

On June 13, 2003 appellant, then a 42-year-old stakeholder liaison, filed a claim alleging that her severe generalized anxiety was a result of a hostile work environment, demeaning comments, sexual harassment and threats in the course of her federal employment. The Office accepted her claim for major depressive disorder and post-traumatic stress disorder. It found that

the evidence established three compensable factors of employment and that the medical opinion evidence related compensable factors to appellant's diagnosed emotional condition.¹

Appellant claimed compensation for disability from June 4 to July 23, 2003. Dr. Joseph M. Smith, a Board-certified family physician, kept her off work at that time. On June 20, 2003 he reported that he was treating appellant for generalized anxiety and depression in relation to her work activities: "[Appellant] describes symptoms classic of depression and anxiety such as low mood, crying, change in appetite, sleep patterns, extreme anxiousness, jitteriness and generally withdrawal from her normal day to day activities."

Appellant also saw Nancy K. Allen, a licensed social worker and psychotherapist, who began treating her on April 17, 2003 and based on her initial assessment of appellant, she diagnosed major depressive disorder, single episode, moderate severity and generalized anxiety disorder. Ms. Allen related appellant's history and clinical symptoms, which included depressed mood everyday for several months, diminished interest and pleasure in most daily activities, isolation from family and friends, insomnia, psychomotor agitation, fatigue, loss of energy daily, diminished ability to concentrate, suicidal ideation excessive anxiety and worry daily, feelings of restlessness, irritability and panic attacks. She explained that, on her recommendation and on the recommendation of the primary care physician, appellant took several weeks off work to adjust to her medication and to receive psychotherapy to help her reduce her symptoms and be able to return to work.

Ms. Allen added that appellant returned to work on July 24, 2003:

"Prior to returning, she was feeling very positive because a former administrator with whom she had had difficulty had left and a new administrator had started. She had heard positive things about the new administrator and was eager to meet and work with him. In her session with me on August 12, 2003, [appellant] was in good spirits and reported she had been highly complimented by the new administrator for her knowledge of her job and her good interpersonal skills. She was feeling very hopeful and was enjoying her job again."

On October 18, 2005 Dr. H. Owen Ward, Jr., Ph.D., a clinical psychologist who first saw appellant on July 12, 2004, reviewed her treatment and provided a very thorough, well-rationalized report as to onset of her condition and extent to which she would have been unable to work, which included the following statement:

"She began treatment with Joseph Smith, M.D., her family physician, on April 14, 2003 who diagnosed her with [g]eneralized [a]nxiety [d]isorder (300.02) and [d]epression, [n]ot [o]therwise [s]pecified (311.0) as he states in his June 20, 2003 report. Dr. Smith gave [appellant] medication and referred her for psychotherapy with [Ms] Allen, LISW, a social worker in Springfield. Ms. Allen adds to the diagnosis of [g]eneralized [a]nxiety a [m]ajor [d]epressive [d]isorder. The list of symptoms are outlined in Ms. Allen's report dated August 26, 2003 and clearly

¹ The compensable factors included a supervisor's comment on August 26, 2002, a supervisor's remarks in December 2002 and a coworker's actions on or about January 31, 2003.

indicate that she was incapacitated, so it is not surprising that she was released from her work duties from June 3 to July 24, 2003.”

On March 9, 2006 the Office denied appellant’s claim for compensation. It found that Dr. Ward’s opinion was insufficient to establish injury-related disability beginning June 4, 2003. The Office noted that Dr. Ward, who began treating appellant more than a year after the start of the claimed disability, derived his opinion from the earlier reports of a family physician and a licensed social worker, both of whom lacked the professional expertise to address appellant’s emotional condition.

On April 25, 2006 Dr. Smith addressed his credentials:

“I am [appellant’s] family physician. I am [B]oard[-]certified in family medicine and I am licensed in the state of Ohio to diagnose and treat medical and mental conditions. I can provide work releases when deemed necessary. I have read Dr. Ward’s report and I concur [with] his findings concerning [appellant]. I diagnosed [appellant] with mental illness on her initial presentation to my office on April 14, 2003. On that date, she was diagnosed with generalized anxiety disorder and major depressive disorder and started on psychotropic medication. I subsequently, followed her and treated her for these disorders. I also referred her to a psychologist and comanaged her mental illness with Dr. Ward, when she began seeing him. At the time of my initial diagnosis and initiation of her treatment, she was employed with the Safety Administration.”²

In a decision dated October 29, 2007, the Office reviewed the merits of appellant’s claim and denied compensation for the period of disability claimed. It noted that Dr. Ward was basing his opinion on professionals who did not have an expertise in the area of mental health. The Office found that Dr. Smith’s opinion carried no weight because he provided no credentials “to substantiate his claim that he is a licensed clinical psychologist or psychiatrist.” It found that appellant’s emotional condition was outside the area of his expertise and the expertise of Ms. Allen.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ “Disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

² On the prior appeal, the Board found that this report was relevant and warranted a merit review of appellant’s case. Docket No. 07-1320 (issued September 26, 2007).

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f) (1999).

An employee seeking benefits under the Act has the burden of establishing the essential elements of her claim by the weight of the evidence,⁵ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁶

As causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician cannot be considered by the Board in adjudicating that issue.⁷ The 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.⁸ A social worker is not a “physician” under the Act.⁹

The required medical opinion evidence need not be from a physician who treated the employee immediately following the accident, but it must be based on a complete and accurate factual background.¹⁰

ANALYSIS

The Office denied compensation for wage loss from June 4 to July 23, 2003 because Dr. Ward, a clinical psychologist and “physician” under section 8101(2) of the Act, derived his opinion from the earlier reports of a family physician and a licensed social worker, both of whom, the Office found, lacked the professional expertise to address appellant’s emotional condition.

The Board finds that Dr. Ward may use the information submitted by Ms. Allen and Dr. Smith to develop his own competent medical opinion on the issue of disability for work. Ms. Allen is not a “physician” under section 8101(2) of the Act and is not competent to give a medical opinion on the issue of disability. But her documentation of appellant’s symptoms -- depressed mood everyday for several months, diminished interest and pleasure in most daily activities, isolation from family and friends, insomnia, psychomotor agitation, fatigue, loss of energy daily, diminished ability to concentrate, suicidal ideation, excessive anxiety and worry daily, feelings of restlessness, irritability and panic attacks -- may serve as a source of clinical information for any psychologist trying to determine whether the accepted employment injury caused disability for work. Regardless of whether Dr. Smith is licensed in the State of Ohio to diagnose and treat mental conditions,¹¹ his record of appellant’s symptoms during the period in question -- low mood, crying, changes in appetite and sleep patterns, extreme anxiousness,

⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Arnold A. Alley*, 44 ECAB 912 (1993).

⁸ 5 U.S.C. § 8101(2).

⁹ *Debbie J. Hobbs*, 43 ECAB 135 (1991) (social worker with a degree in psychology).

¹⁰ *Harry J. Neeley*, 23 ECAB 163 (1972).

¹¹ The Board need not decide that issue.

jitteriness and generally withdrawal from normal day-to-day activities -- may also be used by Dr. Ward in providing an opinion on disability.

Indeed, Dr. Ward found sufficient data in appellant's clinical history, as documented in her medical records, to form his own opinion with a reasonable degree of medical certainty. In particular, he found that the symptoms Ms. Allen outlined clearly indicated that appellant was incapacitated, "so it is not surprising that she was released from her work duties from June 3 to July 24, 2003." It is not determinative to the issue of disability that Dr. Ward saw appellant for the first time one year after the period of disability claimed. What matters is that his opinion is based on a proper history and is sufficiently rationalized.

The Board finds that Dr. Ward's opinion establishes injury-related disability from June 4 to July 23, 2003. The Office accepted appellant's claim for major depressive disorder and post-traumatic stress disorder. Dr. Smith and Ms. Allen took her off work so she could adjust to her medication and receive psychotherapy to reduce her symptoms. Dr. Ward reviewed their records, considered the symptoms presented and concluded that appellant was clearly incapacitated during the period in question. His opinion is rational and logical and is based on a proper history. There is no medical opinion to the contrary. The Board therefore finds that appellant has met her burden of proof by the weight of the evidence. The Board will reverse the Office's October 29, 2007 decision denying compensation for wage loss from June 4 to July 23, 2003.

CONCLUSION

The Board finds that appellant has met her burden to establish that the accepted employment injury caused disability for work from June 4 to July 23, 2003.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2007 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for payment of appropriate compensation.

Issued: October 9, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board