

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRENIA S. GREENFIELD and DEPARTMENT OF VETERANS AFFAIRS,
MARTINSBURG MEDICAL CENTER, Martinsburg, WV

*Docket No. 98-1976; Submitted on the Record;
Issued September 8, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective October 12, 1996 on the grounds that her work-related emotional condition had resolved.

On June 23, 1993 appellant, then a 24-year-old nursing assistant, filed a claim for compensation benefits alleging that she sustained an emotional condition due to factors of her employment. The Office accepted appellant's claim for post-traumatic stress disorder.

In a report dated February 21, 1994, Dr. Bradley Soule, appellant's attending psychiatrist, diagnosed post-traumatic stress disorder. He related that he had treated appellant since September 23, 1993 for flashbacks and traumatic memories related to her employment as a nursing assistant. Dr. Soule stated:

"She was acutely aware of people dying and feared that she would herself. She had apparently been witness to the usual terminal events that occur while working as a nursing assistant on an acute medical service and had witnessed a number of people expire."

* * *

"The symptomatology of her post-traumatic stress disorder is directly related to the stressor events which she witnessed during the course of her employment."

In a letter dated April 11, 1994, the Office provided Dr. Soule with a statement of accepted facts and advised him that work factors deemed to be in the performance of duty included: taking a deceased patient to the morgue and seeing blood on him and the floor, witnessing patient deaths and suffering, seeing patients having strokes and patients with amputations, seeing patients with hepatitis, syphilis and Alzheimer's disease, having patients hit her and spit at her and having bad dreams about the patients. The Office asked Dr. Soule to

provide a comprehensive report explaining how appellant's claimed continuing disability was causally related to factors of her employment.

In a report dated April 13, 1994, Dr. Soule indicated that he was familiar with the condition of post-traumatic stress disorder because he performed disability examinations for the local Veterans Affairs Hospital and that particular condition was very common. Dr. Soule stated that appellant experienced nightmares and flashbacks regarding her work as a nursing assistant and routinely became distressed if she thought about or talked about her work. He reiterated his opinion that her condition was caused entirely by the work factors set forth in the statement of accepted facts provided him by the Office.

In a report dated May 2, 1995, Dr. Joseph A. Jurand, a psychiatrist and Office referral physician, related that appellant had been working approximately five years as a nursing assistant and cared for dying patients and was reassigned to paper work when the job proved "intolerable" but was upset working with "all the dead people's files." He related that after three years in her nursing assistant position and "watching people die," she began thinking about their suffering and felt hurt by their death, cried frequently and felt that "a part of her died with each patient." Dr. Jurand provided a personal and work history and stated his belief that appellant did not have post-traumatic stress disorder as "her trauma does not measure up to necessary levels in terms of being bizarrely far and above the normal events of human life." He diagnosed obsessive/compulsive disorder and possibly adjustment disorder not causally related to her employment.

By letter dated August 23, 1995, the Office referred appellant, along with the entire case record and a statement of accepted facts, to Dr. A.C. Kiczales, a Board-certified psychiatrist, for an examination and evaluation in order to resolve the conflict in medical opinion between Drs. Soule and Jurand as to whether appellant had any continuing disability or medical condition causally related to her accepted condition, post-traumatic stress disorder.

In a report dated October 30, 1995, Dr. Kiczales related that appellant worked in a "nursing capacity" and that she attributed her disability to her work with ill and dying individuals at the employing establishment. He diagnosed atypical post-traumatic stress disorder which was indirectly caused by a histrionic personality disorder and stated that if his conclusions were accurate, "then her illness would be work[]related." Dr. Kiczales indicated that appellant required treatment for her condition.

In a report dated April 8, 1996, Meredith W. Green, Ph.D, a clinical psychologist, provided the results of psychological testing and diagnosed severe depression but noted that almost all of Dr. Green's time with appellant was spent in administering tests and that limited time was spent in interviewing her. She indicated that she had reviewed several of the medical reports, which suggested a diagnosis of post-traumatic stress disorder but that appellant's history was not suggestive of post-traumatic stress disorder. Dr. Green stated that post-traumatic stress disorder was a frequent diagnosis at the employing establishment and appellant "may have been aware of this." She stated:

"One wonders if one is not seeing a residual obsessive compulsiveness in an individual who is virtually psychotically depressed at this time. One suspects that

outpatient treatment is too little and ineffective. It would seem as if this woman should be hospitalized and aggressively treated for her severe depression.

“Her experiences are not dramatically different from that which other people see who are nurses. She was not a nurses’ aide going into this type of situation, it had been preceded by two years of nursing school.... If this is not a post-traumatic syndrome disorder and instead is the testing of a severely depressed and angry woman who has utilized obsessive compulsive defense mechanisms in order to control/ monitor her angry aggressive feelings, then her work history would not be considered the etiology of her psychological condition.”

In a report dated May 24, 1996, Dr. Kiczales related that he had reviewed Dr. Green’s report and, based upon this new material, he did not believe that appellant’s condition was “in any material way” related to her work duties. Dr. Kiczales stated that the work she had been performing was not extraordinary or unusual for a person working in a nursing capacity. He indicated that appellant required treatment by a psychiatrist. Dr. Kiczales stated:

“I believe that [appellant’s] illness began while she was working at the [employing establishment] and not because [of] the [employing establishment]. She is obviously an extremely impaired woman whose efforts over the past several years have been directed toward compensation rather than treatment. I think that personality factors especially those of dependency and histrionicity are most important in her case though[,] judging by Dr. Green’s testing[,] she may now have developed a significant depressive illness. The anger which [appellant] experiences at what she considers to be her maltreatment by your agency only serves to aggravate her state.”

In a report dated July 11, 1996, Dr. Soule submitted what he felt were deficiencies in the reports of Drs. Kiczales and Green. He related that appellant continued to have recurrent memories and dreams about her work at the employing establishment and also had flashbacks triggered by such events as hearing an ambulance siren or seeing events on television involving a hospital environment. Dr. Soule stated that when exposed to such stimuli appellant had tachycardia and widespread perspiration. He related that appellant tried to avoid thoughts about her work and avoided going to hospitals because being exposed to a hospital environment triggered adverse reactions. Dr. Soule noted that appellant had poor concentration which affected her attempted performance of her file clerk light duty at the employing establishment. He stated that appellant met the criteria for post-traumatic stress disorder.

By letter dated July 2, 1996, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the weight of the medical evidence of record, as represented by the reports of the impartial medical specialist, Dr. Kiczales, established that appellant had no remaining disability causally related to her employment-related emotional condition.

In a letter dated July 22, 1996, appellant indicated that her two years of nursing school included prerequisites such as English, child development, sociology, anatomy, chemistry and physiology rather than clinical nursing courses.

By decision dated September 18, 1996, the Office terminated appellant's compensation benefits effective October 12, 1996.

By letter dated September 20, 1996, appellant requested an oral hearing before an Office hearing representative.

On November 24, 1997 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated March 4, 1998 and finalized March 5, 1998, the Office hearing representative affirmed the Office's September 18, 1996 decision.

The Board finds that the Office has not met its burden of proof in terminating appellant's compensation benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.¹

In this case, there was a conflict between the opinion of appellant's attending psychiatrist, Dr. Soule, who stated in an April 13, 1994 report that her employment-related post-traumatic stress disorder had not resolved and Dr. Jurand, the Office's referral psychiatrist, who opined in his May 2, 1995 report that appellant did not have post-traumatic stress disorder and that his diagnosis of her condition, obsessive/compulsive disorder, was not work related. Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If 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."² Therefore, the Office properly referred appellant to an impartial medical specialist to resolve the conflict in medical opinion as to whether her employment-related emotional condition had resolved.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

In a report dated October 30, 1995, Dr. Kiczales, the impartial medical specialist selected to resolve the conflict in medical opinion evidence between Drs. Soule and Jurand, related that appellant worked in a nursing capacity and that she attributed her disability to her work with ill and dying individuals at the employing establishment. He diagnosed atypical post-traumatic

¹ See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

² 5 U.S.C. § 8123(a).

³ *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

stress disorder which was indirectly caused by a histrionic personality disorder and, indicated that if his conclusions were accurate, “then her illness would be work related.” In this report Dr. Kiczales noted that no diagnostic testing was conducted which was subsequently authorized by the Office.

In a report dated April 8, 1996, Dr. Green, provided the results of psychological testing and diagnosed severe depression. Dr. Green indicated that she had reviewed several of the medical reports, which suggested a diagnosis of post-traumatic stress disorder but that appellant’s history was not suggestive of post-traumatic stress disorder.

In a report dated May 24, 1996, Dr. Kiczales related that he had reviewed Dr. Green’s report and, based upon diagnostic testing, he did not believe that appellant’s current condition was “in any material way” related to her work duties. He stated that the work she had been performing was not extraordinary or unusual for a person working in a nursing capacity. However, Dr. Kiczales’ responses to the Office’s inquiries were not well rationalized as he noted only “not applicable” to several questions. Additionally, his report is vague as it did not clarify appellant’s diagnosis, even though Dr. Kiczales felt that she needed psychiatric treatment. He provided only an original, tentative diagnosis of post-traumatic stress disorder, which was accepted in this case, and indicated that appellant exhibited a significant depressive illness. Dr. Green’s supplemental report is deficient in that he failed to establish that appellant had no residuals attributable to her accepted condition. Due to the deficiencies noted above, the Board finds that the opinion of the impartial medical specialist, Dr. Kiczales, is not entitled to special weight and does not establish that appellant’s employment-related post-traumatic stress disorder has resolved. Therefore, the Office did not meet its burden of proof in terminating appellant’s compensation benefits.

The March 4, 1998 decision of the Office of Workers’ Compensation Programs is reversed.

Dated, Washington, DC
September 8, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member