

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKI L. McOMBER and U.S. POSTAL SERVICE,
POST OFFICE, Tacoma, WA

*Docket No. 03-1031; Submitted on the Record;
Issued August 19, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's right to compensation on the basis that she obstructed an Office-directed medical examination.

On July 7, 1999 appellant, a 43-year-old letter carrier, injured the knuckle on her right little finger, when a bee flew into her face while she was placing mail in a box. She filed a claim for benefits on the date of injury, which the Office initially accepted as a strain of the right little finger and subsequently updated to tenosynovitis of the right little finger. The Office additionally authorized trigger release surgery for the right little finger, which appellant underwent April 20, 2000. She stopped work on July 7, 1999 and returned to work on July 5, 2000 in a full-duty capacity. Appellant was on approved family medical leave from July 1999 through July 2000.

Appellant has a history of post-traumatic stress disorder with anxiety and agoraphobia, as well as a history of previous physical abuse. Prior to the work injury of July 7, 1999, she had been diagnosed with post-traumatic stress disorder, bipolar disorder, depression and personality disorders. She had also filed two claims for emotional illness, injury numbers A14-334133 and A14-343089, which were denied by the Office.¹

Appellant filed a claim for compensation for the period July 14, 1999 through April 19, 2000. In developing this claim, the Office noted that there was limited medical evidence which supported any disability from work due to the accepted work-related condition

¹ One claim pertained to a June 12, 1999 incident, whereby appellant alleged that a coworker had verbally assaulted her and approached her in a threatening manner. The claim was denied on August 12, 1999 on the basis that appellant failed to establish an injury in the performance of duty. The other claim dealt with an injury arising on June 18, 1998, which the Office had denied on November 4, 1998 as either not having occurred in the performance of duty or not arising out of assigned duties. The record indicates that that decision was affirmed on appeal.

until appellant's surgery date of April 20, 2000. The Office further noted that, in a July 28, 2000 report, Dr. Gail K. Shuler, appellant's attending psychiatrist, opined that "the verbal attack (of June 12, 1999) reactivated her post-traumatic stress syndrome and then the pain from her hand injury further exacerbated her symptoms and intensified them. Therefore, I do believe that there is some connection between appellant's hand injury and her anxiety and agoraphobia, which kept her from work."

As the July 28, 2000 report from Dr. Shuler and contemporaneous medical records following the work incident of July 7, 1999 raised concerns as to whether appellant was disabled due to the effects of an aggravation of post-traumatic stress disorder during the period July 7, 1999 through April 19, 2000, the Office routed the case file to an Office medical adviser for comment. The Office medical adviser reviewed the evidence in the case record, noting that there was no longitudinal medical evidence in the file that supported a worsening of the post-traumatic stress disorder as a result of the work injury of July 7, 1999 and concluded that it was medically improbable that the mild right little finger symptoms resulting from the July 7, 1999 work incident could have worsened appellant's preexisting post-traumatic stress disorder or depression.

As Dr. Shuler provided some support for appellant's claim for compensation from July 14, 1999 to April 19, 2000, the Office determined that there was a conflict in the medical evidence and referred appellant, together with a statement of accepted facts and the case record, to Dr. Jeanne Bramhall, a Board-certified psychiatrist, for an impartial medical evaluation. The referral letter, dated October 1, 2001, advised appellant that the examination was scheduled for October 12, 2001 and that, under section 8123(d) of the Federal Employees' Compensation Act, an employee's right to compensation was subject to suspension if the employee refused to submit or obstructed a medical examination.

In an October 12, 2001 report, Dr. Bramhall stated that there was great overt and covert hostility expressed towards her from the beginning of the interview, noting that appellant began the session by stating that the appointment was a waste of time because Dr. Marc Stuffis, an emergency physician, had already determined in an independent examination, that her finger injury caused her to be depressed. Dr. Bramhall stated that appellant then handed her a handful of papers, which included Dr. Stuffis' report, a letter documenting that he was not her regular doctor, thus making his diagnostic opinion "independent." As a result of this hostility, Dr. Bramhall stated that appellant was totally uncooperative to interview, advising that, when she attempted to question appellant about the various psychiatric records in her file, she repeatedly gave one of three noncommittal answers ("I can't recall," "I'm not sure" or "probably). Before closing the interview, Dr. Bramhall stated that she explained to appellant that she had inadequate information upon which to assign a diagnosis and appellant signed a release of information to enable the doctor to obtain her 1992 records from Dr. Shuler, appellant's attending psychiatrist. Dr. Bramhall also stated that she expressed her desire to interview appellant a second time after receiving those records. She further advised that appellant was given explicit directions about completing the Minnesota Multiphasic Personality Inventory-II (MMPI), including the admonition not to leave more than 30 items blank, but that appellant left a total of 41 items blank, therefore, making her test result invalid.

In an October 18, 2001 memorandum to the file, the Office reported a telephone conversation with Dr. Bramhall in regard to the problems experienced with appellant's evaluation. The claims examiner noted that, although appellant had signed a release to Dr. Bramhall to obtain her 1992 records from Dr. Shuler and Dr. Bramhall had sent in appellant's release, the records had been archived. Dr. Bramhall expressed her desire to complete the evaluation, but felt that the 1992 records were needed to be thorough. The claims examiner noted that Dr. Bramhall would fax a copy of the release and an address to her.

In a February 11, 2002 memorandum to the file,² the Office advised that appellant had been called to see whether the release of information forms it mailed on February 1, 2002 had been returned. Appellant refused to sign the release of information forms saying that it was too general, not specific enough. She further stated that she had not brought up the psychiatric issue, rather her postmaster had. The Office stated that Dr. Shuler had brought up the issue by saying her post-traumatic stress disorder had been aggravated by the finger injury. When appellant again stated her refusal to sign the release forms, the claims examiner advised her that Dr. Bramhall would be called and informed that, as she refused to sign the release forms and thus they could not obtain Dr. Shuler's records, Dr. Bramhall should complete the impartial medical evaluation. She was then called, informed of the situation and instructed to complete the impartial medical evaluation.

In a March 3, 2002 report, Dr. Bramhall advised that she was unable to complete her evaluation of appellant because past psychiatric records were missing from the case file.

By letter dated March 1, 2002, the Office issued a notice of proposed suspension of compensation, stating that appellant was not fully compliant with the independent medical evaluation conducted by Dr. Bramhall on October 12, 2001. The Office noted that, although Dr. Bramhall gave explicit directions relative to completing the MMPI test, including an admonition not to leave more than 30 items blank, appellant left 41 items blank, rendering the test invalid. The Office further noted that Dr. Bramhall had inadequate information to assign a diagnosis and complete her evaluation and had appellant sign a release of information to assist her in obtaining Dr. Shuler's records from 1992. The Office stated that, when it became necessary to obtain a new release form, as the previous one had expired, appellant refused to do so in a telephone conversation on February 11, 2002. The Office stated that such facts supported that appellant obstructed Dr. Bramhall's evaluation, which was a violation of 5 U.S.C. § 8123(d). The Office provided appellant 14 days in which to provide good cause as to why she failed to properly complete the MMPI test despite explicit instructions and why she refused to sign a release to obtain Dr. Shuler's 1992 records.

In a letter dated March 11, 2002, appellant advised the Office that she had mailed the release to the Kentucky address on approximately February 12, 2002. With regard to not answering certain questions on the MMPI test, appellant stated that, without looking at the test, she could not state why she did not answer certain questions other than she wanted the test to be as accurate as possible and the answers available did not make sense to her. She noted that it has

² The memorandum contains a typographic error indicating a date of February 11, 2001.

been almost five months since she took the test, but that she was willing to take the test again and answer all questions.

By decision dated March 20, 2002, the Office finalized the suspension of appellant's right to compensation because she did not establish good cause for refusing to submit to or obstructing the examination with Dr. Bramhall as required by the Office. The Office further advised that appellant's benefits were suspended for the period July 14, 1999 to April 19, 2000 due to the obstruction.³ In an attached memorandum,⁴ the Office found that appellant's refusal to sign a release which would have facilitated receipt of Dr. Shuler's records precluded Dr. Bramhall from reviewing such records and conducting a second interview with appellant. Although appellant claimed that the release forms had been mailed, the Office noted that such forms had not been received and that she had previously adamantly refused to comply with the request. The Office further found that appellant failed to properly complete the MMPI despite explicit instructions by Dr. Bramhall.

The Board finds that the Office properly suspended appellant's compensation for obstructing a medical examination.

Section 8123(a) of the Federal Employees' Compensation Act authorizes the Office to require an employee, who claims disability as a result of federal employment to undergo a physical examination as it deems necessary.⁵ The determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office.⁶ The Office's regulation, 20 C.F.R. § 10.320, provides that an injured employee must submit to examination by a qualified private physician as often and at such times and places as the Office considers reasonably necessary." The only limitation on this authority is that of reasonableness.⁷ Section 8123(d) of the Act provides that if an employee refuses to submit to or obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction ceases.⁸ However, before the Office may invoke this provision, the employee is provided a period of 14 days within which to present, in writing, his or her reasons for the refusal or obstruction.⁹ If good cause is not established,

³ As the Office was developing the issue of whether appellant has sustained a consequential psychiatric condition during the period July 14, 1999 to April 19, 2000, the suspension of benefits refers to the claim being held in suspense or abeyance until the period of obstruction ceased.

⁴ The Board notes that this memorandum was dated August 19, 2002 in error as it was marked received by the Office on March 20, 2002.

⁵ 5 U.S.C. § 8123(a).

⁶ *James C. Talbert*, 42 ECAB 974 (1991).

⁷ *Id.*

⁸ 5 U.S.C. § 8123(d); see *Donald E. Ewals*, 51 ECAB 428 (2000).

⁹ 20 C.F.R. § 10.323; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (April 1993).

entitlement to compensation should be suspended in accordance with 5 U.S.C. § 8123(d) until appellant reports for the examination.¹⁰

In this case, the Office decided to develop the issue of whether appellant had sustained a consequential psychiatric condition following her finger injury of July 7, 1999. This issue was not resolved as Dr. Bramhall, the impartial medical examiner, required additional medical reports from appellant's treating psychiatrist from the period 1991 through 1999 and a second examination of her after such medical information was obtained. The Office, however, found that appellant had obstructed or refused to participate with Dr. Bramhall and, accordingly, suspended development of the claim for the period July 14, 1999 to April 19, 2000 until the obstruction ceased. The Board notes that the right to compensation is suspended only from the time an employee refuses to submit or obstructs an examination. Appellant underwent the impartial medical evaluation with Dr. Bramhall on October 12, 2001. Accordingly, the suspension of her benefits is effective from October 12, 2001 until the date she complies. As previously noted, the effect of such obstruction merely delays the development of appellant's claim for the claimed period of July 14, 1999 to April 19, 2000, as she is not currently entitled to benefits.

The Board finds that appellant obstructed Dr. Bramhall's October 12, 2001 examination on the basis that she reported that appellant was hostile and nonresponsive to both the doctor's questioning and to the MMPI examination. The Board notes that, although the Office stated appellant refused to sign another release, which would have facilitated the receipt of the medical records from Dr. Shuler, the record reflects that on November 16, 2001 the Office received a copy of appellant's October 12, 2001 signed release for "all psychiatric records between 1991 and June 1999" along with copies of medical records from Dr. Shuler dated September 17, 1992 through June 30, 2000.¹¹ These medical reports were received on November 11, 2001. Although appellant cannot be found to have obstructed a medical examination on the basis that the requested reports were not received by the Office after she had signed a release, her documented hostility and unwillingness to cooperate with Dr. Bramhall and the MMPI examination constitutes obstruction of the medical examination. Furthermore, the Office gave appellant the required 14-day warning that her compensation would be suspended for obstruction. In view of these facts, the Office's decision to suspend the development of appellant's claim for a consequential psychiatric condition for the period July 14, 1999 to April 19, 2000 is correct.

¹⁰ *Raymond C. Dickinson*, 48 ECAB 646, 647 (1997).

¹¹ These records were apparently associated with another of appellant's claims. *Supra* note 1.

The March 20, 2002 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Dated, Washington, DC
August 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member