United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 07-1703**
	)	**Issued: February 6, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Acton, MA, Employer	)	

Appearances:
Katherine Smith, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 12, 2007 appellant, through her attorney, filed a timely appeal from a July 18, 2006 merit decision of the Office of Workers' Compensation Programs finding that she did not sustain a recurrence of disability or an emotional condition due to her accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability on September 6, 2002 causally related to her accepted employment injury; and (2) whether she sustained an emotional condition as a consequence of her employment injury.

FACTUAL HISTORY

On September 12, 1996 appellant, then a 37-year-old rural carrier, filed an occupational disease claim alleging that she sustained tendinitis of the right arm and elbow due to factors of her federal employment. The Office accepted the claim, assigned file number 010343184, for

right elbow lateral epicondylitis. The Office authorized a March 11, 1997 right lateral elbow release. The Office also accepted appellant's claim for left wrist tendinitis under file number 010353278. On March 3, 1998 the Office accepted that she sustained left arm and wrist tendinitis as a consequence of her right lateral epicondylitis and resulting surgery in file number 010343184. The Office authorized a partial epicondylectomoy of the left elbow on August 26, 1998. Appellant accepted a permanent limited-duty job as a clerk with the employing establishment on November 20, 1999.

On October 3, 2002 appellant filed a notice of recurrence of disability on September 6, 2002 causally related to her accepted employment injury in file number 010343184. She stopped work on September 6, 2002 and returned to work on October 1, 2002 for four hours per day.

In a disability certificate dated September 10, 2002, Dr. Myria E. Munoz, a Board-certified internist, diagnosed probable carpal tunnel syndrome and found that appellant was unable to work. On September 19, 2002 she determined that she could resume work on September 30, 2002.

In January 10, 2003 form reports, Dr. Christina Wei, a Board-certified internist, diagnosed an exacerbation of chronic left elbow tendinitis and checked "yes" that the condition was caused or aggravated by employment. She provided a history of injury as appellant slipping on the stairs and falling on her left elbow. Dr. Wei found that she could resume work with restrictions.

On February 6, 2003 Dr. Munoz discussed her treatment of appellant beginning July 29, 2002 for pain from her arm to her wrist. Objective studies did not show carpal tunnel syndrome, as initially suspected. Dr. Munoz evaluated appellant on January 10, 2003 for a left elbow injury sustained when she fell two weeks earlier. She stated:

> "In summary, her diagnosis is chronic bilateral epicondylitis with acute exacerbations involving various areas of tendinitis at the extensor surface and wrist. She had subsequent exacerbation after injury in early January and has evidence of underlying arthritis. She is status post chronic epicondylitis with surgical release in the past on March 1997 and October 1998….
>
> "It is my opinion that this represents a permanent aggravation of the underlying condition described above, that it is exacerbated by overuse injury related to her work originally, and lately related to the injury that she reports on January of this year.
>
> "It is my opinion that she should have continuation of the work limitations that have been in place until this time."

In a duty status report dated February 20, 2003, Dr. Munoz listed work restrictions, including sitting up to four hours per day.[1] On March 13, 2003 she found that appellant was unable to work from March 11 to 14, 2003.

[1] The record also contains undated form reports from Dr. Munoz.

In a statement dated April, 30, 2003, appellant described her condition since accepting a permanent limited-duty position in November 1999. She took time off work in September 2002 because of her arm conditions. Appellant resumed work in October 2002 for four hours per day. She stated, "In December of 2002 I fell at work going back up the stairs to my work area. I tripped going up and as I did I automatically grabbed the rail with my left hand which happens to be the side the rail is on. When I did this the sudden jerking of my arm caused it to lock up and I fell to my knees." Appellant asserted that she reported her injury to management but did not seek medical treatment because she believed that it would improve. She sought treatment when her left elbow pain failed to resolve.

By decision dated May 14, 2003, the Office found that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability such that she could work only four hours per day.

On May 23, 2003 Dr. Munoz provided an addendum to her February 6, 2003 report. She related that appellant's "present symptoms represent a recurrence and are related to the original injury of August 15, 1996. She should continue a 20[-hour] work week for the foreseeable future."

On June 12, 2003 appellant requested an oral hearing.

In a form report dated February 20, 2003, received by the Office on June 24, 2003, Dr. Munoz diagnosed an injury to the left elbow exacerbating arthritis and epicondylitis. She checked "yes" that the condition was employment related and provided as a rationale that the original condition was employment related. The history provided on the form was an injury to the left elbow due to a fall. Dr. Munoz found that appellant could continue to work.

In a disability certificate dated December 4, 2003, Dr. Munoz opined that appellant was unable to work due to major depression beginning November 18, 2003. On March 29, 2004 she found that appellant was disabled beginning November 10, 2003 from "depression and adjustment disorder following her work modification after persistent bilateral tendinitis and epicondylitis of both elbows."

Appellant filed a notice of recurrence of disability on November 18, 2003 due to her employment injury. She maintained that she experienced depression because she could no longer carry mail or be active. Appellant further asserted that management refused to retrain her and that she had "nothing to do but watch the clock." Her coworkers insulted her and harassed her. Appellant had to get permission before doing any work activity. She stated, "I have not been able to do even half of the activities I was able to do before my original injury. Not being a rural carrier has really brought me down."

In a report dated January 29, 2004, Dr. Susan B. Foley, a clinical psychologist, related that she had treated appellant since September 18, 2001 for "symptoms of depression due to the loss of her regular job at the [employing establishment]. This job loss was due to medical problems -- tendinitis -- and forced her to be placed on 'limited duty.' This caused additional problems with her coworkers concerning her 'status.'" Dr. Foley diagnosed adjustment disorder with depression.

At the hearing, held on November 25, 2003, appellant related that she tried to keep busy doing her limited-duty employment but she did not have sufficient work. She attributed her depression to losing her job as a carrier, not getting along with her coworkers and to her physical limitations. Appellant disliked needing assistance at work and at home because of her limitations. She had to obtain permission prior to performing any work. In September 2002, appellant's physician advised her to work four hours per day. Appellant stopped work in November 2003 due to her emotional condition. She filed a traumatic injury claim due to her fall at work in December 2002 but did not purse the claim.

In a report dated September 28, 2004, Dr. Munoz diagnosed chronic bilateral epicondylitis with acute exacerbation and underlying arthritis beginning January 2003, arthritis of the lumbar spine and cervicalgia. She further found "significant depression" which she asserted was "a very important, if not the most important, element of incapacity."

On April 8, 2005 appellant's attorney contended that the employing establishment reduced her work hours to four hours per day. The attorney requested that the claim be expanded to include depression and anxiety.

By decision dated May 16, 2005, an Office hearing representative affirmed the May 14, 2003 decision. He determined that the medical evidence was insufficient to show that appellant was disabled from work for four hours per day beginning September 2002 or that she sustained a consequential emotional condition due to her accepted conditions.

In a report dated May 19, 2005, Dr. Munoz diagnosed right lateral epicondylitis and consequential left wrist and arm tendinitis. She indicated that appellant "was limited to 20 hours a week after progression of her symptoms by September 6, 2002. Dr. Munoz was totally disabled as of November 17, 2003." She attributed appellant's disability to the progression of her right lateral epicondylitis and left elbow arthritis due to both the work injury and a December 18, 2002 fall at work on stairs. Dr. Munoz noted that x-rays obtained shortly after her fall at work showed mild left elbow arthritis not present in prior x-rays. She stated, "It should be noted that acceleration of the process of arthritis independent of age is a well-established medical fact resulting from injuries to the joint that result in uneven joint surfaces, compensatory movements of the opposite extremity to favor pain, and injuries resulting from repetitive movements."

In a report dated April 28, 2005, received by the Office on September 26, 2005, Dr. Thomas Weiss, a psychiatrist, diagnosed bipolar II disorder and indicated that her 1996 work injury "seems to have been a trigger for the exacerbation of her mental health issues." He opined that she was unable to work.

On September 9, 2005 Dr. Weiss related that he treated appellant since January 23, 2004 for post-traumatic stress disorder (PTSD) and bipolar II depressive disorder. He related:

> "[Appellant] had work[-]related injuries in 1996 that resulted in epicondylitis and tendinitis that prohibited her from continuing in her job as a mail carrier, a job she says she loved. The loss of this job precipitated a depression that in turn aggravated her PTSD and [b]ipolar II disorder.

"The struggle with the [employing establishment] regarding a reduced-duty job increased [appellant's] depression and anxiety. [She] reports that by November 2003, even with reduced hours required by Dr. Munoz, the antagonism [she] experienced at work in response to requests for physical assistance due to her restrictions, and the physical restrictions themselves, caused [her] to become increasingly depressed. This depression was characterized by tearfulness, sadness, suicidal thoughts, isolation, hopelessness and agoraphobia that resulted in her leaving her job."

On September 15, 2005 appellant, through her attorney, requested reconsideration. By decision dated July 18, 2006, the Office denied modification of its May 14, 2003 and May 15, 2005 decisions.

LEGAL PRECEDENT -- ISSUE 1

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

Office regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right lateral epicondylitis causally related to employment factors and a consequential injury of left arm and wrist tendinitis. She returned to a full-time limited-duty position as a clerk in November 1999. On October 3, 2002 appellant filed a notice of recurrence of disability beginning September 6, 2002 due to her accepted employment injury. She stopped work on September 6, 2002 and returned to work for four hours per day with restrictions on October 1, 2002.

[2] *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] 20 C.F.R. § 10.5(x).

[4] *Id*.

Appellant has not alleged that the employing establishment changed the requirements of her limited-duty position such that she could no longer perform her work duties. Instead, she attributed her recurrence of disability to a change in the nature and extent of her employment-related conditions. Appellant must provide medical evidence establishing that she had an increase in disability beginning September 6, 2002 due to a worsening of her accepted work-related conditions of right lateral epicondylitis and left arm and wrist tendinitis.[5]

On September 10, 2002 Dr. Munoz diagnosed probable carpal tunnel syndrome. She opined that appellant was disabled from employment. On September 19, 2002, Dr. Munoz found that she could resume work. As she did not attribute appellant's disability from work to the accepted conditions of left arm and wrist tendinitis and right lateral epicondylitis, her reports are of diminished probative value.

In form reports dated January 10, 2003, Dr. Wei diagnosed an exacerbation of tendinitis of the left elbow and checked "yes" that the condition was caused or aggravated by employment. She listed the history of injury as appellant falling down stairs onto her left elbow. Dr. Wei found that she could work with restrictions. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[6] Additionally, Dr. Wei provided a history of appellant sustaining an injury falling on stairs. A "recurrence of disability" means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[7]

On February 6, 2003 Dr. Munoz noted that appellant sustained an increase in left elbow pain following a fall around two weeks prior to January 10, 2003. She diagnosed chronic bilateral epicondylitis with acute exacerbations and tendinitis of the wrist. Dr. Munoz attributed the exacerbation to her employment injury and to her injury the beginning of January. In a May 23, 2003 addendum, she found that appellant's "present symptoms represent a recurrence and are related to the original injury of August 15, 1996. Dr. Munoz should continue a 20[-hour] workweek for the foreseeable future." She, however, did not provide any rationale for her opinion that appellant's current condition was due to her prior employment injury or that she was limited to working only 20 hours per week. A mere conclusion unsupported by rationale is of diminished probative value.[8] Dr. Munoz did not explain the effect of the intervening injury in January 2003 on appellant's disability for employment.

In a February 20, 2003 form report, Dr. Munoz noted a history of a fall causing a left elbow injury. She diagnosed a left arm injury exacerbating arthritis and epicondylitis and checked "yes" that the condition was employment related. Dr. Munoz provided as a rationale

[5] *See Jackie D. West*, *supra* note 2.

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[7] 20 C.F.R. § 10.5(x).

[8] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

that the original condition was due to her employment. As she did not attribute the exacerbation of appellant's arthritis and epicondylitis to the accepted employment injury, but instead to an intervening injury of a fall, her opinion is of little probative value. The fact that a condition arises after an injury and was not present before an injury is not sufficient to support causal relationship.[9]

On May 19, 2005 Dr. Munoz diagnosed right lateral epicondylitis and consequential left wrist and arm tendinitis. She opined that appellant could work only 20 hours per week due to a worsening of her symptoms on September 6, 2002 and could not work at all beginning November 17, 2003. Dr. Munoz attributed her disability to the progression of her right lateral epicondylitis, left elbow arthritis resulting from her employment injury and to a fall at work on stairs on December 18, 2002. She interpreted x-rays obtained after her fall at work showed mild left elbow arthritis not present in prior x-rays. Dr. Munoz indicated that moving on uneven surfaces, compensating for an injured extremity and repetitive movement injures accelerated arthritis. She did not, however, provide a fully rationalized opinion explaining how appellant's increase in disability beginning September 6, 2002 resulted from a change in the nature and extent of her employment-related conditions. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment and supports that conclusion with sound medical reasoning.[10] Appellant has not submitted sufficient medical evidence to establish that she sustained a work-related recurrence of disability beginning September 6, 2002.

LEGAL PRECEDENT -- ISSUE 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 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.[11] 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.[12]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[13] A claimant must

[9] *Michael S. Mina*, 57 ECAB ___ (Docket No. 05-1763, issued February 7, 2006).

[10] *Sandra D. Pruitt*, 57 ECAB ___ (Docket No. 05-739, issued October 12, 2005).

[11] 5 U.S.C. §§ 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[12] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[13] *See Michael Ewanichak*, 48 ECAB 364 (1997).

establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[14] The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[15] The primary reason for requiring factual evidence from the claimant is support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[16]

Administrative and personnel matters, although generally related to the employee's 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.[17] 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.[18] 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.[19]

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause, which is attributable to the employee's own intentional conduct.[20]

ANALYSIS -- ISSUE 2

Appellant attributed her emotional condition both to her prior employment injury and to factors of employment. The Board must, therefore, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant maintained that she experienced difficulties with her coworkers because she worked limited duty. She related that coworkers ridiculed her and disliked providing her with

[14] *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

[15] *See James E. Norris*, 52 ECAB 93 (2000).

[16] *Beverly R. Jones*, 55 ECAB 411 (2004).

[17] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

[18] *See William H. Fortner*, 49 ECAB 324 (1998).

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

[20] *See Charles Garrett Smith*, 47 ECAB 562 (1996).

assistance. Harassment and discrimination by supervisors and coworkers, if established as occurring and arising from the performance of work duties, can constitute a compensable work factor.[21] A claimant, however, must substantiate allegations of harassment and discrimination with probative and reliable evidence.[22] Appellant did not submit any factual evidence in support of her allegations and thus has not established a compensable work factor.

Appellant alleged that she was not given sufficient work to do. She asserted that management refused her requests for retraining and required her to ask permission before doing any task. Appellant was unhappy that she could no longer work as a carrier. The assignment of work and the monitoring of work are administrative functions of the employing establishment rather than a duty of the employee and, absent evidence of error or abuse, are not compensable.[23] Further, the denial by the employing establishment of a request for a transfer or the desire for a different job are not compensable under the Act as they do not involve appellant's ability to perform her regular or specially assigned work duties but rather constitute a desire to work in a different position.[24]

Appellant also attributed her depression to limitations resulting from her employment injury. The Board has held that an emotional condition due to chronic pain and limitations resulting from an employment injury is covered under the Act.[25] Her burden of proof, however, is not discharged by establishing a compensable factor of employment. Appellant must also submit rationalized medical opinion evidence establishing that her emotional condition is causally related to the accepted employment factor.[26]

In a report dated December 4, 2003, Dr. Munoz found that appellant was unable to work beginning in November 2003 because of major depression. On March 29, 2004, she diagnosed depression and an adjustment disorder "following her work modification after persistent bilateral tendinitis and epicondylitis of both elbows." Dr. Munoz opinion regarding appellant's emotional condition, however, is of reduced probative value as she is not a specialist in the appropriate field.[27]

On January 29, 2004 Dr. Foley, a psychologist, discussed her treatment of appellant for depression resulting from the loss of her usual job due to her work injury and difficulty with coworkers. As she did not attribute appellant's depression to limitations from her employment

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[21] *Doretha M. Belnavis*, 57 ECAB ___ (Docket No. 05-1879, issued January 12, 2006).

[22] *Robert Breeden*, 57 ECAB ___ (Docket No. 06-734, issued June 16, 2006).

[23] *Jeral R. Gray*, 57 ECAB ___ (Docket No. 05-1851, issued June 8, 2006); *see also Beverly R. Jones*, *supra* note 16.

[24] *See Charles D. Edwards*, *supra* note 14.

[25] *Clara T. Norga*, 46 ECAB 473 (1995); *Arnold A. Alley*, 44 ECAB 912 (1993).

[26] *Charles D. Gregory*, 57 ECAB ___ (Docket No. 05-252, issued January 18, 2006).

[27] *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the opinion of a physician having training and knowledge in a specialized field of medicine has greater probative value concerning questions peculiar to that field than other physicians).

injury but instead to the loss of her job as a carrier and problems with coworkers, her opinion is of little probative value.

In a report dated April 28, 2005, Dr. Weiss diagnosed bipolar II disorder and found that appellant's 1996 employment injury appeared to be "a trigger for the exacerbation of her mental health issues." His opinion, however, that her employment injury "appeared" to result in an exacerbation of her bipolar II disorder is couched in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[28]

On September 9, 2005 Dr. Weiss diagnosed PTSD and bipolar II. He noted that she could no longer work as a mail carrier due to her epicondylitis and tendinitis. Dr. Weiss related that the loss of her job as a carrier resulted in depression which aggravated her PTSD and bipolar II disorder. He noted that she related that she became increasingly depressed due to conflicts at work resulting from her request for assistance and because of her physical limitations. While Dr. Weiss indicated that appellant attributed her depression to her physical limitations, he did not provide an independent opinion relating her increased depression to physical limitations resulting from her employment injury. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.[29] Appellant, consequently, has not met her burden of proof to establish that she sustained an emotional condition as a consequence of her accepted employment injury.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability on September 6, 2002 causally related to her accepted employment injury or an emotional condition as a consequence of her employment injury.

[28] *L.R. (E.R.)*, 58 ECAB ___ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[29] *Earl David Seale*, 49 ECAB 152 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 18, 2006 is affirmed.

Issued: February 6, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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