

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VARNNIE M. VICTOR and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 99-1699; Submitted on the Record;
Issued January 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant was disabled on or after March 1, 1998 as a result of her employment-related emotional condition.

On January 11, 1993 appellant, then a 51-year-old general supervisor, filed a notice of occupational disease and claim for compensation alleging that she sustained an emotional condition caused by abuse and harassment by managers at work. The Office of Workers' Compensation Programs accepted the claim for depression. Appellant stopped work on December 18, 1992 and has not returned.

In October 1993 appellant was hospitalized at the Friends Hospital for several weeks due to her emotional condition. She has been under the care of several Board-certified psychiatrists, including Dr. Jennifer M. Naticchia and Dr. Stuart D. Levy.

In a July 27, 1995 report, Dr. Levy stated: "[Appellant's] condition has not regressed, but in order for her to make continued progress, she will require the addition of regular psychotherapy sessions. Stressors experienced during her previous position continue to be problematic for [her]. In order for her to return to full unrestricted duties, these issues must be resolved."

In a February 14, 1996 report, Dr. Levy noted that appellant continued to suffer from a severe major depressive episode including severe fatigue, anorexia, heart palpitations and feelings of hopelessness. He opined that appellant was unable to work.

In a discharge summary from Friends Hospital, Dr. Levy noted that appellant was admitted to the hospital on February 28, 1997 for treatment of recurrent depressive disorder with increased symptoms triggered when appellant learned that her mother was terminally ill with pancreatic cancer. It was also noted that just prior to admission appellant was also informed that a very close uncle had died which increased her depression to the point that she was unable to concentrate or care for herself.

By letter dated April 17, 1997, the Office referred appellant for a second opinion examination scheduled for May 8, 1997 with Dr. Jon Bjornson, a Board-certified psychiatrist, to determine whether appellant remained disabled due to depression arising from factors of her employment.

In a report dated May 8, 1997, Dr. Bjornson noted a detailed medical history and findings on examination. He reported that appellant suffered from a recurrent depressive disorder with probable personality traits that made her susceptible to depression as well as a family history of schizophrenia and depression. He opined that appellant's continued symptoms of depression were not related to her federal employment since appellant had not worked in that environment for over four years. He indicated that appellant was on enormously high doses of anti-depressants, stating:

“This is not the kind of dose of medication used for a reactive minor depression due to an insult on the job.... With a reasonable amount of medical certainty, unequivocally, this patient's depression can now be stated as biological, endogenous, completely unrelated to her job situation and job stress. Even her own justification that she continues to be depressed because she thinks about insults on the job is simply not logical and not reasonable.”

Dr. Bjornson was skeptical as to whether appellant could return to any gainful employment given the fact that she had convinced herself that all of her difficulties resulted from “disputes with her managers at work.”

The Office determined that there was a conflict in the medical opinion between appellant's treating physician and the Office referral physician, and referred appellant for an impartial medical evaluation with Dr. Wolfram Rieger, a Board-certified psychiatrist.

In a September 24, 1997 report, Dr. Rieger noted detailed findings and discussed the medical record. During late 1992 and early 1993, he stated:

“[Appellant] experienced a mild adjustment disorder with depressed mood ... [due to] what she subjectively perceived as work stress and harassment. This disorder abated once she removed herself from what she perceived as a noxious environment. However, being predisposed to develop mental illness by a strong psychiatric family history (a fact to which she ... readily admits) [appellant] developed a major depression in February 1997 that was totally unrelated to the earlier minor depression and to anything that may have occurred at work in the distant past. If any life events played a role as stressors in bringing on this major depression of the involuntional melancholia type, then person losses (death of uncle) or threatened losses (mother has cancer of the pancreas) would be implicated. Other personal stressors also contributed: ongoing grief over the death, probably by suicide, of one son and the fact that another son is schizophrenic, disappointment with the career choice [of a son and a daughter who dropped out of college].”

Dr. Rieger concluded that appellant was no longer disabled due to her accepted condition and could return to work with no restrictions or limitations.

On November 6, 1997 the Office issued a notice of proposed termination of compensation for wage loss. The Office stated that the medical evidence of record established that appellant was no longer totally disabled from work due to her accepted employment-related emotional condition. Appellant was given 30 days to submit either additional evidence or argument if she disagreed with the Office's proposed findings.

In a decision dated February 19, 1998, the Office terminated appellant's compensation effective March 1, 1998.

Appellant subsequently requested a hearing, which was held on October 27, 1998.

Appellant submitted two reports dated October 26 and April 13, 1998 by Dr. John R. Rushton, a Board-certified psychiatrist. He described various sessions he conducted with appellant and related her description of the nature of the harassment she received at work. He diagnosed that appellant suffered from major depression disorder due "directly to the abusive hurting treatment by her supervisor." Dr. Rushton opined that appellant was totally and permanently disabled as of April 10, 1998. He further recommend that appellant undergo an additional year of neuropsychiatric treatment.

In a January 12, 1999 decision, an Office hearing representative affirmed the Office's February 19, 1998 decision.

The Board finds that the Office met its burden of proof in finding that appellant was no longer disabled from work due to her employment-related emotional condition.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ 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.²

In the instant case, there was a conflict in the medical evidence between Dr. Levy, appellant's treating physician, and Dr. Bjornson, the Office second-opinion referral physician, as to whether appellant's disability related to the accepted condition of mild depression had ceased. Dr. Levy opined that appellant was disabled from work due to a depressive disorder caused by harassment appellant experienced at work from several managers. Dr. Bjornson stated that appellant had no continuing disability due to the work-related factors. He opined that appellant's depressive condition was entirely genetic and no longer attributable to her federal employment.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

Section 8123(a) of the Federal Employees' Compensation Act provides that, "[i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."³

Given the conflict in the medical evidence, the Office properly referred appellant to a referee physician for an impartial medical evaluation. Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently reasoned upon a proper factual background, must be given special weight.⁴

In a report the impartial medical specialist selected to resolve the conflict in the medical evidence in this case, opined that there was no objective medical evidence from which to conclude that appellant had any continuing disability or residuals related to her accepted condition of depression. Dr. Rieger found that appellant was no longer suffering from depression related to factors of her federal employment since she had not been to work in four years and had not been exposed during that time to a hostile work environment. He noted, however, that during the intervening years appellant was exposed to many personal stressors which served to aggravate her symptoms of depression. He also noted that appellant had a family history for depression which would explain why she continued to exhibit symptoms of the emotional disorder. The Board considers the report of Dr. Rieger to be thorough and well rationalized, supported by the normal objective evidence and based on accurate medical and factual history. The Board, therefore, finds that Dr. Rieger's opinion is entitled to special weight.

Furthermore, in deciding to credit the opinion of the impartial medical specialist in the present case, the Board has also taken into consideration the two new medical reports prepared by Dr. Rushton subsequent to Dr. Rieger's report. Although Dr. Rushton concludes that appellant is totally disabled from work-related depression, the Board agrees with the Office hearing representative that the credibility of Dr. Rushton's opinion is undermined by the fact that the his reports make no mention of the nonwork-related and personal events in appellant's life which contributed to her disability. Because Dr. Rushton does not appear to have a comprehensive view of appellant's medical condition, and since he failed to provide any rationale for findings,⁵ the Board considers his reports to be insufficient to overcome the special weight accorded Dr. Rieger's opinion.

Consequently, the Board finds that the Office properly found that appellant was not disabled from work due to her accepted work-related condition on or after March 1, 1998.

³ 5 U.S.C. § 8123.

⁴ *Roger Dingess*, 47 ECAB 123 (1995).

⁵ See *Bobby J. Parker*, 49 ECAB 260 (1997) (to be of probative medical value in establishing injury, the opinion of a 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 decision of the Office of Workers' Compensation Programs dated January 12, 1999 is hereby affirmed.

Dated, Washington, DC
January 23, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member