

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRY L. McFALL and DEPARTMENT OF AGRICULTURE,
PLANT PROTECTION QUARANTINE, Brownsville, TX

*Docket No. 99-2178; Submitted on the Record;
Issued January 10, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment; and (2) whether the Branch of Hearings and Review abused its discretion by denying appellant's request for an oral hearing.

The Board finds that appellant has not met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

This case has previously been before the Board on appeal. In its November 23, 1998 decision, the Board found that appellant had established two compensable factors of employment: that her supervisor required her to exceed her work tolerance limitations; and that a public display of private information regarding appellant's performance constituted error on the part of the employing establishment.¹ However, the Board concluded that appellant failed to submit sufficient rationalized medical opinion to establish a causal relationship between her diagnosed condition and her accepted factors of employment and that therefore she failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty.

Following the Board's November 23, 1998 decision, appellant submitted additional medical evidence and requested reconsideration before the Office of Workers' Compensation Programs on December 17, 1998. By decision dated February 8, 1999, the Office reviewed appellant's claim on the merits and found that she failed to meet her burden of proof. Appellant requested an oral hearing from the Branch of Hearings and Review on February 12, 1999. By decision dated April 14, 1999, the Branch of Hearings and Review denied appellant's request as she had previously requested reconsideration from the Office.

¹ Docket No. 97-854 (issued November 23, 1998).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.²

In support of her request for reconsideration, appellant submitted a report dated March 20, 1997 from Dr. Gentil Salazar, a psychiatrist, who reviewed his prior treatment of appellant and stated, "As you can see, it is very difficult for me to say that her injury was directly responsible for her depression, since she was not symptomatic during her hospital stay." He stated that appellant's multiple problems at work either reactivated or provoked her bout of depression. Dr. Salazar concluded, "Another possibility is that the back injury created a physical -- psychic decompensation, which reactivated a latent depression, which in turn was aggravated and perpetuated by her other added stressors at work."

This report is not sufficient to meet appellant's burden of proof as Dr. Salazar does not indicate his awareness of the accepted employment factors; the requirement that she work outside her restrictions, rather than her nonemployment-related back condition; and the display of private information in a public setting. Without the necessary explanation of how these specific accepted employment factors caused or contributed to appellant's diagnosed emotional condition, this medical evidence is not sufficient to meet appellant's burden of proof and the Office properly denied appellant's claim.

The Board further finds that the Branch of Hearings and Review did not abuse its discretion by denying appellant's request for an oral hearing.

As noted previously, the Board issued its decision on November 23, 1998. Appellant requested reconsideration from the Office on December 17, 1998 and the Office denied appellant's claim on February 8, 1999. Appellant then requested an oral hearing on February 12, 1999. The Branch of Hearings and Review denied this request on April 14, 1999 noting that appellant had previously requested reconsideration from the Office and that the issue could be equally well addressed by submitting additional new evidence and requesting reconsideration from the Office.

The Office regulations provide that a claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days of the date of

² *Lourdes Harris*, 45 ECAB 545, 547 (1994).

the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request on the same decision.³

In this case, appellant previously requested reconsideration on the same decision for which she requested an oral hearing. Therefore, in accordance with the Office's regulations she is not entitled to an oral hearing. The Branch of Hearings and Review further determined that appellant could pursue her claim equally well through the reconsideration process.

The Board finds that the Office properly complied with its regulations in denying appellant's request for an oral hearing.

The April 14 and February 8, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 10, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

³ 20 C.F.R. § 10.616(a).