

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH E. ROSE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Los Angeles, CA

*Docket No. 97-1157; Submitted on the Record;
Issued September 28, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly rescinded its acceptance of appellant's claim for an emotional condition.

On November 4, 1994 appellant, then a 36-year-old tax auditor/reviewer, filed an occupational disease claim alleging that she sustained an emotional condition which she attributed to factors of her federal employment. By decision dated August 18, 1995, the Office accepted appellant's claim stating that the following factors were found to be compensable factors of employment: receiving conflicting instructions on how to conduct training in 1986; having to reassign work and correct errors caused by a terminated trainee; being given additional training during one year which increased her work load; having a general pattern of constantly changing work priorities; being given conflicting instructions regarding priorities in 1992 and 1993 while working in the quality measurement section and being frustrated by the pressure between quality standards and production levels required; and in 1994 being required to process claims with numerous errors, tardy actions and procedural violations caused by auditors who had previously worked on them.

In a report dated October 7, 1994, Dr. Frances E. Wilson, a clinical psychologist, related that appellant had described symptoms of depression and anxiety which she attributed to work stress. He indicated that appellant would be able to return to work on December 1, 1994.

In a report dated November 3, 1994, Dr. Michael G. Galanis, a psychiatrist, noted that appellant was hospitalized in 1993 for severe depression. Dr. Galanis related that appellant had undergone extensive medical treatment between October 1984 and January 1985 with multiple surgeries and hospitalizations for treatment of Hodgkin's disease with medical complications. He stated that appellant met the criteria for post-traumatic stress disorder in 1993 as a result of medical, surgical and psychological effects of her cancer. Dr. Galanis related that appellant began working at the employing establishment in April 1984, was diagnosed with Hodgkin's disease in October 1984 and returned to work in April 1985 in a part-time basis. He related that problems developed when appellant came under the supervision of Ms. Huberman. Dr. Galanis related that in January 1990 appellant underwent a hysterectomy and Ms. Huberman began

blaming appellant for the effects of her absences on coworkers. He related that appellant's

position was changed to front line auditing which resulted in further job stress, labyrinthitis, severe headaches, major depression and generalized anxiety disorder by July 1992. Dr. Galanis stated:

“After reviewing [appellants] work history, her difficulties with the supervisor began in 1986. Despite medical problems she functioned well but stress[-]related factors appear to have contributed to further health problems about [two] [to] [three] years after she returned to work and [was] treated for Hodgkin’s Disease.

“Ms. Huberman [appellant’s supervisor] is described as erratic, at times punitive, and the job duties chaotic and shifting. The difficulties surfaced two years after the cancer and depression which began in the late 1980’s became unbearable by September 1992 prior to consultation with Dr. Wilson. By the time I saw [appellant] in the hospital in 1993, she had disturbed sleep, extreme fatigue, lack of motivation, cognitive difficulties and generalized anxiety; seriously limiting her ability to function at her job. Despite efforts made thus far, she had been unable to return to work. Both Dr. Wilson and I are convinced a return to work would result in serious exacerbation of [d]epression, [a]nxiety and [i]nsomnia, compromising physical health as well. The level of anxiety and stress related to completion of even this application for ... compensation benefits resulted in rages; emotional outburst, tears and sleep problems while also intensifying anxiety from mild to severe levels.”

By letter dated October 5, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. Howard Greils, a psychiatrist, for a second opinion examination and evaluation as to whether appellant had any medical condition causally related to the compensable factors of employment as set forth in the statement of accepted facts dated October 3, 1995.

In a report dated November 3, 1995, Dr. Greils provided a history of appellant’s condition, her past medical history, her past psychiatric treatment, educational, personal and psychosocial history and the results of psychological testing and a mental status examination. He diagnosed a depressive disorder, anxiety disorder and post-traumatic stress disorder secondary to Hodgkin’s disease by history. Dr. Greils also included a report regarding psychological testing from Dr. Robert C. Chamberlain, a clinical psychologist. He stated that appellant had a depressive disorder which had developed relatively early in her life with the first signs in 1967 when she began to have difficulties with an eating disorder and when her father went to Vietnam and that she had required four years of counseling in the 1970’s and never fully resolved the dependency issues which had developed in regard to her family. Dr. Greils stated that he administered psychological testing which was scored and assessed by Dr. Chamberlain. He noted Dr. Chamberlain’s opinion that appellant was exaggerating some of her complaints and that the testing revealed some anxiety and depressive symptoms that often were used to suppress underlying hostility and that the hostility probably arose out of issues from her childhood.

Dr. Greils stated that, absent any work-related stress, appellant’s depressive disorder would have continued with the clinical course seen in her adult life and that her level of depression and anxiety preexisted any work-related injury and were aggravated by an emotional injury diagnosed in the past as a post-traumatic stress disorder which was secondary to her treatment for Hodgkin’s disease. He stated his opinion that appellant’s emotional condition was

not caused or aggravated by the compensable factors of employment as described in the statement of accepted facts contained in the record. Dr. Greils stated that appellant was upset and frustrated by her work environment but these factors could not possibly have caused or aggravated a condition as serious as the one that she had for so many years prior to her job at the employing establishment. He stated that appellant was not disabled due to any work-related condition and did not have any work restrictions due to preexisting conditions.

By decision dated April 1, 1996, the Office rescinded its acceptance of appellant's emotional condition on the grounds that the weight of the medical evidence rested with Dr. Greils' report in which he provided a rationalized medical opinion that appellant's emotional condition was not causally related to her employment.

By letter dated April 28, 1996, appellant requested an examination of the written record and stated her disagreement with the Office's April 1, 1996 decision.

In an undated letter submitted with appellant's request for a review of the written record, appellant's father asserted that appellant had not been under therapy since 1967 when he served in Vietnam. He stated that he was only in Vietnam for one year and that appellant's depression related to his absence was only temporary. Appellant's father stated that appellant went on to be active in high school and graduated from college in 1981 with high honors. He asked that the Office consider the successes that appellant had achieved while working at the employing establishment including receiving awards in the first three or four years of her service both before and after her treatment for cancer and to review the changes in her working conditions and supervisors and other job-related factors.

By decision dated November 1, 1996, the Office hearing representative affirmed the Office's April 1, 1996 decision.¹

The Board finds that the Office has not met its burden of proof in rescinding its acceptance of appellant's emotional condition claim.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.² This holds true where the Office later decides that it erroneously accepted the claim. To justify rescission of acceptance, the Office must show that it based its decision on new evidence, legal argument and/or rationale.³

In the instant case, the Office initially accepted that appellant sustained an emotional condition causally related to several factors of her employment.

In a report dated November 3, 1994, Dr. Galanis related that appellant had undergone extensive medical treatment between October 1984 and January 1985 with multiple surgeries

¹ The Board notes that appellant submitted new evidence subsequent to the issuance of the Office's November 1 and April 1, 1996 decisions. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² *Thomas Meyers*, 35 ECAB 381, 386 (1983).

³ *See Laura H. Hoexter (Nicholas P. Hoexter)* 44 ECAB 987, 994 (1993); *Alphonso Walker*, 42 ECAB 129, 132-33 (1990), *petition for recon. denied*, 42 ECAB 659 (1991).

and hospitalizations for treatment of Hodgkin's disease with medical complications. He stated that appellant met the criteria for post-traumatic stress disorder in 1993 as a result of medical, surgical and psychological effects of her cancer. Dr. Galanis related that appellant began working at the employing establishment in April 1984, was diagnosed with Hodgkin's disease in October 1984 and returned to work in April 1985 in a part-time basis. He related that problems developed when appellant came under the supervision of Ms. Huberman. Dr. Galanis related that in January 1990 appellant underwent a hysterectomy and Ms. Huberman began blaming appellant for the effects of her absences on coworkers. He related that appellant's position was changed to front line auditing which resulted in further job stress, labyrinthitis, severe headaches, major depression and generalized anxiety disorder by July 1992. Dr. Galanis stated:

“After reviewing [appellants] work history, her difficulties with the supervisor began in 1986. Despite medical problems she functioned well but stress[-]related factors appear to have contributed to further health problems about [two] [to] [three] years after she returned to work and [was] treated for Hodgkin's [d]isease.

“Ms. Huberman [appellant's supervisor] is described as erratic, at times punitive, and the job duties chaotic and shifting. The difficulties surfaced two years after the cancer and depression which began in the late 1980's became unbearable by September 1992 prior to consultation with Dr. Wilson. By the time I saw [appellant] in the hospital in 1993, she had disturbed sleep, extreme fatigue, lack of motivation, cognitive difficulties and generalized anxiety, seriously limiting her ability to function at her job. Despite efforts made thus far, she had been unable to return to work....”

In a report dated November 3, 1995, Dr. Greils provided a history of appellant's condition and the results of psychological testing and a mental status examination. He stated that appellant had a depressive disorder which had developed early in her life when she began to have difficulties with an eating disorder and when her father went to Vietnam and that she had required four years of counseling in the 1970's and never fully resolved the dependency issues which had developed in regard to her family. Dr. Greils stated that he administered psychological testing which was scored and assessed by Dr. Chamberlain. He noted Dr. Chamberlain's opinion that appellant was exaggerating some of her complaints. Dr. Greils stated his opinion that, absent any work-related stress, appellant's depressive disorder would have continued with the clinical course seen in her adult life and that her level of depression and anxiety preexisted any work-related injury and were aggravated by an emotional injury diagnosed in the past as a post-traumatic stress disorder which was secondary to her treatment for Hodgkin's disease. He stated his opinion that appellant's emotional condition was not caused or aggravated by her employment. Dr. Greils stated that appellant was not disabled due to any work-related condition and did not have any work restrictions due to preexisting conditions.

The Board finds that there is an unresolved conflict in the medical opinion evidence between Drs. Galanis and Greils as to whether appellant sustained an emotional condition causally related to factors of her employment. Based on this conflict, the Office did not meet its burden of proof to rescind acceptance of appellant's claim.

The November 1 and April 1, 1996 decisions of the Office of Workers' Compensation Programs are reversed.

Dated, Washington, D.C.
September 28, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member