United States Department of Labor
Employees' Compensation Appeals Board

B.W., Appellant	)	
and	)	
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Long Beach, CA, Employer	)	**Docket No. 10-664** **Issued: October 14, 2010**

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 11, 2010 appellant, through her attorney, filed a timely appeal of a November 4, 2009 merit decision of the Office of Workers' Compensation Programs, which denied continuation of pay. 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's March 11, 2008 employment injury was properly designated as an occupational disease, thereby precluding entitlement to continuation of pay.

FACTUAL HISTORY

On March 11, 2008 appellant, then a 54-year-old revenue officer, filed a traumatic injury claim (Form CA-1) alleging that she experienced numbness and tingling in her left shoulder and arm, severe pain in the left arm and a headache. She was unsure of the cause, but surmised that it was "maybe stress related." Appellant identified March 11, 2008 as the date of injury.

After consulting with the employing establishment's onsite medical personnel, appellant was transported by ambulance to St. Mary Medical Center Emergency Department. She was diagnosed with acute cephalgia with left arm pain, weakness and numbness.[1] Differential diagnoses included transient ischemic attack and complex migraines.[2] Appellant was later transferred to Los Alamitos Medical Center where she remained until March 13, 2008. While hospitalized appellant was seen by Dr. Omid Omidvar, a Board-certified neurologist, who diagnosed possible to probable hemiplegic migraine resulting in transient left-sided weakness. Appellant had reportedly been having headaches the last two to three weeks. Dr. Omidvar also noted the presence of hyperthyroidism and a B12 vitamin deficiency, which he explained may exacerbate hemiplegic migraine. There was also evidence of anemia.

In a March 24, 2008 attending physician's report (Form CA-20), Dr. Hélène Saad, a family practitioner, diagnosed hemiplegic migraine and hypertension. She identified March 11, 2008 as the date of injury. The reported history of injury was that appellant had been under stress at work to meet deadlines. Dr. Saad noted that appellant arrived at work around 7:00 a.m. on March 11, 2008 and was carrying heavy computer equipment when she experienced a severe headache and left arm numbness. She had reportedly gone to work that day despite having a headache.

In a March 26, 2008 statement, appellant described the March 11, 2008 incident. She stated that she was outside walking to her office building pulling her computer and case cart with her left hand when it fell due to the weight of the cart. This reportedly triggered a sudden sharp pain in her head and her left arm became completely numb as she struggled to lift her cart with both hands. Appellant stated that severe left arm numbness prevented her from lifting the heavy cart. She reportedly stood there for a moment struggling to regain her composure. Appellant was eventually able to lift her cart and continue into the building.

The Office denied the claim on April 24, 2008 because appellant failed to establish a causal relationship between her claimed condition and her employment. It also denied modification by decision dated June 30, 2008.

On September 12, 2008 appellant requested reconsideration and she submitted additional medical evidence. She also submitted an unsigned occupational disease claim (Form CA-2) with a March 11, 2008 date of injury. Appellant argued that her manager had incorrectly filed a CA-1. She explained that the March 11, 2008 incident occurred while she was carrying her computer cart, "not" because she was carrying the cart. On the CA-2 appellant explained that following a series of stressful work events she had an episode at work where she experienced blurry vision, severe headache and numbness on the left side of her body and weakness to her left arm to the point that she was unable to hold her computer cart in her left hand. The September 12, 2008 request for reconsideration provided detailed information about what appellant characterized as the pressures of her job and its "unnecessary and unreasonable demands" that reportedly took a toll on her mental and physical condition. Appellant recalled

[1] Appellant had a similar incident of left upper extremity numbness and weakness in November 1997.

[2] The emergency room treatment records noted a prior history of migraines. Appellant's history of migraines reportedly dated back more than 30 years. She also had a prior history of panic attacks.

that in the weeks preceding the March 11, 2008 incident she had been under physical and mental pressure from management to meet some priority deadline reports. She stated, *inter alia*, that she had been working long hours to get caught up on her caseload and to meet various deadlines. Appellant had been on a "rigid field schedule" and management reportedly placed exhausting and strenuous goals on revenue officers.

Dr. Vera M. Bell, a clinical psychologist, examined appellant on December 9, 2008 and diagnosed major depression, single episode and generalized anxiety disorder. In her December 12, 2008 report, Dr. Bell stated that appellant experienced several stressful incidents at work and she became overwhelmed with the responsibilities that were placed on her.[3]

In a December 18, 2008 statement of accepted facts (SOAF), the Office noted that as a revenue officer appellant was responsible for an inventory of cases which required initial contact, follow-up actions, field work and case decisions. It accepted that prior to the March 11, 2008 incident where appellant fell ill at work, she was on a rigid field schedule for priority cases to make first contact. She was also working long hours and attempting to meet various deadlines. The Office also accepted that appellant's revenue officer position was a stressful job, with many responsibilities, demands and daily deadlines. Additionally, appellant was evaluated on the quality of her work. As part of her case management activities, she received and reviewed daily e-mails about her workload and her productivity goals. Lastly, the Office accepted that, because of appellant's 120-day detail to a GS-11 position, she experienced some workload management problems due to the quantity of the work she was assigned.

In a report dated January 22, 2009, Dr. Stephan Simonian, a Board-certified psychiatrist and Office referral physician, diagnosed generalized anxiety disorder, depressive disorder and somatization disorder. Appellant's employment exposure reportedly aggravated a preexisting condition. Dr. Simonian attributed her current condition to the "accumulation of stressful situations" outlined in the SOAF.

On February 19, 2009 the Office accepted appellant's claim for temporary aggravation of somatization disorder, generalized anxiety disorder and a migraine condition (ICD-9 Code 300.81, 300.02 and 346.8, respectively). Appellant received continuation of pay from March 12 through April 25, 2008. The Office paid her wage-loss compensation from April 26, 2008 through March 22, 2009. Appellant returned to work on March 23, 2009.

In a decision dated April 6, 2009, the Office determined that appellant's claim was an occupational disease claim rather than a traumatic injury and, therefore, the Form CA-1 she originally filed was converted to a Form CA-2. The result was that appellant was not entitled to continuation of pay (COP).

On June 8, 2009 appellant requested reconsideration. By decision dated November 4, 2009, the Office denied modification of the April 6, 2009 decision.

[3] Dr. Bell's history of injury essentially mimicked the information appellant provided the Office in her September 12, 2008 request for reconsideration.

LEGAL PRECEDENT

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.[4] A traumatic injury means a condition of the body caused by a specific event or incident or a series of events or incidents, within a single workday or shift.[5] Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of body.[6]

For most employees who sustain a traumatic injury, the Federal Employees' Compensation Act provides that the employer must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days.[7] This is called COP. The employer, not the Office, is responsible for providing COP.[8] Unlike wage-loss benefits, COP is subject to taxes and all other payroll deductions that are made from an employee's regular income.[9] To be eligible for COP, a person must have a "traumatic injury," as defined under 20 C.F.R. § 10.5(ee), which is job related and the cause of the disability and/or the cause of the lost time due to the need for medical examination and treatment.[10] Additionally, a person must file Form CA-1 within 30 days of the date of the injury and begin losing time from work due to the traumatic injury within 45 days of the injury.[11] An employer is not required to pay COP when, *inter alia*, the disability was not caused by a traumatic injury.[12]

ANALYSIS

The Board finds that the March 11, 2008 employment injury was properly designated as an occupational disease, thereby precluding entitlement to COP. When appellant requested reconsideration on September 12, 2008 she argued that the March 11, 2008 Form CA-1 had been filed in error. Rather than attributing her condition to a single event or series of events occurring on March 11, 2008, she claimed that the "pressures of my job," "unreasonable demands" and trying to meet those demands contributed to her deteriorating health. The pressures reportedly mounted during the months and weeks preceding the March 11, 2008 incident when appellant experienced a severe headache and left upper extremity pain, numbness and weakness. She stated that she recalled "weeks before the incident" when she was "under physical and mental

[4] 20 C.F.R. § 10.5(q) (2009).

[5] *Id*. at § 10.5(ee).

[6] *Id.*

[7] 5 U.S.C. § 8118(a), (b) (2006); 20 C.F.R. § 10.200(a).

[8] *Id*. However, the Office has the exclusive authority to determine questions of entitlement and all other issues relating to COP. *Id*. at § 10.200(b).

[9] *Id*.

[10] *Id.* at § 10.205(a).

[11] *Id.*

[12] *Id*. at § 10.220(a).

pressure from management to meet some priority deadline reports." The Form CA-2 that accompanied appellant's September 12, 2008 request for reconsideration noted that a "series of stressful work events caused [her] to have an episode at work...."

Based on appellant's September 12, 2008 representations, the Office accepted that she was on a rigid field schedule for priority cases to make first contact. Appellant was also working long hours and attempting to meet various deadlines and her revenue officer position was stressful, with many responsibilities, demands and daily deadlines. The Office also accepted that as part of appellant's case management activities, she received and reviewed daily e-mails about her workload and her productivity goals. Additionally, because of a 120-day detail to a GS-11 position, appellant experienced some workload management problems due to the quantity of work assigned. Lastly, the Office accepted that she was evaluated on the quality of her work.

The mere fact that appellant fell sick at work on March 11, 2008 does not establish that her accepted conditions were due to employment factors occurring that particular day. None of the above-noted accepted employment factors are specific to March 11, 2008. The credible medical evidence does not attribute appellant's diagnosed psychiatric conditions and/or her migraines to a specific employment-related event occurring on March 11, 2008. As such, the Office properly determined that appellant's claim was more appropriately classified as an occupational disease rather than a traumatic injury, as initially filed. However, as appellant's claimed disability during the 45-day period beginning March 12, 2008 was not caused by a traumatic injury, she is not entitled to COP.[13]

CONCLUSION

The Office properly characterized appellant's March 11, 2008 employment injury as an occupational disease. Consequently, appellant is not entitled to COP.

[13] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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