

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIOLA M. EZELL and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNT SERVICE, Indianapolis, IN

*Docket No. 99-2442; Submitted on the Record;
Issued January 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she has an emotional injury causally related to her work injury of August 22, 1997.

On August 22, 1997 appellant, then a 44-year-old accounting technician, filed a claim for compensation after a man attempted to rob her in the parking lot as she was going to work. Appellant sustained an injury while running away, she tripped and fell. The Office of Workers' Compensation Programs accepted the claim (file number 160310905) for a left knee contusion as a result of the robbery attempt.

On July 24, 1998 appellant submitted a claim for an emotional condition arising as a result of a July 9, 1998 incident in which she sustained a panic attack after a man came up from under a bridge as she was walking through the parking lot to work. Appellant alleged that this reminded her of the attempted robbery she experienced in the same parking lot the prior year. The Office assigned the claim file number 160320187. By decision dated September 15, 1998, the Office denied appellant's claim for compensation on the grounds that fact of injury was not established.

In a letter dated September 16, 1998, the Office administratively doubled the two case files into one master file number 160310905. By decision dated March 30, 1999, the Office denied appellant's request for reconsideration on the grounds that the record did not establish that the event of July 9, 1998 took place and the evidence of record did not establish that appellant's emotional condition on and after July 13, 1998 was a consequential injury of the August 22, 1997 robbery attempt.

The medical evidence in this case includes clinic notes from an unknown source. A clinical note dated August 22, 1997, indicated that appellant ran from her assailant and fell, landing on her left knee and elbow. After reaching work she had anxiety/asthma attack with an episode of vomiting. Clinic notes dated August 11 and September 2, 1997 indicate that appellant

was the victim of a robbery and the diagnoses of depression/anxiety/post-traumatic shock was provided.

In a series of chart notes from July 1998, Regina T. Sellers, LMSW-ACP, noted that appellant had been seen in therapy for post-traumatic stress disorder (PTSD) and major depression since July 13, 1998. Ms. Sellers noted that appellant was having anxiety attacks while preparing to go to work following the attempted mugging and robbery, had been crying spontaneously, not sleeping and gaining weight due to emotional eating. Ms. Sellers related the clinical finding of PTSD and major depression to the trauma received July 9, 1998 after appellant was accosted with treats and a gun in the parking lot on the way to the building where she worked. In a December 11, 1998 letter, Ms. Sellers stated that the information stated under the clinical finding was a combination of the 1997 incident which consisted of injury to appellant's knee and a robbery/assault and the 1998 near assault that occurred on July 9, 1998. Ms. Sellers stated that she related/connected the July 9, 1998 near assault with the robbery and assault on August 22, 1997 to show the relationship, which caused the mental disorder to materialize and intensify.

In a July 22, 1998 progress note, Dr. Edward Reed, a family practitioner, noted that appellant was involved in an assault a couple of years ago and had undergone some counseling as a result of anxiety. He noted that appellant had done fairly well until a couple of weeks prior when she was involved in a "near assault" on the way to her work. Dr. Reed diagnosed mild depression with agitative anxiety. In a July 30, 1998 report, he stated that appellant's significant depression and anxiety reaction was secondary to a personal incident involving a robbery attempt on August 22, 1997 on her work premises. In a December 11, 1998 report, Dr. Reed stated that appellant has an extensive history of experiencing anxiety, depression and panic attacks that aggravated her asthma and insomnia. Dr. Reed noted that appellant received psychotherapy for events occurring in April and September 1992, December 1995, March and September 1996 prior to her August 1997 assault/robbery attempt with resultant bodily injury after falling down during the attack and the July 1998 near assault in the parking lot on the way to the work area.

In chart notes from August 21, 1998, Dr. Carmen E. Llauger-Mier, a psychiatrist, diagnosed appellant with major depression, single episode and PTSD. Dr. Llauger-Mier described the July 9, 1998 incident in a Form CA-20 report dated September 3, 1998 as appellant being assaulted while walking in the parking lot and noted in his other reports that appellant saw a man in the parking lot and "became hysterical." In a December 9, 1998 report, Dr. Llauger-Mier stated that the diagnoses included the August 22, 1997 assault and the incident that occurred on July 9, 1998.

The Board finds that appellant has not established her burden of proof that she sustained an emotional condition causally related to her work injury of August 22, 1997.

To establish her claim that she 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.¹ 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.²

It is also an accepted principle of workers' compensation law and the Board has so recognized, that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.³ As is noted by Professor Larson in his treatise: "[O]nce the work-connected character of any injury, has been established the subsequent progression of the condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."⁴

The Board finds that the evidence of record supports that an incident occurred on July 9, 1998 while appellant was on her way to work. In a September 7, 1998 statement, appellant alleged that, as she was walking through the parking lot to go to work, she neared a bridge and a man surprised and startled her when he appeared from under a bridge. He stopped and stared at her for a few moments. Appellant stated that she got very nervous and afraid and that all she could think about was "it was going to happen again." Dr. Reed classified the July 1998 event as a "near assault" in the parking lot on the way to the work area. Dr. Llauger-Mier noted that appellant was assaulted while walking in the parking lot and in subsequent reports noted that appellant saw a man in the parking lot and "became hysterical." The report from Ms. Sellers, a licensed social worker, related a history of appellant being accosted with treats and a gun in the parking lot on the way to work. Although the medical reports provide a conflicting history as to how the July 9, 1998 event occurred, the evidence of record reflects that on July 9, 1998 appellant saw a man while she was in the parking lot on the way to work and she had a reaction. Accordingly, the Board accepts that an incident occurred on July 9, 1998 as alleged.

However, the Board finds that the medical evidence is insufficient to establish that an emotional condition arose from the accepted August 22, 1997 robbery attempt or the July 9, 1998 incident. Regarding the August 22, 1997 robbery attempt, the Board finds that none of the medical evidence diagnosed an emotional condition resulting from the August 22, 1997 robbery attempt until July 13, 1998. Although the clinic notes from August and September 1997 mention a possible emotional condition to the August 22, 1997 robbery attempt, the diagnosis is rendered by an unknown person with unknown certification. As the credentials of the person rendering the diagnosis is unclear, no probative value can be attributed to these reports. Although Ms. Sellers, a licensed social worker, related appellant's reaction from the July 1998 incident to the August 1997 robbery attempt, lay individuals, such as physician assistants or social workers,

¹ Donna Faye Cardwell, 41 ECAB 730 (1990).

² Victor J. Woodhams, 41 ECAB 345 (1989).

³ Larson, *The Law of Workers' Compensation* § 13.00; see also Stuart K. Stanton, 40 ECAB 859 (1989); Charles J. Jenkins, 40 ECAB 362 (1988).

⁴ *Id.* at § 13.11(a).

are not competent to render a medical opinion.⁵ Accordingly, as Ms. Sellers is not considered a medical doctor, her opinion is of no probative value.

The Board notes that both Dr. Reed and Dr. Llauger-Mier attributed appellant's reaction on July 9, 1998 to the August 22, 1997 robbery attempt. However, since it has not been established that appellant sustained an emotional condition from the August 22, 1997 robbery attempt, her reaction on July 9, 1998 cannot be considered a consequence of that injury.

Appellant, therefore, has not provided probative medical evidence sufficient to establish that she sustained an emotional condition causally related to the August 22, 1997 or the July 9, 1998 incidents.

The decisions of the Office of Workers' Compensation Programs dated March 30, 1999 and September 15, 1998 are hereby affirmed.

Dated, Washington, DC
January 2, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Shelia Arbour* (Victor E. Arbour), 43 ECAB 779 (1992). Furthermore, section 8101(2) of the Federal Employees' Compensation Act defines "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *Sheila A. Johnson*, 46 ECAB 323 (1994).