

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARJORIE P. CAGLE and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

*Docket No. 99-749; Submitted on the Record;
Issued October 5, 2000*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability beginning September 22, 1997.

The Office of Workers' Compensation Programs accepted that appellant sustained bilateral epicondylitis, bilateral wrist tendinitis and a left thumb sprain in the performance of her duties as a clerk. Appellant received compensation for temporary total disability from October 6, 1990 to September 26, 1991 when she returned to light-duty work for four hours per day. Appellant again stopped work on October 2, 1991 and the Office resumed payment of compensation for temporary total disability. By letter dated July 30, 1992, the Office advised appellant that it had also accepted the condition of "aggravation of preexisting condition of brief depressive reaction."

Appellant returned to work on August 11, 1997, working four hours per day in a position as a modified general clerk. This position was at the employing establishment's district office reception desk and required "no lifting, no repetitive motions, no typing, no writing, no keying, no keyboards and no computer input." Effective August 11, 1997, the Office began paying appellant compensation for four hours per day.

On September 22, 1997 appellant stopped work; she filed a claim for compensation for total disability beginning that date. By decision dated June 1, 1998, the Office found that the evidence did not establish that appellant was totally disabled beginning September 22, 1997. Appellant requested reconsideration and submitted additional evidence. By decision dated October 28, 1998, the Office found that the additional evidence was not sufficient to justify modification of its prior decision.

The Board finds that the case is not in posture for a decision.

The Office correctly identified that there was a conflict of medical opinion on the question of whether appellant's psychological or emotional condition precluded her from performing the modified clerk position for four hours per day. An Office referral physician, Dr. Gerald Fredman, a Board-certified psychiatrist, concluded in an October 31, 1997 report: "From a psychiatric perspective, [appellant] should be able to perform her job four hours per day." Appellant's attending physician, Dr. Lewis Nemes, a clinical psychologist, stated in a February 26, 1998 report that he had reviewed Dr. Fredman's report and disagreed that appellant could work four hours per day. This is consistent with Dr. Nemes' September 29, 1997 report in which he stated that appellant was too depressed to perform her limited duty.

To resolve this conflict of medical opinion, the Office referred appellant, the case record and a statement of accepted facts to Dr. Thomas Reichenbacher, a Board-certified psychiatrist. In a report dated March 19, 1998, Dr. Reichenbacher diagnosed dysthymia and pain disorder associated with psychological factors on Axis I, and mixed personality disorder with narcissistic, histrionic and paranoid features on Axis II. Dr. Reichenbacher stated that appellant had "persistent psychological symptoms which appear to be related to a preexisting personality disorder which was aggravated by her medical injuries," and that her "preexisting mixed personality disorder appears to have been aggravated by her depression and pain syndrome and this appears to be a permanent aggravation by the description of this reported to me." Dr. Reichenbacher then stated: "In my opinion, [appellant's] psychological conditions, both Axis I and Axis II, prevent her from working in her previous employment as a FSM [flat sorting machine] or LSM [letter sorting machine] operator. Attempts were made for her to work part time four hours per day in a modified clerk position, however, she claims that her seating arrangement in which she was having to look towards the coworker whom she did not like and had to have her back to all of the other people walking by her, prevented her from successfully working in this position." Dr. Reichenbacher added: "My greatest concern was [appellant's] anger and use of profanity when describing issues and events from her [employing establishment] employer. I am concerned that this response may be permanent and not responsive to therapy or other treatments and may limit her ability to work in any setting in the [employing establishment]." In a work tolerance limitations form submitted with his report, Dr. Reichenbacher stated that appellant's "pain syndrome which is aggravated by her dysthymia and underlying premorbid personality disorder prevents her from working for eight hours per workday," but indicated that appellant could work four hours per day. Dr. Reichenbacher also stated, "I am most concerned with her anger and paranoid responses to the [employing establishment] which will make it difficult for her to work in any setting/position in the [employing establishment]."

The Board has held that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion evidence, the opinion of such specialist, if sufficiently well rationalized and based on a proper medical background, must be given special weight.¹ The Board has also held that in a situation where the Office secures an opinion from an impartial medical specialist and the opinion from such specialist requires clarification or

¹ *James P. Roberts*, 31 ECAB 1010 (1980).

elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.²

The Board finds that the March 19, 1998 report of Dr. Reichenbacher requires clarification or elaboration in order to properly resolve the issue of whether appellant sustained a recurrence of disability beginning September 22, 1997.

Although Dr. Reichenbacher stated that appellant could work four hours per day, he also stated that appellant's anger and paranoid responses to the employing establishment would make it difficult for her to work in any setting at the employing establishment. Dr. Reichenbacher's report does not directly answer the question of whether an employment-related psychological or emotional condition prevented appellant from continuing to work as a modified general clerk effective September 22, 1997. The case will be remanded to the Office for it to obtain a supplemental report from Dr. Reichenbacher answering this question and providing rationale for the answer.

The decisions of the Office of Workers' Compensation Programs dated October 28 and June 1, 1998 are set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision.

Dated, Washington, DC
October 5, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Harold Travis*, 30 ECAB 1071 (1979).