

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIANNE COSTELLO and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 01-1215; Submitted on the Record;
Issued July 2, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

On June 4, 1994 appellant, then a 32-year-old letter carrier, filed a Form CA-2 claim for benefits based on occupational disease, alleging that she developed an emotional condition caused by factors of her employment. In a statement accompanying the claim, appellant alleged that her supervisor, Tom Defusco, had engaged in a pattern of harassment and intimidation against her, as a result of which she developed stress, nervous anxiety and an adjustment disorder.

The Office denied appellant's claim in decisions dated February 28 and October 10, 1995. By letter dated October 10, 1996, appellant requested reconsideration.

The Office referred appellant for a second opinion examination with Dr. Frank Sullivan, Board-certified in psychiatry and neurology. In a report dated March 25, 1997, Dr. Sullivan, after stating findings on examination and reviewing the medical history and statement of accepted facts, opined that the history and medical records found a direct causal relationship between appellant's symptoms and factors of her employment.

In a report dated September 1, 1997, Dr. Sullivan stated that appellant's condition had improved and stabilized after she was removed from her work environment. He advised that appellant was willing to return to work so long as she avoided contact with Mr. Defusco, which would probably result in a recurrence of her symptomatology. Dr. Sullivan stated that this was the only factor inhibiting her from returning to full-time work at her former position.

By decision dated December 18, 1997, the Office set aside the previous decisions denying compensation and accepted appellant's claim for an anxiety disorder with mixed emotional features. The Office commenced payment for compensation of total disability, retroactive to May 14, 1994.

By letter dated June 8, 1998, the Office advised Dr. Louis Hafken, Board-certified in psychiatry and neurology and appellant's treating psychiatrist, that her former supervisor, Mr. Defusco, had retired and was therefore no longer employed at the employing establishment. The Office asked Dr. Hafken whether appellant was able to return to employment at her date-of-injury job given the fact that he had repeatedly opined that she was willing and able to return to work so long as she avoided contact with Mr. Defusco.

In a report dated June 23, 1998, Dr. Hafken stated that, assuming her previous supervisor, Mr. Defusco, was no longer working at the employing establishment, he saw no medical hindrance to her returning to her previous position. He stated that his April 10, 1998 report contained the same restrictions he had previously outlined, *i.e.*, that she should avoid contact with Mr. Defusco.

On August 14, 1998 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the weight of the medical evidence, as represented by the opinions of Drs. Hafken and Sullivan, indicated that appellant was able to return to employment with the employing establishment given the fact that her former supervisor had retired, and that therefore there were no current restrictions regarding her ability to resume working full time at her former job. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

Appellant submitted a September 10, 1998 report from Dr. Charles E. Folkers, Ph.D, a clinical psychologist, who advised that appellant was suffering from post-traumatic stress disorder (PTSD) with delayed onset of moderate severity. He stated that one consequence of this disorder for appellant was that the thought of returning to work in the employing establishment in any position and not merely working again for Mr. Defusco, caused emotional distress that is currently disabling. Dr. Folkers further stated that there were indications that appellant was not presently able to return to work of any kind because of difficulty focusing attention and preoccupation with her situation.

By decision dated October 1, 1998, the Office terminated appellant's compensation.

By letter dated October 27, 1998, appellant requested an oral hearing, which was held on September 26, 2000. He submitted November 24, 1999 and September 25, 2000 reports from Dr. Folkers, and a September 21, 2000 report from a social worker. In his November 24, 1999 report, Dr. Folkers reiterated his previous findings and conclusions, cited literature pertaining to PTSD and stated:

"The symptomatic consequences of the incident have included fear and feelings of helplessness; exaggerated rage reactions; insomnia; avoidance of places, situations, and individuals associates with the incident; mental fogginess and difficulty concentrating; depressed mood; and anxious hypervigilance. This combination of symptoms and their association with the traumatizing incident are fully consistent with diagnosis of [PTSD], chronic, with delayed onset, according to ... diagnostic criteria."

In his September 25, 2000 report, Dr. Folkers advised that appellant felt she would be able to work with the employing establishment in a different administrative region, but reiterated that she should avoid returning to the same work division in which she was formerly employed. He stated:

“My recommendation is based on the clinical judgment that because she experienced secondary retraumatization from her dealings with [employing establishment] administrators subsequent to the initial trauma, working in [her former work site] would pose too great a risk of further traumatic reactions.”

By decision dated December 20, 2000, the Office hearing representative affirmed the October 1, 1998 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

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.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 this case, the Office based its decision to terminate appellant's compensation on reports from Dr. Sullivan, the referral physician, and Dr. Hafken, appellant's treating physician. In its December 18, 1997 decision, the Office accepted appellant's claim for an anxiety disorder with mixed emotional features based on the opinions of Drs. Sullivan and Hafken; both physicians, however, agreed that the only restriction on appellant's return to work was to avoid any contact with Mr. Defusco, her former supervisor, whose interaction with appellant was the precipitating factor in the development of her emotional condition. In his June 23, 1998 report, Dr. Hafken was advised by the Office that Mr. Defusco had retired and no longer employed with the employing establishment. He opined that there were no remaining restrictions precluding appellant's return to full duty at her previous position. The Office relied on the opinions of Drs. Sullivan and Hafken in its October 1, 1998 termination decision, finding that in light of Mr. Defusco's retirement appellant's employment-related disability had ceased and that she could return to full-time work without restrictions.

The Board finds that the Office determined that appellant no longer had any disability for regular employment from her accepted emotional condition and could return to her regular work activities based on the opinions of Drs. Sullivan and Hafken. The reports of these physicians were sufficiently probative, rationalized, based upon a proper factual background and constituted sufficient medical rationale to support the Office's October 1, 1998 decision terminating appellant's compensation.

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

Appellant did submit reports from Drs. Folkers, who diagnosed PTSD and indicated that appellant could return to work with the employing establishment only if she were allowed to work in a work site other than the one in which she had previous been employed.³ Dr. Folkers advised that appellant should be prohibited from returning to her former workplace. Prior to the October 1, 1998 termination decision, Drs. Sullivan and Hafken found that appellant had only one restriction prohibiting her return to working in her former work site, that of avoiding contact with her former supervisor. Dr. Hafken had treated appellant since the onset of her condition in 1994 and had maintained this opinion years of treating appellant. The referral physician, Dr. Sullivan, concurred with this opinion, and the Office properly found that the opinions of these two Board-certified physicians, which was unrefuted, were probative, rationalized and represented the weight of the medical evidence. In contrast, Dr. Folkers' reports stating that appellant had suddenly developed a new aversion against working in her former job site entirely are speculative and equivocal, and did not contain countervailing, probative medical evidence that appellant continued to have residual disability from her accepted emotional condition or that she was physically unable to return to full duty without restrictions. Accordingly, the Board affirms the December 20, 2000 decision of the Office hearing representative.

The decision of the Office of Workers' Compensation Programs dated December 20, 2000 is hereby affirmed.

Dated, Washington, DC
July 2, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ The report submitted by a social worker does not constitute medical evidence pursuant to section 8101(2).