

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN K. HOLT and DEPARTMENT COMMERCE,  
NATIONAL BUREAU OF STANDARDS, Gaithersburg, Md.

*Docket No. 97-1196; Submitted on the Record;  
Issued March 11, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that she had continuing disability causally related to her accepted employment injury after February 5, 1983.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a physicist, sustained a depressive reaction on or about June 16, 1969 causally related to her federal employment.<sup>1</sup> Appellant was initially paid wage-loss benefits from June 16, 1969 until March 30, 1971. Appellant did return to her previous employment. The record reflects that at the time of the injury appellant was employed 32 hours per week. Appellant has stated that between 1970 and 1981 she worked two days per week, and that from 1981 until 1986 she worked three days per week, until her employment was terminated due to a reduction-in-force.

In 1987 appellant filed a notice of recurrence of disability alleging that she was entitled to additional wage-loss benefits for the difference between the 32 hours a week she worked at the time of injury, and the reduced weekly hours she worked from 1971, as well as total disability benefits commencing May 1987, at the termination of her severance pay. The Office denied appellant's notice of recurrence of disability by decision dated December 18, 1987, on the grounds that the evidence of record failed to establish that appellant's ongoing condition and resulting disability were causally related to factors of her federal employment.

On June 3, 1988 an Office hearing representative vacated the denial of the claim and remanded the case for referral to a second opinion physician and a *de novo* decision regarding appellant's continuing benefit entitlement. The Office obtained a second opinion evaluation report from Dr. Jacob Katzow, a Board-certified psychiatrist, dated December 30, 1988. In a letter dated October 26, 1992, an Office claims examiner advised appellant that, based upon the

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<sup>1</sup> In her claim appellant had alleged that she sustained an emotional condition because a research manuscript she had prepared for publication received an unnecessarily hostile review by a general referee, whom appellant believed to be her principle competitor. As a result of this review, appellant was required to revise her manuscript. The timing of the revision allowed for publication of a competitor's manuscript and suggested a derivative relationship with appellant's manuscript.

second opinion referral which was obtained in accordance with the remand order, appellant was entitled to compensation for wage loss from April 21, 1975 until November 10, 1986. The claims examiner indicated that a chronological breakdown of periods of leave without pay would be obtained from the employing establishment and disability benefits would be denied subsequent to November 10, 1986.

Appellant was provided an election of benefits for the period July 23, 1981 through November 10, 1986. On February 27, 1990 appellant wrote to the Office questioning why she could only receive benefits through 1986. On September 10, 1993 the Office issued appellant a check for wage-loss compensation during the period July 23, 1981 through February 5, 1983. Appellant was advised that further entitlement was under consideration. On April 28, 1995 the Office issued appellant a compensation check in the amount of \$63,068.27 for wage-loss benefits during the period April 1, 1971 to March 5, 1981. By decision dated June 19, 1995, the Office denied appellant wage-loss benefits after March 5, 1981 on the grounds that appellant no longer had a loss of wage-earning capacity.

By decision dated May 6, 1996, an Office hearing representative vacated the loss of wage-earning capacity determination dated June 19, 1995. The Office hearing representative stated that the issue before the Office was not loss of wage-earning capacity, but appellant's entitlement to continuing disability benefits. The hearing representative remanded the case to the Office for preparation of a statement of accepted facts and referral to an appropriate medical specialist for a definitive, rationalized medical opinion as to whether appellant had any continuing disability causally related to the accepted employment injury. The hearing representative instructed the Office that upon completion of the additional evidentiary development, the Office should issue a *de novo* decision either continuing to pay benefits under the Federal Employees' Compensation Act, denying benefit entitlement beyond a specific date, or rescinding acceptance of the claim.

The Office thereafter referred appellant to Dr. Bernard J. Vittone, a Board-certified psychiatrist, for a second opinion evaluation. In a report dated October 30, 1996, Dr. Vittone found that appellant's diagnoses were bipolar disorder, depressed state and panic disorder with agoraphobia. Regarding the panic disorder, Dr. Vittone stated that he could not find anything during his examination of appellant, within her records, or regarding the accepted factors of employment, which would imply a causal relationship between this disorder and her employment. Regarding the bipolar disorder, Dr. Vittone stated that this condition was aggravated temporarily by her employment in 1969 and that the permanent condition was accelerated in its course. Dr. Vittone explained that appellant had evidence of this condition long before her initial disabling episode in 1969 and had a family history which supported a probable underlying genetic predisposition towards this condition. Dr. Vittone also noted appellant's own statement to him that her ongoing problems with mood were unrelated to work factors, as work did not contribute to her disorder, but that her disorder made it very difficult to work in her position as a physicist. Dr. Vittone concluded that appellant's bipolar condition was permanent, as substantiated by appellant's history of ongoing problems as well as substantiation by medical literature. He concluded, however, that appellant's employment-related aggravation of this condition ceased in approximately 1970. He stated that he could not find anything in the statement of accepted facts, the medical record, or appellant's examination to support any ongoing aggravation beyond 1970.

By decision dated December 5, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the claimed condition of bipolar disorder and panic disorder, with agoraphobia, or disability was causally related to the accepted employment factors.

The Board finds that the evidence of record substantiates that appellant had bipolar disorder which was temporarily aggravated by her employment until November 10, 1986.

In 1987 appellant filed a notice of recurrence of disability wherein she alleged that she was entitled to wage-loss benefits from 1971 and continuing. As noted by the Office hearing representative in his review of the case record, it is unclear whether this case record was constructed and maintained in its entirety. The record does not indicate that appellant's physicians did continue to submit new reports to the record after 1987. In a report dated May 4, 1987, appellant's treating psychiatrist, Dr. Waletzky, did opine that appellant continued to be totally disabled due to her accepted injury of June 15, 1969. The Office thereafter referred appellant to Dr. Katzow for a second opinion evaluation.

In a report dated December 30, 1988, Dr. Katzow reported that appellant's diagnosis was bipolar affective illness. The doctor explained that appellant's bipolar illness was already present prior to hospitalization in 1969 and that it was basically a genetically determined disease. Dr. Katzow opined that at best, employment factors precipitated particular incidents of the ongoing illness and that the employment-related aggravation of the condition would have ceased within six months after appellant left her employment in 1986. The Office thereafter advised appellant that she would receive wage-loss benefits until November 10, 1986.

An employee 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>2</sup>

Based upon the reports of appellant's treating physician, Dr. Waletzky and the Office's second opinion physician, Dr. Katzow, the Office properly determined that appellant was entitled to wage-loss benefits until November 10, 1986. The record indicates that appellant did not receive wage-loss benefits after February 5, 1983, however, as the Office determined on June 19, 1995 that appellant had no loss of wage-earning capacity after March 5, 1981. An Office hearing representative vacated the loss of wage-earning capacity determination on May 6, 1996 and remanded the case to the Office for further development regarding the medical issue of appellant's continuing disability. Based upon Dr. Vittone's second opinion report the Office, on December 5, 1996, denied payment of any further compensation benefits. The Office found in its decision dated December 5, 1996 that the evidence of record failed to establish that the claimed condition of bipolar disorder and pain disorder, with agoraphobia, or any disability was causally related to the accepted factors of employment.

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<sup>2</sup> *Dennis J. Lasanen*, 43 ECAB 549 (1992).

The Board finds that the reports of both Dr. Katzow and Dr. Vittone support a diagnosis of bipolar disorder, temporarily aggravated by employment. Dr. Katzow opined that the employment-related aggravation would have ceased by November 10, 1986 and the Office, thereafter, informed appellant that it would accept her claim for payment of wage loss through November 10, 1986. The record does not indicate, however, that appellant received wage-loss compensation after February 5, 1983. After receipt of Dr. Vittone's report, the Office found in its decision dated December 5, 1996, that appellant was not entitled to payment of any additional disability benefits. Denial of wage-loss benefits through November 10, 1986 would, however, be tantamount to a rescission of the claim.<sup>3</sup> The Office did not indicate that it was in fact rescinding any prior acceptance of the claim. The Board finds, therefore, that benefits are payable through November 10, 1986, for the condition of temporary aggravation of bipolar disorder.

The decision of the Office of Workers' Compensation Programs dated December 5, 1996 is hereby modified to reflect that this claim is accepted for the condition of temporary aggravation of bipolar disorder, ceasing November 10, 1986, and is affirmed as modified.

Dated, Washington, D.C.  
March 11, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> Once the Office accepts a claim and pays compensation benefits, it has the burden of justifying the termination or modification of compensation. This holds true where the Office later decides that it erroneously accepted a claim. To justify rescission of acceptance, the Office must establish that its prior acceptance was erroneous based on new or different evidence or through new legal argument and/or rationale. *Elizabeth Pinero*, 46 ECAB 123 (1994).