift was changed from the 2:00 p.m. to 10:50 p.m. shift to the 7:50 p.m. to 4:00 a.m. shift. She also suggested that pain from an employment-related March 6, 2001 injury contributed to her sleep disorder. The Office denied appellant's claim on the grounds that she had not established a compensable employment factor. It determined that she claimed that her condition was due to the administrative decision made by management to change her work shift, but appellant had not shown error or abuse by management in this administrative decision.

The Board finds that appellant established the existence of an employment factor due to the fact that her work shift was changed from the 2:00 p.m. to 10:50 p.m. shift to the 7:50 p.m. to 4:00 a.m. shift. It appears from the record that she alleged that she sustained a sleep disorder due to the direct effects of this work shift change, rather than due to the administrative decision by management to change the shift. Appellant changed from an early afternoon to late evening shift, to a late evening to early morning shift. The change in her work shift was significant enough to be considered akin to a change from a day shift to a night shift.¹¹

Appellant also suggested that pain from an employment-related March 6, 2001 injury contributed to her sleep disorder. Although the Board has held that a condition related to chronic pain and limitations resulting from an employment injury is covered under the Act, appellant did not submit sufficient factual evidence to establish the existence of such an injury with residual pain symptoms.

The Board further finds that appellant did not submit sufficient medical evidence to establish that she sustained a sleep disorder due to the accepted employment factor, *i.e.*, the change in her work shift from the 2:00 p.m. to 10:50 p.m. shift to the 7:50 p.m. to 4:00 a.m. shift. Appellant submitted an October 20, 2005 report in which Dr. Konakis, an attending Board-certified family practitioner, stated that she evaluated her for insomnia on February 13 and August 26, 2004 and July 27, 2005. Dr. Konakis posited that it was primarily appellant's employment-related shoulder pain "that has precipitated her problems with insomnia." However, as noted above, appellant has not established the existence of such an employment-related condition with pain residuals. Dr. Konakis also stated that her "late night shift hours have made it increasingly difficult for her to get adequate sleep and still attend physical therapy sessions in the morning." Appellant did not provide an opinion that the change in her work shift contributed to a particular diagnosed condition. Moreover, Dr. Konakis did not describe the

¹⁰ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹¹ See generally *Charles J. Jenkins*, *supra* note 3. It is not entirely clear when appellant changed her shift but it appears to have occurred after March 6, 2001.

accepted work shift change in any detail or explain the medical process through which it could have caused a sleep disorder or other medical condition.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a sleep disorder in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 7 and February 6, 2006 decisions are affirmed.

Issued: January 24, 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