

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY ANN NAGEL and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Kansas City, Mo.

*Docket No. 95-2378; Submitted on the Record;
Issued June 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.¹

The Board finds that the case is not in posture for decision and must be remanded for referral to an impartial medical examiner to resolve the conflict in medical opinion in this case.

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.³ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁴ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions, which are alleged to have caused or exacerbated a disability.⁶

¹ The Board notes that case records numbered 479 and 478 concern a matter not before the Board and are incorrectly included in this case file.

² 5 U.S.C. §§ 8101-8193.

³ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁴ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁵ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁶ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

To establish her claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁷ 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 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 appellant.⁸ Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁹

In the present case, appellant filed a claim for compensation on November 5, 1991 alleging that she had become depressed based on stress resulting from her employment as a contract specialist. The Office of Workers' Compensation Programs advised appellant on December 19, 1991 that further factual evidence was necessary to support her claim. The Office requested that appellant further describe the alleged factors of employment by providing specific dates of occurrences and a complete description of the incidents, which caused her condition. Appellant responded on February 10, 1992 with a detailed response covering over 100 pages. In essence, appellant indicated that she considered her conflict with her supervisor, Ms. Rita L. Cosner, to be the cause of her depression. Appellant cited and enclosed multiple memoranda dated between September 1991 and February 1992 from the employing establishment and herself memorializing the adverse relationship she had with Ms. Cosner. On page 20 of her submission, appellant stated that she felt that her depression resulted from the adverse manner, in which she was treated by several supervisors including Ms. Cosner.

On January 30, 1992 the employing establishment submitted a 97 page report outlining appellant's recent performance history culminating in a denial of a grievance appellant brought to contest a letter of admonishment issued in September 1991 for insubordination.¹⁰ The employing establishment also included a December 27, 1991 notice of proposed dismissal based on appellant's failure to follow agency and supervisory procedures, her absence without approved leave from October 11, 1991 and several specifications of insubordination relating to her telephone discussions with her supervisor.

In a medical report dated May 11, 1992 Dr. Debra A. Willsie, a psychiatrist, stated that appellant had been seen by a clinical therapist on 16 occasions between June 11 and

⁷ See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

⁸ *Id.*

⁹ *Joseph D. Lee*, 42 ECAB 172 (1990).

¹⁰ The Board notes that the date on the cover letter should be January 30, 1992 vice 1991.

October 15, 1991. The doctor noted that “some personal and family issues were addressed, but the overwhelming majority of the therapy focused on her response to the hostile work environment.” The doctor stated that she examined appellant on October 16, 1991 and rendered a diagnosis of major depression. Appellant was placed on medication and seen an additional 14 times by the clinical therapist. The doctor noted that appellant was able to return to a workplace that had an average amount of stress.

The Office denied appellant’s claim by compensation order dated December 17, 1992, on the grounds that appellant had not established that her emotional condition occurred in the performance of duty.

On January 15, 1993 appellant, with assistance of counsel, requested an oral hearing.

In a medical report dated July 2, 1993 Dr. Willsie stated that appellant’s depression was causally related to her requirement to adhere to the September contract award deadline, her requirement to report on a daily basis to her supervisor, the loss of her warrant, suspension of daily meetings, which appellant had hoped would be opportunities to demonstrate her ability, loss of her use of the copier, missing files, loss of assignments of some contracts while being assigned less desirable contracts and inability to meet unrealistic deadlines. Dr. Willsie stated that appellant was temporarily totally disabled from October 1991 through October 1992.

On July 6, 1993 a hearing was held in Kansas City, Missouri. Appellant testified regarding multiple instances at work that she considered to be the cause of her emotional condition. She stated that Ms. Cosner, her supervisor, began yelling at her as early as February 1991 for errors that Ms. Cosner mistakenly had thought appellant committed. Appellant from that time began to be uncertain regarding what was expected of her and believed that management was “nit picking” her performance. Appellant alleged that after a March 27, 1991 meeting a supervisor threatened to take her warrant authority, which was her personal authority to approve and manage contracts, away from her without an apparent reason. She believed that she was placed under strict scrutiny. Appellant additionally testified that she was told not to read the specifications in contracts that she was managing even though it was part of her job. She stated that Ms. Cosner advised against this practice in order to expedite the review process, noting that the legal office advised her that such advise was incorrect. Appellant testified that she was upset when Ms. Cosner stated in March 1991 that she may be reassigned and was again upset when her work load was increased in April 1991. She was then told that she needed to answer inquiries within 24 hours of receipt which represented a change in practice. Appellant stated that she believed she was treated differently than other contract specialists in that Ms. Cosner began to review all her work and made changes in appellant’s contract amendments and modifications. On June 10, 1991 appellant was criticized in front of other employees. On June 13, 1991 she was advised that she had to report to her supervisor in writing each day regarding her work, a requirement that no other contract specialist was required to perform. She was also given a one day advance notice that she had to process a contract on June 17, 1991 and was told by Ms. Cosner that if she failed to appear for work on that day she would be charged as absent without leave. Appellant was also told that if no clerical help was available on June 17 she would be expected to perform the clerical tasks necessary to process the contract. On June 17, 1991 appellant submitted the contract as required, but had her warrant unilaterally revoked without prior notice. On June 18, 1991 appellant was told to provide Ms. Cosner with a

list of all the work that that needed to be done on her assignments. In July 1991 appellant alleged that Ms. Cosner removed her draft work papers from a file and refused to return them to her. She was then advised her warrant was revoked merely to provide her an opportunity to work more closely with other contacting officers and become more accustomed to the employing establishment's way. She also noted that the employing establishment changed its policy regarding whether to add names of addresses to contract packages. She was also advised not to file phone messages in the contact file and not to use the copying machine. She then had her to give up her printer to a new employee and became the only contracting specialist without one. Appellant also alleged that management removed her transportation manual without explanation and that all contact specialists were suddenly required to use an in-box rather than walk paper around the office. Appellant then had all her contract solicitation work taken away and was given small purchasing contracts to manage. She stated that the small contracts were to be awarded by September 30, 1991, which was an unrealistic date. Because contracting officers would not answer her questions in a timely manner she was unable to get her work done as quickly as she would have. On September 19, 1991 appellant discovered that all her work had been deleted from her computer and suspected Ms. Cosner as the person responsible. On September 25, 1991 appellant engaged in a verbal altercation with Ms. Cosner, which other employees could hear, causing her to leave the building resulting in tears all day. In the end of September, all her work that had to be awarded by September 30, 1991 was taken away from her without explanation. Although she was denied overtime, other staff received overtime to work on her projects.

On September 13, 1993 the hearing representative remanded the case to the Office on the grounds that appellant's treating psychiatrist cited two factors of federal employment, appellant's requirement to report on a daily basis to her supervisor and appellant's need to adhere to deadlines, as well as having made a definite diagnosis of an emotional condition sufficient to require the Office to further develop the claim. The hearing representative notified the Office that it should prepare a statement of accepted facts and refer the case to a Board-certified psychiatrist to determine whether appellant had a medical condition, which was causally related to factors of federal employment.

On December 1, 1993 the Office referred appellant, her medical records and a statement of accepted facts to Dr. George R. Wurster, Board-certified psychiatrist, for an examination and evaluation to determine whether appellant had an emotional condition causally related to work factors. The statement of accepted facts included the following list of compensable work factors: that on November 12, 1990 appellant was awarded her warrant, but had it been removed on June 17, 1991; that on January 7, 1991 appellant declined to pay a contractor because of a contract performance problem; that on February 27, 1991 appellant indicated to her supervisor that she was uncomfortable approving a contract modification at the instruction of her supervisor, however appellant was unable to clerically make the change and was confronted by her supervisor about this problem; that appellant was subjected to constant and daily deadlines; that in August 1991 she had her contract solicitations removed and was reassigned janitorial contracts; that she had a 24 hour turnaround time with regard to questions from prospective bidders; that she intermittently prepared reports on her daily activity; that she was required to perform periodic clerical duties; and that from August to September 1991 she was required to report to her supervisor with regard to where she was going, whom she was to see and for how long.

In a January 4, 1994 medical report, Dr. Wurster stated that he had conducted two interviews with appellant, which lasted ninety minutes each on December 12 and 29, 1993. The doctor noted appellant's work history and recounted the details of appellant's conflicts with her supervisor, her concerns about changes in the working practices of the office and noted her medication. He reported that appellant's test results were normal and that they did not support a diagnosis of any depressive disorder or dysthymia. Dr. Wurster noted that the results of appellant's Symptom Checklist 90-R was essentially within normal limits, that the results of the Depressed Mood Scale did not support a depressive disorder or dysthymia; and that her response to the Minnesota Multiphasic Personality Inventory-2 test was essentially normal. Although the Millon Clinical Multi-axial Inventory-II test revealed traits of an obsessive compulsive personality, dependent personality and histrionic personality, Dr. Wurster stated that the test result did not establish a personality disorder. He noted that appellant's diagnosis of major depression was appropriate when rendered by Dr. Willsie in accordance with the DSM III, but that her symptoms were in remission while treated with prescribed medication. The doctor found that appellant was "not suffering from any significant depression," noting that appellant stated that she had returned to being her old self. Dr. Wurster concluded that appellant had become depressed due to her perceptions of harassment and fear of possible job loss in the work place, but that the job assignment did not contribute to her decompression into depression.

On February 17, 1994 the Office, in a decision, denied appellant's claim for compensation. In an attached memorandum, the Office stated that the weight of the medical evidence as demonstrated by the report of Dr. Wurster, a Board-certified psychiatrist who was a second opinion specialist, demonstrated that appellant's emotional condition arose out of her perceptions of harassment rather than out of the compensable work incidents as identified in the hearing representative's September 13, 1993 remand order.

On February 11, 1995 appellant filed a request for review and submitted a January 26, 1995 medical report from Dr. Willsie. In her report Dr. Willsie stated that appellant's continuing emotional condition of Adjustment Disorder were related to the accepted work factors. The doctor noted that appellant was stressed about her ability to meet deadlines, particularly "regarding a lack of supervisory support as obstacles were placed in her way." The doctor noted that the accepted work factors together with deadlines combined to cause extreme humiliation and "rob her of the power to accomplish her job." Without recourse in dealing with her superiors to improve "her working conditions," she became more depressed and, as result of her limited specialty, felt trapped "in a powerless position without meaningful input to effect one's life," which the doctor believed caused her depression.

On March 21, 1995 the Office, in a decision, denied appellant's request for review. In an attached memorandum the Office stated that Dr. Willsie's reports of May 11, 1992 and January 26, 1995, were contradictory in that the 1991 report referred to family and personal issues that were addressed in therapy, but that the January 1995 report made no reference to these issues. Further the Office noted that the medical report implied that appellant's condition was precipitated by her dissatisfaction with the work environment. The Office concluded that the medical report failed to provide a rationalized medical opinion explaining how the compensable factors could have caused or aggravated appellant's condition.

The Board finds that this case is not in posture for decision.

In this case, the hearing representative found that there were two compensable factors of employment, deadlines and daily accounting to her supervisor, which appellant alleged caused her emotional condition and remanded the case for a second opinion to determine whether appellant's emotional condition was causally related to these compensable employment factors. The Office then referred the case to Dr. Wurster, a Board-certified psychiatrist, who found, based on extensive interviews and a series of evaluations, that appellant's emotional condition was attributed to her perception of harassment and fear of losing her job. Dr. Wurster found that appellant's emotional condition was not attributable to any work factors, but was causally related to appellant's perception of harassment by management. In contrast, Dr. Willsie, appellant's psychiatrist, stated that appellant's emotional condition was caused by her work factors, noting that appellant's stress about her ability to meet deadlines and her perceived lack of supervisory support combined to cause humiliation and robbed her of her ability to accomplish her job. The record, therefore, is in conflict on the issue of whether appellant has any emotional condition causally related to factors of her federal employment.

Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict. Accordingly, the case will be remanded to the Office for resolution of the conflict. On remand, the Office should refer appellant, along with a statement of accepted facts and the medical records, to an appropriate specialist for impartial evaluation. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated March 21, 1995 is set aside and remanded for further action consistent with this decision.

Dated, Washington, D.C.
June 22, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member