

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RITA J. HANSEN and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION

*Docket No. 97-717; Submitted on the Record;
Issued September 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after February 12, 1992 due to her employment-related emotional condition.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after February 12, 1992 due to her employment-related emotional condition.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order¹ on September 6, 1996 in which it set aside the September 1, 1994 decision of the Office of Workers' Compensation Programs on the grounds that the Office improperly denied appellant's request for merit review of her claim under 5 U.S.C. § 8128(a). The Board determined that appellant had presented new legal argument which required reopening of her claim for merit review and remanded the case to the Office for consideration of appellant's recurrence of disability claim on the merits to be followed by an appropriate decision.²

The Office had accepted that appellant sustained depression primarily due to verbal abuse from her supervisor, Ms. Anne Coughlin, and paid compensation for medical treatment and various periods of disability. Appellant returned to part-time work for the employing establishment in April 1990 and full-time work in July 1990, but stopped work on February 12, 1992 claiming that she sustained a recurrence of disability due to her employment injury. By decisions dated July 1 and September 24, 1993, the Office denied appellant's claim for

¹ Docket No. 95-787.

² The Board also affirmed the Office's April 29, 1994 decision on the grounds that the Office properly denied appellant's earlier request for merit review.

recurrence of disability and, by decisions dated April 29 and September 1, 1994, the Office denied appellant's requests for merit review.³

In support of her second request for merit review, appellant argued that the Office adjudicated her case as though it was a claim for a new emotional condition rather than a claim for a recurrence of disability due to an accepted employment-related emotional condition; that the Office inappropriately focused on determining whether the incidents and conditions present at the time of appellant's claimed recurrence of disability constituted employment factors; that the Office did not seek further clarification from her attending physician regarding whether she had sustained an employment-related recurrence of disability; and that there was sufficient medical evidence of record regarding causal relationship to require remanding the case to the Office for further development of the medical evidence. The facts and circumstances of the case up to the point of the Board's decision are set forth in that decision and are incorporated herein by reference.

On remand, the Office considered appellant's recurrence of disability claim on the merits and, by decision dated November 7, 1996, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after February 12, 1992 due to her employment-related emotional condition.

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.⁴ 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.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

As noted above, appellant alleged that she sustained disability on and after February 12, 1992 due to an employment-related emotional condition. Appellant initially suggested that she had sustained a new employment-related emotional condition due to various claimed employment factors including cold air, smoke, radio noise, overwork, inadequate equipment, cancellation of her leave and problems with her compensation claim. Appellant later clarified that she had sustained a recurrence of disability on and after February 12, 1992 due to her accepted employment-related condition for which she stopped work in 1989 and 1990.

³ By decision dated January 25, 1993, the Office had determined that appellant did not sustain physical injuries which disabled her in February 1992; the Office combined the file related to this matter with the file for the present claim.

⁴ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁵ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

In support of her claim for recurrence of disability, appellant submitted numerous reports of Dr. Benjamin C. Wood, Jr., an attending Board-certified psychiatrist. In a report dated February 14, 1992, Dr. Wood diagnosed major depression and detailed appellant's hospitalization of that date; in a note dated February 14, 1992, Dr. Wood indicated that appellant had sustained an aggravation of her accepted employment-related emotional condition.⁷ In a report dated April 23, 1992, Dr. Wood noted that appellant reported experiencing stress related to problems associated with the processing and denial of her compensation claim. He also indicated that appellant reported her emotional state was adversely affected by physical problems which had been worsened due to exposure to cold air, smoke and radio noise at work. Dr. Wood stated that appellant's depression worsened in January 1992 due to thoughts related to the anniversary of her father's suicide in January 1962.

In a report dated September 3, 1992, Dr. Wood asserted that appellant's emotional condition was aggravated by such factors as problems with her compensation claim and exposure to cold air, smoke and radio noise. In reports dated January 11 and February 2, 1993, Dr. Wood again noted that appellant's emotional condition was worsened by these factors and continued to emphasize that appellant's disability on and after February 12, 1992 was related to her accepted employment injury. In a report dated July 22, 1993, Dr. Wood also indicated that appellant's condition was affected by overwork, inadequate equipment and cancellation of her leave.

The reports of Dr. Wood, however, are of limited probative value on the relevant issue of the present case, in that they did not contain adequate medical rationale in support of their conclusions on causal relationship.⁸ Dr. Wood did not adequately explain the medical process by which appellant would have sustained a recurrence of disability in February 1992 due to the employment-related emotional condition for which she stopped work in 1989 and 1990. As noted above, appellant's employment-related depression was accepted as primarily due to verbal abuse from Ms. Coughlin. Medical rationale supporting Dr. Wood's opinion is especially necessary in that Ms. Coughlin had left the employing establishment by the time that appellant returned to work in 1990. Although Dr. Wood made note of the role of such alleged factors as appellant's problems with her compensation claim and exposure to cold air, smoke and radio noise, the present claim is for a recurrence of disability rather than a claim for a new injury. Moreover, Dr. Wood did not adequately explain why appellant's disability on and after February 12, 1992 would not be solely related to nonwork factors, such as her familial history of abuse and suicide.

After Dr. Wood's retirement in mid 1994, appellant continued to receive treatment from Dr. Nancy Arko, a Board-certified psychiatrist, who, in a report dated July 10, 1995, indicated that appellant's disability on and after February 12, 1992 was related to her accepted employment-related emotional condition. In a report dated July 10, 1995, Dr. Arko stated, "She has a family history of severe depression and suicidality and is at risk because of her original

⁷ In a form report dated March 9, 1992, Dr. Wood indicated that appellant was totally disabled beginning February 12, 1992.

⁸ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

traumatic work situation in which she was continually harassed, criticized and demeaned by a supervisor. Her treatment is complicated by the [Office's] reluctance to acknowledge her condition or pay for its treatment." However, Dr. Arko's reports also are of limited probative value on causal relationship due to their lack of adequate medical rationale. Dr. Arko's reports are of limited probative value for the further reason that they contain an extremely limited description of appellant's factual and medical history.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹⁰ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.¹¹

The decision of the Office of Workers' Compensation Programs dated November 7, 1996 is affirmed.

Dated, Washington, D.C.
September 8, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁹ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

¹⁰ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

¹¹ Appellant had asserted that the Office failed to seek further clarification from Dr. Wood regarding whether she had sustained an employment-related recurrence of disability, but a review of the record reveals that Dr. Wood had an adequate opportunity to clarify his opinion; appellant also asserted that there was sufficient medical evidence of record to require remanding the case to the Office for further development of the medical evidence, but the medical evidence submitted by appellant was of limited probative value for the reasons noted above.