

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOIS J. CUNNINGHAM-PATTERSON and DEPARTMENT OF VETERANS AFFAIRS, COLMERY-O'NEIL MEDICAL CENTER, Topeka, Kans.

*Docket No. 96-753; Submitted on the Record;  
Issued January 21, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

The Board has duly reviewed the case record and concludes that this case is not in posture for decision.

On September 8, 1995 appellant, then a 47-year-old medical clerk, filed an occupational disease claim,<sup>1</sup> alleging that flashbacks of an employment-related stabbing caused nervousness and nightmares. A September 13, 1994 employing establishment report stated that on July 18, 1990 appellant had been stabbed in the hand by an inpatient in a psychiatric ward. She was seen at the employing establishment health unit immediately after the incident, was referred to the Employee Assistance Program for psychological counseling, and was off work for two days. She was eventually transferred to an intermediate care ward.

The relevant medical evidence includes employing establishment clinic notes dated July 18, 1990 advising that appellant was stabbed in the wrist with a butter knife, sustaining an abrasion. Dr. Eve Lipschitz, a psychiatrist, provided reports dated September 9 and 20, 1994 and advised that upon appellant's return to work following a July 1994 hysterectomy, she began having nightmares of someone stabbing her, "full blown" panic attacks and difficulty in concentrating. Dr. Lipschitz' diagnostic impression was rule-out major depressive episode and rule-out post-traumatic stress disorder. Dr. Katherine G. Weyrens, a Board-certified internist

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<sup>1</sup> The record indicates that appellant also filed recurrence claims for a back injury and carpal tunnel syndrome. The record does not contain an Office final decision on these claims; thus, they are not before the Board. 20 C.F.R. § 501.2(c).

whose primary practice area is psychiatry, provided a November 25, 1994 report stating that she was in agreement with Dr. Lipschitz.

In a statement dated November 8, 1994, appellant described the July 18, 1990 stabbing injury and stated that she feared the patient who stabbed her as he was still hospitalized at the employing establishment. She noted that upon her return to work following surgery in 1994 she became tense and anxious with nightmares and flashbacks to the July 1990 injury.

By decision dated January 21, 1995, the Office acknowledged the July 18, 1990 stabbing injury and denied the emotional condition claim on the grounds that the medical evidence of record failed to establish that appellant's condition was related to the July 1990 injury.

On March 20, 1995 appellant requested reconsideration and submitted additional medical evidence from Dr. Weyrens. In treatment notes dated December 2, 9 and 16, 1994, Dr. Weyrens noted symptoms of post-traumatic stress disorder and recommended that appellant not work at the employing establishment because flashbacks, anxiety and nightmares "would likely occur." In a report dated January 20, 1995, she described the July 1990 stabbing injury and appellant's symptoms and diagnosed post-traumatic stress disorder. The physician advised that the condition had become static and that appellant could not work near psychiatric patients without anxiety. By report dated February 9, 1995 Dr. Weyrens noted that she had been treating appellant on a weekly basis since October 27, 1994 and concluded that appellant's post-traumatic stress disorder was caused by the July 18, 1990 stabbing. She then explained the criteria utilized to establish this diagnosis which appellant exhibited and that work at the employing establishment exacerbated her symptoms.

In a merit decision dated May 3, 1995, the Office again denied the claim, finding that Dr. Weyrens' reports were insufficient to establish the claim because she failed to address how the July 1990 incident, which caused appellant little if any physical damage, could cause such a severe disability four years after the incident and failed to address the many other personal stressors affecting appellant's condition. The Office noted that no cognitive function, personality or neuropsychiatric testing had been done and concluded that "It would appear that the opinion provided by the treating physician is based solely on the subjective complaints of [appellant]."

On August 14, 1995 appellant again requested reconsideration and submitted additional reports from Dr. Weyrens. In a May 15, 1995 report, the physician advised that appellant could return to work four hours per day if she avoided direct contact with psychiatric patients. In a May 17, 1995 report, she repeated her earlier conclusion that appellant's post-traumatic stress disorder was caused by the 1990 stabbing incident and stated that the condition was lifelong; therefore, appellant should never work with psychiatric patients. In a June 1, 1995 report, Dr. Weyrens stated:

"[Appellant] has been diagnosed with post-traumatic stress disorder secondary to the assault which occurred on July 18, 1990. [She] had a delayed onset of the post-traumatic stress disorder. This is not unusual with post-traumatic stress disorder. The symptoms were likely triggered by [her] hysterectomy. [She] has had many personal stressors but these do not negate the diagnosis of post-

traumatic stress disorder. In making the diagnosis of post-traumatic stress disorder, cognitive functioning tests, personality inventory, and neuropsychiatric testing is not necessary and not part of the criteria [used] in making the diagnosis.”

By decision dated October 23, 1995, the Office denied appellant’s request for review, again discounting the opinion of Dr. Weyrens. The instant appeal follows.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim<sup>3</sup> including the fact that the individual is an “employee of the United States” within the meaning of the Act,<sup>4</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>6</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup> However, an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>8</sup>

Causal relationship is a medical issue<sup>9</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup> Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup> Nonetheless, when employment factors cause an

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

<sup>4</sup> See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>5</sup> 5 U.S.C. § 8122.

<sup>6</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>7</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> See *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>10</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 7.

<sup>11</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>12</sup>

In this case appellant established, that she was an employee of the United States and that her claim was timely filed. The Office accepted that the July 18, 1990 stabbing incident was a factor of employment but denied appellant's emotional condition claim on the grounds that the medical evidence was insufficient to establish her claim. Appellant, however, submitted reports from her treating psychiatrist, Dr. Katherine Weyrens, who diagnosed post-traumatic stress disorder caused by the July 18, 1990 employment injury and clearly explained how she reached this diagnosis. Dr. Weyrens, however, did not explain the contribution of appellant's hysterectomy and other personal stressors or why appellant could not work in the intermediate care ward. While Dr. Weyrens' reports are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. As Dr. Weyrens indicated that appellant's condition was employment related, her reports are sufficient to require further development of the record.<sup>13</sup> It is well established that proceedings under the Act<sup>14</sup> are not adversarial in nature<sup>15</sup> and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>16</sup> On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's emotional condition is employment related. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.<sup>17</sup>

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<sup>12</sup> *Larry Warner*, 43 ECAB 1027 (1992).

<sup>13</sup> *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second-opinion evaluation.

<sup>14</sup> 5 U.S.C. § 8101 *et seq.*

<sup>15</sup> *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

<sup>16</sup> *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

<sup>17</sup> In view of the Board's disposition of the merits of appellant's claim, the issue of whether the Office abused its discretion in denying merit review is moot.

The decisions of the Office of Workers' Compensation Programs dated October 23, May 3 and January 21, 1995 are hereby vacated and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.  
January 21, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member