

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHHNY L. JACKSON and U.S POSTAL SERVICE,
VEHICLE MAINTENANCE FACILITY, Dallas, Tex.

*Docket No. 96-802; Submitted on the Record;
Issued May 4, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or after March 28, 1989 causally related to his February 7, 1989 employment injury.

On February 28, 1989 appellant, then a 39-year-old motor vehicle operator, filed a claim for an adjustment disorder with mixed emotional features and aggravation of an underlying avoidant personality disorder occurring on February 7, 1989 when a supervisor watched appellant for several minutes and then told appellant that he could do better work. Appellant advised his supervisor that he was having a muscle spasm and was waiting for it to pass and the supervisor responded that it did not take five minutes to stamp a work order. The Office of Workers' Compensation Programs accepted appellant's claim.

The record shows that on March 14, 1989, appellant returned to the same light-duty job which he had been performing prior to his employment injury on February 7, 1989.

In a report dated March 13, 1989, Joyce L. Sichel, Ph.D., a licensed clinical psychologist, related that appellant was harassed at work by a supervisor who stared at him repeatedly, expected him to do things that his medical disability did not permit, and told him to speed up production on a task while he was having muscle spasms. She stated that as a result of these work incidents appellant developed very intense emotional reactions of humiliation and anger and she diagnosed adjustment disorder with mixed emotional features. Dr. Sichel stated that appellant seemed to be substantially recovered as of March 14, 1989.

In a form report dated April 9, 1990, Dr. Sichel diagnosed adjustment disorder with exacerbation from work incidents on March 29, 1990 and indicated that appellant was totally disabled from March 29 to April 9, 1990.

In a claim form dated December 20, 1989 and in subsequent claim forms, appellant claimed temporary total disability from March 28, 1989 through October 30, 1992.

In a report dated May 14, 1990, Dr. Sichel related that on March 29, 1990 appellant reported that he had been harassed by supervisors and that he seemed to have suffered a worsening of his symptoms of anxiety, anger and depression. Dr. Sichel stated:

"[Appellant's] diagnosis is slightly different than it was in 1989. At that time, I had assigned a primary role to his particular work environment in causing his distress, and a lesser role to his longstanding personality predisposition toward a solitary lifestyle. As of the present, it is clear that [appellant] is unable to work around other people without experiencing significant discomfort, and that when they have direct dealings with him of an unpleasant nature his condition worsens further. While another employee might be able to take these relatively minor conflicts with supervisors in stride, [appellant] shows inability to do this. Given his primary vulnerability to distress over interpersonal conflict, there is no doubt in my mind that the work incidents occurring on March 29, 1990 were causal factors in his deteriorating condition, [though] they were secondary to his chronic oversensitivity. My formal diagnosis ... is ... social phobia and ... avoidant personality."

In a report dated June 8, 1990, Dr. Sichel stated that the history given to her of the March 29, 1990 incident was that Mr. Newberry, a supervisor, noticed appellant crossing the hall into the office of appellant's immediate supervisor, Mr. Verela. Dr. Sichel related that about five minutes later Mr. Verela told appellant that he would have to work in a different office across the hall and that he also told appellant that he had taken a coffee break which exceeded the permitted time limit and that appellant would have to stop wearing sunglasses at work. She related that appellant felt that he was harassed by Mr. Verela at Mr. Newberry's instigation. Dr. Sichel related that appellant's psychological condition worsened after this new incident. Dr. Sichel stated:

"[Appellant] is highly vulnerable to stressful events on the job. While this incident did not cause [appellant's] vulnerability, it acted in concert with his predisposition toward experiencing stress symptoms, and in my professional opinion the incident was causal to a worsening of his symptoms (anxiety, rage reactions, depression, migraine headaches and elevated blood pressure). It is clear that when working conditions reach a certain level of unpleasantness, [appellant] is not able to cope. While another employee might be able to handle this relatively minor conflict in stride, [appellant] is not."

In a form report dated November 19, 1990, Dr. Sullivan Bryant, a family practitioner, diagnosed social phobia and avoidance personality and indicated that appellant was totally disabled. He checked the block marked "yes" indicating that the condition was causally related to his February 7, 1989 employment injury.

By letter dated February 9, 1993, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. Florence Ouseph, a Board-certified psychiatrist, for an examination and evaluation as to whether appellant had any continuing employment-related medical condition or disability.

In a report dated February 26, 1993, Dr. Ouseph related that appellant had reported emotional problems beginning in February 1989 when his supervisor wanted him to speed up while stamping numbers on a work order and appellant reported that he began to feel anxious and depressed. She provided the results of a mental status examination and diagnosed major depression, single episode, atypical anxiety disorder, adjustment disorder with mixed emotional features, and avoidant personality traits. Dr. Ouseph stated that currently it was difficult to evaluate what might be causing his depression and anxiety. She stated that appellant most probably would have difficulty returning to work because of his depression and anxiety and severe withdrawn behavior, increased irritability, difficulty with handling stress, and difficulty with concentration. Dr. Ouseph noted that appellant also reported difficulty because of a knee injury.

By letter dated April 8, 1993, the Office asked for clarification from Dr. Ouseph. The Office noted that appellant had not worked since March 29, 1990, three years ago, and asked, in light of this fact, how factors of his employment still could be aggravating his emotional condition.

By letter dated April 23, 1993, Dr. Ouseph responded that, even though appellant had not worked for the employing establishment for over three years, he reported that if he had any contact with anyone from the employing establishment or the Office he became nervous.

By decision dated June 2, 1993, the Office determined that appellant's disability was no longer causally related to his February 7, 1989 employment injury but was instead due to his underlying avoidant personality disorder.

In a report dated June 23, 1993, Dr. Sichel related that appellant told her that he perceived the incidents in March 1990, of having his work load increased and being told to move to another office, as harassment. She stated her opinion that appellant's stress symptoms were heightened by these events. Dr. Sichel stated that the incidents at work on March 29, 1990 seemed to have aggravated his basic avoidant personality disorder and social phobia.

In a report dated January 14, 1992 to Dr. Sichel, Dr. Bryant stated that on March 29, 1990 appellant told him that his supervisor had instructed him to move to another office and had increased his work load by adding to his truck mileage and asking him to answer the telephone and pass out truck cards. He related that after these incidents appellant took a coffee break and was told by his supervisor that the break was too long and that he also would have to take off his sunglasses at work. Dr. Bryant stated:

"It is clear to me that [appellant's] previously healthier personality ... ha[s] definitely deteriorated or worsened and ha[s] become severely impaired from what he was prior to his [February 7, 19]89 stress injury. In my opinion this is due to his [February 7, 19]89 and [March 29, 19]90 stress injuries...."

By decision dated August 12, 1993, the Office denied modification of its June 2, 1993 decision.

By letter dated October 29, 1993, appellant requested reconsideration of the denial of his claim.

In a report date July 7, 1994, Dr. Bryant stated:

"[Appellant's] preexisting avoidant personality disorder and social phobia was precipitated and/or aggravated by the [February 7, 19]89 work-related factors.... He continues to perceive the work-related factors as being very stressful, therefore it is my opinion his ongoing residual symptoms ... are due in part to his work-related factors on [February 7,] 1989."

* * *

"Because of his poor adaptation to his [February 7,] 1989 and/or [March 29,] 1990 work-related stress injuries, he has suffered a wide range of undesirable consequences.... Prior to [February 7,] 1989 [appellant] did have, and was coping with, his preexisting avoidant personality disorder, and his preexisting social phobia ... it is my opinion that ... [appellant's] preexisting conditions are also work related through the present time due to his continuing heightened stress residuals.... I have seen no other factors in [appellant's] daily history that would have aggravated his preexisting conditions to such a severe point ... other than the work-related factors which transpired on [February 7,] 1989 and [March 29,] 1990...."

By decision dated August 16, 1994, the Office denied modification of its August 12, 1993 decision.

By letter dated August 15, 1995, appellant requested reconsideration of the denial of his claim.

In a report dated February 19, 1990, Dr. Sichel provided a list of dates when appellant was disabled but did not address the issue of causal relationship.

In a report dated March 28, 1990, Dr. Bryant provided a list of dates when appellant was unable to work but did not address the issue of causal relationship.

In a form dated October 24, 1994, Dr. Sharon L. Woodruff, a psychiatrist, indicated that appellant was totally disabled.

In a report dated January 12, 1995, Dr. Woodruff stated that she first examined appellant on October 5, 1994 and had reviewed the medical records relating to his February 7, 1989 employment injury and his claimed recurrence of a stress condition on March 29, 1990. She stated her opinion that appellant's employment-related aggravation of his avoidant personality disorder and preexisting avoidant personality disorder was the cause of his disability for the periods March 28, 1989 through October 30, 1992.

By decision dated December 18, 1995, the Office denied modification of its August 16, 1994 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on or after March 28, 1989 causally related to his February 7, 1989 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

In this case, the Office accepted that appellant sustained an adjustment disorder and aggravation of an underlying avoidant personality disorder due to a single incident on February 7, 1989 when a supervisor told appellant that it took him too long to perform a particular task, stamping work orders. The record shows that on March 14, 1989 appellant returned to the same light-duty job which he had been performing prior to his employment injury on February 7, 1989. Appellant subsequently claimed a recurrence of disability commencing March 28, 1989 through October 30, 1992.

In a form report dated April 9, 1990, Dr. Sichel, a licensed clinical psychologist, diagnosed adjustment disorder with exacerbation due to work incidents on March 29, 1990 and indicated that appellant was totally disabled from March 29 to April 9, 1990. However, she provided no rationalized medical opinion explaining how the disability commencing on March 29, 1990 was causally related to the February 7, 1989 employment injury and therefore this report is not sufficient to discharge appellant's burden of proof.

In a report dated May 14, 1990, Dr. Sichel related that on March 29, 1990 appellant reported that he had been harassed by supervisors and that he seemed to have suffered a worsening of his symptoms of anxiety, anger and depression. However, Dr. Sichel indicated that appellant's condition on March 29, 1990 was primarily caused by his underlying avoidant personality disorder and only in part due to an incident on that date in which he claimed to be harassed by supervisors. The Office has accepted that appellant's emotional condition in 1989 was caused by a single incident on February 7, 1989. No incident occurring on March 29, 1990 has been accepted by the Office as a compensable factor of employment. Therefore, this report from Dr. Sichel is not sufficient to establish that appellant sustained a recurrence of disability on or after March 28, 1989 causally related to his February 7, 1989 employment injury.

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

In a report dated June 8, 1990, Dr. Sichel stated that the history given to her of the March 29, 1990 incident was that Mr. Newberry, a supervisor, noticed appellant crossing the hall into the office of his immediate supervisor, Mr. Verela. Dr. Sichel related that Mr. Verela told appellant that he would have to work in a different office across the hall and that he also told appellant that he had taken a coffee break which exceeded the permitted time limit and that appellant would have to stop wearing sunglasses at work. She related that appellant felt that he was harassed by Mr. Verela at Mr. Newberry's instigation. Dr. Sichel related that appellant's psychological condition worsened after this new incident. As noted above, an incident on March 29, 1990 has not been accepted by the Office as a compensable factor of employment, only an incident on February 7, 1989. Therefore this report is not sufficient to discharge appellant's burden of proof.

In a form report dated November 19, 1990, Dr. Bryant, a family practitioner, diagnosed social phobia and avoidance personality and indicated that appellant was totally disabled. He checked the block marked "yes" indicating that the condition was causally related to his February 7, 1989 employment injury. The Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁴ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁵ Therefore this report is not sufficient to establish that appellant sustained a recurrence of disability on March 28, 1989 causally related to his February 7, 1989 employment injury.

In a report dated April 23, 1993, Dr. Ouseph, a Board-certified psychiatrist and Office referral physician, stated that even though appellant had not worked for the employing establishment for over three years he reported that if he had any contact with anyone from the employing establishment or the Office he became nervous. However, Dr. Ouseph did not provide her own opinion as to the cause of appellant's problem, only appellant's complaint that contact with the employing establishment or Office made him nervous. As this report does not contain sufficient rationalized medical opinion explaining how appellant's condition on and after March 28, 1989 was causally related to a single work incident on February 7, 1989, it is not sufficient to establish that appellant sustained an employment-related recurrence of disability.

In a report dated June 23, 1993, Dr. Sichel related that appellant had told her that he perceived the incidents on March 29, 1990, of having his work load increased and being told to move to another office, as harassment. She stated that these incidents seemed to have aggravated appellant's basic avoidant personality disorder and social phobia. However, as noted above, only a single work incident on February 7, 1989 has been accepted by the Office. This report regarding incidents on March 29, 1990 is not sufficient to establish that appellant sustained a recurrence of disability causally related to his February 7, 1989 employment injury.

⁴ *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁵ *Id.*

In a report dated January 14, 1992 to Dr. Sichel, Dr. Bryant stated that on March 29, 1990 appellant told him that his supervisor had instructed him to move to another office and had increased his work load by adding to his truck mileage and asking him to answer the telephone and pass out truck cards. He related that after these incidents he took a coffee break and was told by his supervisor that the coffee break was too long and that he also would have to take off his sunglasses. Dr. Bryant stated:

“It is clear to me that [appellant’s] previously healthier personality ... ha[s] definitely deteriorated or worsened and ha[s] become severely impaired from what he was prior to his [February 7, 19]89 stress injury. In my opinion this is due to his [February 7, 19]89 and [March 29, 19]90 stress injuries....”

However, the Office has not accepted any incidents on March 29, 1990 as compensable factors of employment and Dr. Bryant provided insufficient medical rationale explaining how appellant’s continuing problems were due to the single work incident on February 7, 1989 rather than due to his nonwork-related underlying avoidant personality disorder. Therefore this report is not sufficient to discharge appellant’s burden of proof.

In a report date July 7, 1994, Dr. Bryant stated his opinion that appellant’s ongoing residual symptoms were due in part to the February 7, 1989 employment injury. He stated that because of appellant’s poor adaptation to his February 7, 1989 and March 29, 1990 “work-related stress injuries,” his preexisting emotional condition was aggravated, causing continuing problems. However, this report is not based upon an accurate factual background as Dr. Bryant appears to assume that the work incidents on March 29, 1990 have been accepted by the Office as compensable factors of employment whereas only the February 7, 1989 incident was accepted by the Office. Furthermore, Dr. Bryant has provided insufficient medical rationale explaining how appellant’s continuing problems could be causally related to a single incident on February 7, 1989, rather than to his underlying nonwork-related avoidant personality disorder. Therefore this report is insufficient to establish that appellant sustained a recurrence of disability on March 29, 1989 causally related to his February 7, 1989 employment injury.

In a form dated January 12, 1995, Dr. Woodruff, a psychiatrist, stated that she first examined appellant on October 5, 1994 and had reviewed the medical records relating to his February 7, 1989 employment injury and his claimed recurrence of a stress condition. She stated her opinion that appellant’s employment-related aggravation of his avoidant personality disorder and preexisting avoidant personality disorder was the cause of his disability for the period March 28, 1989 through October 30, 1992. However, as she provided no medical rationale for her opinion, this report is not sufficient to discharge appellant’s burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability was causally related to the accepted employment injury on February 7, 1989 and therefore the Office properly denied his claim for compensation benefits.

The December 18, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 4, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member