

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA J. BROWN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Lexington, KY

*Docket No. 98-671; Submitted on the Record;
Issued March 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective March 16, 1997; and (2) whether appellant has met her burden of proof to establish any continuing condition or disability causally related to her accepted employment injury on or after March 16, 1997.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

On May 4, 1995 appellant, then a 43-year-old office automation clerk, filed a claim for occupational disease, alleging that she developed an emotional condition, as well as psoriasis, as a result of employment-related stress.¹ On January 16, 1996 the Office accepted appellant's claim for aggravation of bipolar disorder and aggravation of psoriasis.² In a letter dated February 14, 1997, the Office proposed to terminate appellant's compensation benefits. By

¹ Appellant was off work for intermittent periods from April 16 through October 22, 1993 and was off work continuously from October 23 through December 3, 1993. On December 6, 1993 appellant returned to limited duty, part time, until April 17, 1995, when she stopped work completely and did not return.

² With respect to her emotional condition, the Office found that appellant had established three compensable factors of employment: (1) In October 1992 when a computer problem caused part of a document she was typing to become lost, appellant felt panicked and felt that she wanted to die because the document was to be sent to her supervisors for release to the U.S. Attorney's office; (2) that on January 13, 1995 she was involved in a verbal altercation with Ms. Janet Lohr, which hurt and embarrassed her; and that (3) between 1983 and 1987 her job occasionally required her to be in travel status, which caused her great anxiety as she is afraid to travel out of town by herself for fear of having a panic attack in traffic and causing an accident. With respect to appellant's physical condition, the Office based its acceptance of aggravation of psoriasis on the September 21, 1995 opinion of Dr. Joseph P. Bark, a Board-certified dermatologist, who stated that appellant's skin condition had not responded adequately to treatment "due to the combination of situations and conditions including the stressful nature of the patient's life and job. Stress clearly aggravates psoriasis and it is probably active in [appellant's] case. Therefore, it is advisable that she be kept in a low-stress environment until or unless we get her psoriasis under control."

decision dated March 13, 1997, the Office terminated appellant's wage-loss compensation and medical benefits beginning March 13, 1997. Appellant, through counsel, requested reconsideration on April 2, 1997 and by decision dated May 13, 1997, the Office modified its prior decision to extend appellant's compensation to March 16, 1997, but affirmed the ultimate termination of compensation benefits.³ Appellant, through counsel, requested reconsideration on August 11, 1997 and submitted additional medical evidence in support of her request. By decision dated September 25, 1997, the Office found the medical evidence of record insufficient to warrant modification of the prior decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁷

In this case, with respect to appellant's physical condition, Dr. Bark, treating appellant for her psoriasis, stated in a report dated July 2, 1996, that appellant could resume her job and continue her treatment for psoriasis without much difficulty. He stated that any job appellant is satisfied with would be fine and that she did not require vocational rehabilitation.

With respect to appellant's emotional condition, Dr. Getulio V. Tovar, a Board-certified psychiatrist and treating physician, submitted an April 8, 1996 attending physician's report in which he indicated that appellant remained totally disabled by bipolar disorder and recurrent major depressive disorder, characterized by severe anxiety and depression with lack of concentration, low energy level, high stress level, a decline in the level of functioning, distorted thinking and misrepresentation of events. He indicated with a check mark "yes" that these conditions were causally related to appellant's accepted employment injury. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history

³ In his April 2, 1997 request for reconsideration, appellant's counsel asserted that the Office had issued its March 13, 1997 decision terminating benefits prematurely, less than 30 days after the Office issued its February 14, 1997 notice of termination. As a result, counsel asserted, the Office failed to consider medical evidence which had been received by the Office prior to the expiration of the 30 days allowed for response. In its May 13, 1997 decision, the Office conceded appellant's points and considered appellant's evidence, but found that it was not sufficient to change the outcome of the case. The Office modified its prior decision, however, to allow appellant to collect benefits for the full 30-day period after the issuance of the February 14, 1997 notice of termination.

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ *Id.*

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *Id.*

given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁸ In a November 11, 1996 work capacity evaluation form completed by Dr. Tovar, he indicated that appellant continued to have tremors and possible mild memory or concentration problems and that she required daytime sedation. He further stated that appellant saw him for medication adjustments and saw another physician for psychotherapy. He indicated by check marks on the form that while appellant could communicate clearly with others by telephone, she could not perform any of the other employment tasks listed on the form and concluded that appellant might have reached her best level of improvement. He did not offer an opinion as to whether appellant's conditions were causally related to appellant's accepted employment injury.

The Office referred appellant to Dr. Douglas D. Ruth, a Board-certified psychiatrist, for a second opinion evaluation. In a report dated January 31, 1997 and in an accompanying letter dated February 4, 1997, Dr. Ruth noted appellant's history of injury and medical history and performed a complete psychiatric examination. He diagnosed borderline personality disorder, lifelong and stated that it was not caused or aggravated by appellant's employment experiences. He stated that she could not return to regular work even within a different office or under a different supervisor, due to the combination of her long-standing personality characteristics, difficulty with concentration and her attitude, but could likely return to work in a different setting in tasks that required minimal interactions with others and did not require intense concentration. He added that he felt she had reached her baseline level of function and concluded that if her disability had been aggravated by work, then the impact of work on her symptoms would have ceased as of the first day she was permanently off work.

In a report dated March 4, 1997, Dr. Carol R. Lowery, a licensed clinical psychologist and treating physician, responded to Dr. Ruth's report. Dr. Lowery disagreed with Dr. Ruth's diagnosis and with his conclusions that appellant's psychiatric condition had not been aggravated by her employment, stating that Dr. Ruth did not appear to have obtained the test results necessary to diagnose borderline personality disorder and further did not appear to have had access to a portion of her own medical notes in which she documented appellant's response to employment stressors. Dr. Lowery further disagreed with Dr. Ruth's conclusion that appellant had returned to her baseline level of functioning, asserting that each successive depressive episode suffered by appellant was more severe and longer lasting than the previous episode. Dr. Lowery concluded that she believed "that stressors in the workplace did not initially cause [appellant's] depression but, that as her treatment proceeded, her illness was aggravated by conditions in the workplace as evidenced by her improvement and relative stabilization within about 90 days of leaving employment."

In a report dated March 10, 1997, Dr. Tovar responded to Dr. Ruth's report and explained why he agreed with Dr. Lowery's criticism's of Dr. Ruth's report. Dr. Tovar further agreed that appellant had not returned to her baseline level of function, but had declined in recent years.

⁸ *Robert J. Krstynen*, 44 ECAB 227 (1992).

The Board initially finds that with respect to appellant's physical condition, as Dr. Bark, appellant's treating dermatologist, stated in his July 2, 1996 report that appellant's employment-related aggravation of psoriasis was no longer disabling and that appellant could return to work, the Office met its burden to terminate wage-loss compensation for this condition. However, as Dr. Bark's report does indicate that appellant continues to require treatment for her psoriasis and as Dr. Bark does not address whether appellant's employment-related aggravation of her psoriasis has ceased, the Office did not meet its burden to terminate appellant's medical benefits for her accepted aggravation of psoriasis.

With respect to appellant's emotional condition, the Board finds that the weight of the medical opinion evidence rests with Dr. Ruth's well-rationalized narrative report. There is no disagreement among the physicians associated with this claim that appellant continues to suffer from a severe psychological condition. While Dr. Ruth's initial conclusion, that appellant's psychiatric condition was not caused or aggravated by her work, may have been based on an incomplete review of the medical records, the Board notes that this flaw in Dr. Ruth's report is not fatal. The Office previously accepted that appellant's employment had aggravated her psychiatric condition and, therefore, this is no longer at issue in this claim. What remains at issue, however, is whether appellant continues to suffer from an employment-related aggravation of her psychiatric condition, even though she has not been employed since April 17, 1995. Dr. Ruth directly responded to this question, unequivocally stating that if her disabling condition had been aggravated by her work, then the impact of the work on her symptoms would have ceased as of the first day she was permanently off work. Drs. Tovar and Lowery, however, failed to address why they believe appellant's disability continues to be related to factors of her employment and not to her lifelong psychiatric disorder and further failed to provide any objective findings or rationalized explanation of why employment-related residuals would still be present several years after appellant's employment exposure ceased. Moreover, Dr. Lowery specifically stated in her report, that appellant experienced "improvement and relative stabilization within about 90 days of leaving employment." As neither Dr. Tovar nor Dr. Lowery provided any reasoning, which could support a finding that appellant's continuing condition and disability are related to her accepted employment-related aggravation of her emotional disorder, their reports are not sufficient to create a conflict with the detailed and well-rationalized report of Dr. Ruth and the Office met its burden of proof to terminate appellant's compensation benefits for her emotional condition effective March 16, 1997.

The Board further finds that appellant failed to meet her burden of proof to establish continuing disability causally related to her accepted employment conditions.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted employment injury.⁹ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. 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

⁹ *George Servetas*, 43 ECAB 424, 430 (1992).

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 the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

With respect to her psoriasis, following the Office's May 13, 1997 decision, appellant submitted progress notes dating from August 15, 1985 to April 23, 1997 from Dr. Bark, her dermatologist. While the medical treatment notes from Dr. Bark indicate that appellant continued to undergo treatment for psoriasis through April 23, 1997 and that as of that date her condition had not cleared, as Dr. Bark does not state in these reports that appellant's psoriasis is disabling, these reports are insufficient to support a claim for continuing disability.¹¹

With respect to her emotional condition, appellant submitted narrative reports from Drs. Lowery and Tovar. In her report dated June 3, 1997, Dr. Lowery reiterated her disagreement with Dr. Ruth's diagnosis and conclusions and provided additional discussion on the issue of the extent to which appellant's current condition is employment related, stating:

"Here, there is no question but that [appellant] has been in consistent and regular services with Dr. Tovar and with me. I have attached a copy of my June 2, 1995 report to Mr. John Chilstrom. If this letter, along with other evidence, establishes the basis for granting a [w]orkers' [c]ompensation award and [appellant] has been in continuous care that has never succeeded in her establishing a high enough level of functioning to be released to return to work, then there is no logical basis for terminating her award at this time."

Dr. Lowrey further stated that any attempt to return appellant to work would likely result in a deterioration of her condition.

In his report dated July 3, 1997, Dr. Tovar stated that there had been no change in appellant's diagnosis, that she continued to need psychiatric care and treatment and that she remained totally disabled due to her condition. With respect to whether her condition continued to be aggravated by factors of her employment, Dr. Tovar stated only that "it has been clearly documented in information provided by Dr. Lowrey that [appellant's] [a]ffective [d]isorder was precipitated by stress in the workplace."

Although the reports of Drs. Lowery and Tovar continue to provide support for a finding that appellant's condition has not ceased, neither physician provided any medical rationale explaining why and how appellant's condition continues to be aggravated by factors of her

¹⁰ *James Mack*, 43 ECAB 321 (1991).

¹¹ In light of the Board's holding that the Office failed to meet its burden to terminate appellant's entitlement to medical treatment for an employment-related aggravation of psoriasis, the issue of whether appellant established a continuing need for medical treatment for an accepted aggravation of psoriasis is moot.

employment, several years after she ceased work. Therefore, these reports are not sufficient to create conflict with the well-reasoned report from Dr. Ruth or to establish appellant's continuing disability.

The decisions of the Office of Workers' Compensation Programs dated September 25, May 13 and March 13, 1997 are hereby reversed in part and affirmed in part, consistent with this decision of the Board.

Dated, Washington, D.C.
March 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member