

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

L.H., Appellant)

And)

U.S. POSTAL SERVICE, POST OFFICE,)
Milwaukee, WI, Employer)

**Docket No. 10-1717
Issued: May 24, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case submitted on the record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 15, 2010 appellant, through her attorney, filed a timely appeal of an April 30, 2010 merit decision by the Office of Workers' Compensation Programs which denied her claim for a recurrence. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability beginning September 22, 2009 causally related to her accepted conditions.

FACTUAL HISTORY

On September 19, 2003 appellant, then a 38-year-old supervisor of customer service, filed an occupational disease claim alleging that she developed an emotional condition due to harassment at work. She stopped work on September 6, 2003. The Office accepted the claim for

¹ 5 U.S.C. § 8101 *et seq.*

depression and post-traumatic disorder.² Appellant returned to work on a part-time basis on May 19, 2008 in a rehabilitation supervisory position. She increased to full-time work effective July 7, 2008.

In reports dated September 14 and December 9, 2009, Dr. Brad K. Grunert, a licensed clinical psychologist, noted that he treated appellant for post-traumatic stress disorder and panic attacks. He advised that she related that things were going well for her in the workplace, but she then had an incident in which her boss got into a verbal altercation with her. This retriggered much of appellant's previous symptomatology. As a result, she began experiencing significant panic attacks that was a worsening of her condition. Dr. Grunert advised that he restricted appellant from work for two weeks to stabilize her condition.

On September 28, 2009 appellant filed a claim for a recurrence of disability on September 22, 2009.³ She stopped work on September 23, 2009. Appellant alleged that she had post-traumatic stress disorder and panic disorder which was from the environment and her job. The employing establishment noted that her comments were not detailed enough for response. Appellant also filed claims for wage-loss compensation beginning September 23, 2009.

The Office received treatment notes from Dr. Grunert dated May 13 to November 2, 2009. These included a September 14, 2009 treatment note in which Dr. Grunert advised that appellant had a recurrence of panic attacks which he attributed to her supervisor. In a September 23, 2009 treatment record, he noted that she had a significant flare up of her symptoms and described workplace stressors which included that she believed her supervisor was setting her up for failure. Appellant was not informed about class times for a supervisor's examination which resulted in her not passing her examination. Dr. Grunert stated that appellant related that her supervisor had engaged in an affair with another coworker and expected the other employees to cover for him; but she refused to do so and suggested that she was harassed. Appellant was also frightened on an occasion when she was alone at work. Dr. Grunert noted that she indicated that an individual appeared in the building, and she requested that he leave or she would call the police. He reviewed appellant's past history and placed her off work. In a September 28, 2009 treatment note, Dr. Grunert stated that she was highly stressed and related that she had "a lot of fears for her related to her workplace and her apparent lack of safety there." He also completed disability certificates dated September 23 to November 2, 2009 advising that she could not work due to post-traumatic stress disorder.

On November 15, 2009 the employing establishment controverted the claim. It noted that there was no medical evidence to support that appellant's absence was work related. The employing establishment stated that it had not heard from her since September 23, 2009, subsequent to an administrative action.

² The Office accepted that the air had been let out of the tires of appellant's personal vehicle while parked in the employing establishment's lot on September 5, 2003 and that the bolts of a rear tire were loosened. It also found that in 1997 a shooting occurred on the third floor of the building in which appellant worked on the fourth floor.

³ The record reflects that on May 8, 2009 appellant filed a claim for a recurrence for that date. She alleged that it was the same condition. On September 30, 2009 the Office denied appellant's claim for a recurrence.

In a letter dated December 1, 2009, the Office informed appellant of the evidence needed to support her claim and requested that she submit such evidence within 30 days.

In a December 4, 2009 statement, Maureen Straley, a supervisor, noted that appellant was difficult to work with and it appeared that she “just did [not] want to do her job.” She addressed several incidents pertaining to appellant. On June 2, 2009 appellant questioned Ms. Straley about doing her job and on June 3, 2009, appellant refused to answer when Ms. Straley questioned her about who she was paging over the intercom. Although Ms. Straley was in charge, it appeared that appellant disliked being subordinate to her and had advised that she had more seniority

In a December 17, 2009 response, appellant alleged that she was off from work because she felt threatened, unsafe and insecure during work hours and she continued to have post-traumatic stress disorder. She worried about what would happen at work and became depressed and have panic attacks. Appellant also indicated that her panic attacks would sometimes happen at the end of the day when she went home.

In a January 4, 2010 decision, the Office denied appellant’s claim for a recurrence of disability commencing September 22, 2009, finding that the medical evidence was insufficient to establish her claim.

On January 7, 2010 the Office received treatment notes from Dr. Grunert dated November 9 to December 16, 2009. Dr. Grunert diagnosed panic disorder with agoraphobia and post-traumatic stress disorder. He related that appellant had a “lot of stressors in terms of dealing with her employer related to her claim.” Dr. Grunert noted that she related “how threatened she felt and how this overwhelmed her. [Appellant] again felt that no one was really standing by her.” Dr. Grunert stated that she attributed her condition to her perceptions of safety and believed the employing establishment was a dangerous place for her. Appellant related that she was “troubled most by a persistent feeling of being unsafe within the workplace.” Dr. Grunert referred to an incident where she was alone in the building and she found an individual who was not supposed to be there.

In a letter dated January 8, 2010, the employing establishment again controverted the claim contending that appellant’s condition was self-generated. It included a statement from her manager, Todd Dory, who noted that she was given ample opportunities to complete her duties but continued to repeat mistakes and blamed others for her deficiencies.

The Office received reports from Dr. Grunert dated January 5 to March 30, 2010. On January 19, 2010 Dr. Grunert referred to the original work injury and noted that appellant developed panic disorders and had flashbacks of having an accident where she was severely injured or killed. He noted that, upon appellant’s return to work after five years of being off work, she was asked to close one evening. While appellant was alone, someone entered the building and she felt very threatened. Dr. Grunert also referred to another incident in which a customer threatened her. Appellant noted that management moved her desk to the front and she felt unsafe. She perceived that management did nothing to alleviate her concerns which caused her to feel threatened and experience a “reoccurrence of her previous post-traumatic stress disorder.” Dr. Grunert opined that “[c]learly, the reoccurrence of this stems from [appellant’s]

inability to feel safe in the environment of the postal service.” He advised that she was not able to work due to concerns about safety and a recurrence of her symptoms.

On January 19, 2010 the Office received a December 2, 2009 psychiatric evaluation from Dr. Leandra Lamberton, Board-certified in psychiatry and family medicine. Dr. Lamberton diagnosed post-traumatic stress disorder. She noted that appellant reported having panic attacks at work. Dr. Lamberton obtained a history that someone attempted to kill appellant at work in 2003. In a January 20, 2010 follow up, she prescribed medication.

On February 1, 2010 appellant requested reconsideration and explained that she was off work due to post-traumatic stress and that her original injury involved someone attempting to kill/harm her. She was off work for five years and attempted to return to work when she was retrained as a carrier supervisor. Appellant was placed in a customer supervisor position which caused her to close the building at night by herself. She did not feel safe and her life was again threatened by a customer. Appellant stated that a stranger walked in the building when she was alone. She explained that when she reported her concerns to management, her desk was placed out front.

In a March 12, 2010 statement, the employing establishment asserted that certain of appellant’s allegations were unclear. It denied any knowledge of a stranger in the building or threats to her in 2009. Furthermore, the employing establishment confirmed that appellant had received the appropriate training. It noted that her supervisor, Ms. Straley, advised that she was also a closing supervisor and never felt unsafe and that appellant had not informed her of any safety concerns. Additionally, the employing establishment explained that the only restrictions on her return to work were that she not return to her original work site.

The employing establishment also provided statements from Mr. Dory, the manager, and Ms. Straley. They confirmed that appellant received adequate training and denied any knowledge of any intruder or break in. They denied any safety concerns. Ms. Straley indicated that the only incident involving a death threat occurred in 2008. She noted that appellant received a death threat over the telephone from a customer. That night appellant was escorted to her car. Mr. Dory noted that she never expressed concern about the building not being secure. He also explained that a buddy system was in place for leaving the building.

In a March 19, 2010 statement, the employing establishment explained that appellant was not off work as a result of threats. It noted that she stopped work the same day she received a predisciplinary interview. Regarding any alleged death threat, the employing establishment explained that it was unable to identify the alleged death threat as there was a telephone call and the customer never came to the station.

By decision dated April 30, 2010, the Office denied modification of the January 4, 2010 decision.

LEGAL PRECEDENT

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 has resulted from a previous

injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.⁷

The Office's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed, or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report, which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.⁸

ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence providing a rationalized opinion which related her claimed recurrence of disability on September 22, 2009 to her accepted depression or post-traumatic stress disorder. For this reason, appellant did establish that she sustained a recurrence of disability as a result of her accepted conditions.

The Office accepted appellant's claim for depression and post-traumatic stress disorder. Appellant returned to full duty on July 7, 2008. She filed a claim for a recurrence of her work-related disability on September 22, 2009 and submitted reports from Dr. Grunert. This included a September 23, 2009 treatment note in which appellant noted that she had significant flare up of her symptoms. Dr. Grunert related that appellant attributed her condition to workplace stressors, which included that her supervisor was setting her up for failure and she was not apprised of the time for a class to prepare her for a test. He also noted that she referred to an occasion when she was alone at work and an individual appeared in the building. The Board notes that appellant's statements attribute her worsened condition to new employment incidents, not as a spontaneous recurrence of her accepted injury. The original claim was accepted for an emotional condition

⁴ R.S., 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

⁵ I.J., 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁷ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (January 1995).

due to air being let out of her tires in 2003 and a shooting incident in 1997. Moreover, there is no bridging evidence of medical treatment from July 7, 2008, the date appellant was released for regular duty. Dr. Grunert did not explain why she was unable to work on or after September 22, 2009 due to her accepted employment injury. In his September 28 and November 9, 2009 reports, he indicated that appellant was highly stressed and related that she had fears for her safety at work. Dr. Grunert did not clearly explain her concerns with regards to the accepted depression and post-traumatic stress disorder that arose from the accepted incidents. Although he referred to an incident where appellant was alone in the building and she found an individual who was not supposed to be there, this was not a basis of the acceptance of her claim. Dr. Grunert did not explain how there was a spontaneous change in her accepted conditions without new exposure to the work environment that caused the illness. He completed disability certificates from September 23 to November 2, 2009 advising that appellant was unable to work due to post-traumatic stress disorder but he did not provide any objective findings to support his conclusion. The Board also notes that Dr. Grunert diagnosed conditions, such as panic disorder and agoraphobia, which are not accepted conditions.⁹ Dr. Grunert did not explain how or why employment factors caused or aggravated a recurrence on or after September 22, 2009 due to her accepted employment injury. He also did not address how the September 22, 2009 disciplinary hearing affected appellant's condition.

In a January 19, 2010 report, Dr. Grunert referred to the original work injury and noted that appellant developed panic disorders and had flashbacks of having an accident where she was severely injured or killed. He noted that upon appellant's return to work after a five-year period of being off work, she was asked to close one evening. While appellant was alone, someone entered the building and she felt very threatened. The Board notes that the date of this incident is unknown and the employing establishment denied knowledge of any incident in 2009. The only incident involving a threat occurred prior to 2008 and was made over the telephone. The employing establishment noted that appellant was escorted to her car and that she continued to work and nothing became of the telephone call. Dr. Grunert also noted that the placement of her desk in the front caused her to be unsafe; however, the employing establishment denied that there were any safety issues. The employing establishment also noted that she stopped work after a predisciplinary hearing. In any event, the Board notes that these are new work incidents to which her condition is attributed. As noted, 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹⁰ Dr. Grunert did not provide medical rationale explaining how appellant's disability was caused by a spontaneous change in her accepted conditions without new workplace exposures.

The reports from Dr. Lamberton do not provide rationale explaining why the claimed recurrent disability was due to the accepted conditions.

⁹ See *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (for conditions not accepted by the Office as being employment related, it is the employee's burden to establish causal relation).

¹⁰ See *supra* note 4.

Appellant did not submit any other evidence to support a recurrence of disability beginning on September 22, 2009, with objective findings and medical rationale to support that her recurrence was causally related to the accepted depression and post-traumatic stress conditions. Consequently, she has not met her burden of proof in establishing her claim for a recurrence of disability.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning September 22, 2009 causally related to her accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2010 and January 4, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 24, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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