

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY PINSON DARDEN and DEPARTMENT OF
VETERANS AFFAIRS, REGIONAL OFFICE, Los Angeles, CA

*Docket No. 99-737; Submitted on the Record;
Issued January 19, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

On October 31, 1988 appellant, then a 52-year-old assistant finance officer, filed a traumatic injury claim for job-related stress, which she attributed to reprisals by officials at the employing establishment. She noted that an examiner of the Equal Employment Opportunity Commission (EEOC) had found that she had been improperly denied a promotion to the position of assistant finance officer. The Office accepted appellant's claim for major depression and began payment of temporary total disability compensation, retroactive to June 22, 1998, when appellant stopped work. In a March 27, 1998 decision, the Office terminated appellant's compensation effective March 28, 1998 on the grounds that appellant had recovered from her accepted occupational illness. Appellant requested a written review of the record by an Office hearing representative. In an October 8, 1998 decision, the Office hearing representative found that the weight of the medical evidence rested with the report of the impartial medical specialist who concluded that appellant had no residuals of the employment injury. He, therefore, affirmed the Office's March 27, 1998 decision.

The Board finds that the Office properly terminated appellant's compensation for employment-related depression.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

In a March 20, 1989 report, Dr. Ronald J. Davidson, a Board-certified psychiatrist, diagnosed major depression, dysthymia, psychological factors affecting physical conditions including hypertension and gastrointestinal problems and narcissistic traits. He concluded that appellant was totally disabled for work and related her condition to harassment at work.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Peter S. Armstrong, a psychologist, together with a statement of accepted facts and the case record, for an examination and second opinion. In a May 9, 1991 report, Dr. Armstrong diagnosed major depression, single episode. He commented that the job factors cited in the statement of accepted facts were related to her discrimination suit and were related to her depression. Dr. Armstrong stated that there was no sign of a preexisting psychiatric condition that required any sort of treatment. He indicated that appellant's history of job performance gave no suggestion that she experienced any limitation in her functioning prior to her filing of her discrimination complaint. Dr. Armstrong noted that the history indicated that appellant functioned successfully for an extended period at work. He commented that appellant's tendency to be compliant and dependent were important to an understanding of her injury. Dr. Armstrong stated that she looked to her employer with a sense of trust and an expectation that her years of loyalty would be rewarded. He indicated that appellant's failure to advance was based on a sense of betrayal by her employer, which rendered her helpless and traumatized by the treatment she received. Dr. Armstrong commented that it was impossible to separate the job injury from appellant's discrimination complaint. He stated that, had the employing establishment complied appropriately to the EEOC findings, appellant would likely not have experienced the job trauma. He concluded that appellant's depression was job related.

Dr. Davidson continued to submit extensive, detailed progress reports. He diagnosed moderate-to-severe chronic depression, phobia on working in discriminatory or harassing environment or with the employing establishment, dysthymia, anxiety, psychological factors affecting physical condition, and obsessive-compulsive, narcissistic and dependent traits, industrially aggravated. Dr. Davidson indicated that appellant was totally disabled for work.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. David Bedrin, a Board-certified psychiatrist, for an examination and second opinion. In a June 24, 1997 report, Dr. Bedrin diagnosed a bipolar disorder. He stated that appellant, had a history of depression and manic-type symptoms such as doing a considerable amount of cleaning and laundry, increased energy level, racing thoughts and insomnia. Dr. Bedrin commented that a bipolar disorder was a major affective disorder which included symptoms of depression as well as manic or hypomania which appellant had by history. He noted that appellant's depression began in November 1987, which he related to appellant's marriage for the second time. He commented that appellant also had personality disorder features, which were long-standing chronic conditions beginning in late adolescence or early adulthood. Dr. Bedrin indicated that these conditions preexisted appellant's employment with the employing establishment. He stated that many of appellant's problems arose because of her personality disorders due to the way she reacted with herself, others and her environment. Dr. Bedrin commented that appellant had problems at work with her supervisor and did not adequately complete her training. He related that when appellant received work evaluations she became angry and filed grievances rather than trying to improve her performance. Dr. Bedrin stated that these incidents appeared to be secondary to problems which arose because of her

preexisting, nonwork-related personality disorders. He indicated that, even though appellant felt discriminated against and paranoid, it appeared to be secondary to her personality disorder. Dr. Bedrin concluded that appellant had no objective factors of disability and indicated that her mental status examination was within normal limits. He stated that it appeared that the major portion of appellant's bipolar disorder was secondary to nonindustrial causes, those being problems which had arisen because of her preexisting nonindustrially-related personality disorder or features of personality disorder and secondary to appellant's marriage in 1987 which was a major life event. Dr. Bedrin commented that, if any of appellant's psychiatric condition was secondary to industrial factors, it was minor.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Jonathan P. Rosman, a Board-certified psychiatrist, to resolve the conflict in the medical evidence between Drs. Davidson and Bedrin. In a January 4, 1998 report, Dr. Rosman diagnosed a schizoaffective disorder and paranoid personality disorder. He explained that appellant had shown an enduring feeling of a hostile and discriminatory world and environment dating back before the discriminatory episode of 1982. Dr. Rosman stated that appellant's and Dr. Davidson's statements showed that this perceived discrimination extended back into the 1970's. He commented that appellant appeared to be socially isolated and to have difficulty in trusting others. Dr. Rosman indicated that she read hidden meanings into benign comments or events. He noted that appellant reported audio and visual hallucinations at the time she left her employment which persisted for a period of time. Dr. Rosman noted that three Minnesota Multiphasic Personality Index tests scored by three experts over a period of two years consistently showed significant paranoid symptomatology. Dr. Rosman related that Dr. Davidson reported appellant's history of "hundreds and thousands" of incidents of discrimination at work even through the 1970's when she was not complaining of problems. Dr. Rosman interpreted this history as a paranoid misrepresentation of the true state of affairs. He indicated that appellant also tested as having extremely high depressive symptomatology. Dr. Rosman noted that Drs. Davidson and Bedrin obtained a significant history of hypomanic symptoms with an increased rate of thinking and speech. He commented that the episodes of these symptoms appeared to have been extremely short-lived but were noted by both psychiatrists. Dr. Rosman stated that such symptomatology raised the possibility of Type II bipolar disorder, which would be characterized by brief hypomanic episodes together with major depressive episodes and could account for a degree of psychotic symptomatology such as hallucinations and delusions. He concluded, however, that the overriding nature of appellant's symptoms were that of paranoia and commented that appellant's paranoid symptoms could not be accounted for by a diagnosis of bipolar disorder. Dr. Rosman, therefore, diagnosed schizoaffective disorder. He stated that appellant's schizoaffective disorder had been partially treated and currently was not flagrantly psychotic without current major depressive or hypomanic symptoms but with persistent paranoid symptomatology, mild-to-moderate depression, persistent slowness of thought and difficulty processing material, indicative of persistent mild-to-moderate thought disorder and paranoid misinterpretation of events. Dr. Rosman concluded that appellant's paranoid personality disorder was not related to the accepted factors of employment since this type of personality organization was extremely stable and well formed early in a person's life. He commented that the history appellant gave and the collateral information support that she had a long-standing mistrustful perception of her life. Dr. Rosman stated that the schizoaffective disorder was typically a combination of conditions which had a biological basis. He concluded that the accepted factors of employment exacerbated

appellant's condition and exacerbated her symptoms. He stated that these factors, however, were not the only causative factors operating at the time of appellant's disability. Dr. Rosman commented that there were other stressors which were extremely significant such as the death of her first husband, her divorce from her second husband, her unemployment and her social isolation. He indicated that appellant would not be able to return to work but would require vocational rehabilitation. Dr. Rosman summarized that appellant suffered from schizoaffective disorder and paranoid personality disorder with very fragile thought processes bordering on psychotic with a paranoid delusional element. He stated that appellant's conditions were not caused by the accepted factors of employment but were exacerbated by them. He concluded, however, that after a decade of treatment the residual symptoms had taken on a life of their own and were no longer causally related to the accepted factors.

In a March 2, 1998 report, Dr. Davidson disagreed with the reports of Drs. Bedrin and Rosman. He stated that appellant's performance evaluations of exceptional performance in many areas were inconsistent with a diagnosis of schizophrenia or paranoid personality disorder. Dr. Davidson indicated that the performance evaluation was manifest of exceptional and outstanding personality functioning, very good object relations and no thought disorder. He commented that the performance evaluation contradicted Dr. Rosman's assessment that appellant had a mistrustful relationship with her environment. Dr. Davidson presented statements from people who knew appellant socially and stated that these statements demonstrated that appellant was not socially isolated as Dr. Rosman had concluded. Dr. Davidson stated that a MMPI-2 performed in 1991 did not show paranoia, schizophrenia, character disorder, or bipolar disorder. He commented that appellant had no family history of schizophrenia or bipolar disorder. Dr. Davidson stated that those with schizophrenia, bipolar disorders or personality disorders would have impaired relationships, poor supervisory skills, poor skills at maintaining employment and poor family relationships. He indicated that appellant did not have such a history, noting that she had been employed for 27 years, had received promotions and had been given exceptional performance evaluations. Dr. Davidson reported that appellant had no history of visual hallucinations. He noted that appellant was on medication when she reported audio hallucinations. Dr. Davidson concluded that Dr. Rosman's report had an inaccurate history, was flawed in medical logic and had diagnoses that were not supportable under the appropriate diagnostic criteria.

In situations where there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.² In this case, Dr. Rosman gave a detailed, extensive report of appellant's condition, based on an accurate history. He concluded, based on his examination, that appellant's psychiatric condition was preexisting and only exacerbated by the accepted factors of her employment. His report is, therefore, entitled to special weight and, in the circumstances of this case constitutes the weight of the medical evidence. Dr. Davidson's reports formed part of the conflict in the medical evidence. His March 2, 1998 report, while questioning the basis of Dr. Rosman's report does not have sufficient probative weight to call

² *James P. Roberts*, 31 ECAB 1010 (1980).

into question the conclusions reached by Dr. Rosman whose report provided a sufficient basis for the Office's decision to terminate appellant's compensation.

The decisions of the Office of Workers' Compensation Programs, dated October 8 and March 27, 1998, are hereby affirmed.

Dated, Washington, DC
January 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Valerie D. Evans-Harrell
Alternate Member