

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE GALES and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Chicago, IL

*Docket No. 98-1054; Submitted on the Record;
Issued January 3, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective April 18, 1997 on the grounds that the weight of the medical evidence established that she no longer had any employment-related disability or medical condition.

On August 16, 1995 appellant, then a 33-year-old mailhandler, filed an occupational disease claim alleging that she sustained a hernia, ulcer and stress condition, which she attributed to moving mail trays and tubs which required pushing and pulling. She also alleged that she experienced stress due to harassment from supervisors. The Office accepted the condition of gastritis. Appellant stopped work on August 7, 1995 and began receiving compensation benefits for temporary total disability.

In a form report dated September 8, 1995, Dr. Charles W. Parrish, III, appellant's attending general practitioner, diagnosed duodenal ulceration, a hiatal hernia, chronic gastritis, Zenker's diverticulum, depression and anxiety reaction. He indicated that these conditions were caused or aggravated by appellant's employment. Dr. Parrish stated that appellant was totally disabled and was being given medication and a referral to a psychiatrist.

In a form report dated September 10, 1995, Robert Thompson, a licensed clinical social worker, diagnosed major depressive disorder causing disability for work.¹

In a written statement received by the Office on September 13, 1995, appellant alleged that her hernia and back problems were caused by lifting large tubs of mail, pushing carts of mail and various other tasks. She alleged that her supervisors threatened her with disciplinary actions

¹ As defined in the Federal Employees' Compensation Act, lay individuals such as physician assistants, nurse practitioners and social workers are not competent to render a medical opinion; *see* 5 U.S.C. § 8101(2). Therefore, Mr. Thompson's opinion is of no probative value in this case.

when she disagreed with them, followed her to the restroom and kept track of the time she spent there, closely monitored her work, took her timecard so that she could not find it and assigned more work and gave fewer breaks to her unit than to other units.

By letter dated October 27, 1995, Dr. Parrish related that appellant was being treated for employment-related duodenal ulceration, chronic gastritis, anxiety and depression. He stated that she had cited instances of harassment at work and that he concurred that these problems at work were associated with her medical problems.

By letter dated November 17, 1995, an employing establishment representative stated that appellant's description of her work duties was accurate but stated that employees were instructed to request help if a task was too difficult for one person to handle. She stated that there were no aspects of appellant's job, which could be perceived as stressful and she was not aware of any conflict between appellant and her supervisors. The representative stated that appellant was generally able to perform her required duties in accordance with expectations but performance and conduct problems occurred when she was not able to work where she wanted to work and she would start talking about what other employees were doing or not doing and become emotional and loud.

In a statement of accepted facts dated December 5, 1995, the Office stated that two factors alleged by appellant to have caused her claimed emotional condition were accepted as factual: that she worked eight hours a day, five days a week and that she dropped mail onto a belt for cancellation, lifted tubs of mail and pushed a hand truck about five feet to an elevator. The Office stated that it had not accepted as factual appellant's other allegations.

In a report dated January 8, 1996, Dr. Amin N. Daghestani, a Board-certified psychiatrist of professorial rank and Office referral physician, related appellant's complaint that she was being harassed at work. He provided the results of a mental status examination and diagnosed major depression, single episode. Dr. Daghestani stated his opinion that appellant's depression predated the claimed harassment at work and a fall at work but that these situations aggravated her depression.

In a report dated February 13, 1996, Dr. Daghestani stated his opinion that appellant's depression was temporarily aggravated by the two factors the Office accepted as factual. In a note dated April 23, 1996, he advised the Office that appellant's symptoms from her depression began to improve in early January 1996 but it was difficult to know when the condition would resolve although an improvement in prognosis was expected with continued therapy.

In a form report dated September 24, 1996, Dr. Parrish indicated that appellant was disabled due to her depression and anxiety disorder. He checked the block marked "yes" indicating that the condition was causally related to her employment.

In a report dated November 4, 1996, Dr. Alexander E. Obolsky, a Board-certified psychiatrist and an Office referral physician, provided a history of appellant's claimed emotional condition and course of treatment and the results of a mental status examination and concluded that there was no evidence of workplace decompensation secondary to any psychiatric disorder. He stated his opinion that appellant had no psychiatric condition with disability causally related

to factors of her employment. Dr. Obolsky noted that appellant told him that she did not want to return to work at the employing establishment and was attending school to become a beautician and asked that he not report to the Office that she was attending cosmetology classes.

In a letter dated December 5, 1996, the Office asked Dr. James L. Franklin, a Board-certified gastroenterologist and an Office referral physician, whether appellant's accepted condition of temporary aggravation of gastritis had resolved. The Office noted that, although appellant was not working, she was attending cosmetology school for four and one-half days a week.

By letter dated December 6, 1996, the Office asked Dr. Parrish why appellant was disabled for work and noted that she was attending school for four and one-half days a week.

In a report dated December 9, 1996, Dr. Franklin stated that he had reviewed a surgical pathology report documenting the finding of gastritis, acute and chronic, with possible helicobacter pylori infection, which he found "not very helpful" as it was not known whether any ulcer was present or whether appellant was subsequently treated for the infection. He stated that the presence of a helicobacter pylori induced gastritis would have no limitation on appellant's ability to work. In an accompanying form dated December 12, 1996, Dr. Franklin stated that appellant's gastrointestinal symptoms did not have any bearing on her ability to perform physical work.

By letter dated March 10, 1997, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the evidence of record established that she no longer had any disability causally related to her employment injury.

By letter dated April 9, 1997, appellant stated her disagreement with the proposed notice of termination of compensation benefits and submitted additional evidence.

In a form report dated March 13, 1997, Dr. Parrish diagnosed "resolved duodenal ulcer" but indicated appellant was still being treated for depression and anxiety. He indicated that she was able to perform regular work.

In a disability certificate dated April 8, 1997, Dr. Parrish stated his opinion that appellant had experienced a recurrence of her gastritis symptoms.

In a form report dated April 10, 1997, Dr. Parrish indicated that appellant was totally disabled due to gastritis and diagnosed a "possible duodenal ulcer."

By decision dated April 18, 1997, the Office terminated appellant's compensation benefits effective April 18, 1997 on the grounds that the weight of the medical evidence established that appellant's disability resulting from her accepted 1995 gastritis condition had ceased by that date.

By letter dated May 14, 1997, appellant requested an examination of the written record by an Office hearing representative and submitted additional evidence.

In a report dated April 28, 1997, Dr. Parrish stated that appellant had been disabled since June 22, 1995 due to stress anxiety and depression as well as an ulcer, hiatal hernia and gastritis secondary to job-related stress. He noted that appellant had undergone surgery for her gastritis condition and it had resolved by May 30, 1996 but that appellant continued to complain of depression and anxiety and was unable to return to full duty.

In a report dated May 15, 1997, Dr. Parrish stated that an ultrasound of the gallbladder had revealed cholelithiasis with an obstruction of the hepatic duct secondary to a gallstone and that appellant underwent an emergency cholecystectomy on April 28, 1997. He stated that she required at least four weeks to recover from her surgery.

By decision dated November 10, 1997, the Office hearing representative affirmed the April 18, 1997 decision.²

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective April 18, 1997 on the grounds that the weight of the medical evidence established that she no longer had any employment-related disability or medical condition.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.³

In this case, the Office accepted that appellant sustained gastritis in the performance of duty. In a report dated December 9, 1996, Dr. Franklin, a Board-certified gastroenterologist and Office referral physician, stated that he had reviewed a surgical pathology report documenting the finding of gastritis, acute and chronic, with possible helicobacter pylori infection, which he found "not very helpful" as it was not known whether any ulcer was present or whether appellant was subsequently treated for the infection. Dr. Franklin stated that the presence of a helicobacter pylori induced gastritis would have no limitation on appellant's ability to work. In an accompanying form dated December 12, 1996, he stated that appellant's gastrointestinal symptoms did not have any bearing on her ability to perform physical work.

In a form report dated March 13, 1997, Dr. Parrish diagnosed "resolved duodenal ulcer" but indicated appellant was still being treated for depression and anxiety. He indicated that she was able to perform regular work. However, in a form report dated April 10, 1997, Dr. Parrish diagnosed a "possible duodenal ulcer," which appears to conflict with his earlier statement that the ulcer had resolved and he found her totally disabled due to gastritis. There is no explanation as to why Dr. Parrish felt that appellant was totally disabled in April 1997 when he had found

² The Board notes appellant's appeal was filed on February 10, 1998. For this reason, the Office's March 3, 1998 denial of reconsideration is null and void; see *Douglas E. Billings*, 41 ECAB 880 (1990).

³ See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

her able to perform regular work in March 1997 and he provided no objective evidence or medical rationale in support of his opinion.

In a report dated November 4, 1996, Dr. Obolsky, a Board-certified psychiatrist and an Office referral physician, provided a history of appellant's claimed emotional condition and course of treatment and the results of a mental status examination and concluded that there was no evidence of workplace decompensation secondary to any psychiatric disorder. He stated his opinion that appellant had no psychiatric condition with disability causally related to factors of her employment. The Board finds that the report of Dr. Obolsky establishes that appellant's gastritis condition was not aggravated by any employment-related emotional condition. Furthermore, although Dr. Parrish noted in his March 13, 1997 report, that appellant was still being treated for depression and anxiety, he opined that she was able to perform regular work as of that date and her compensation benefits were not terminated until April 18, 1997. Dr. Daghestani, a Board-certified psychiatrist, opined in his reports that appellant had a depression condition, which was aggravated by employment factors but he did not state that appellant was disabled due to this condition or that it aggravated her gastritis condition. Considering all the evidence, the Board finds that the Office met its burden in terminating appellant's compensation benefits as of April 18, 1997.

As the Office met its burden of proof in terminating appellant's compensation benefits, the burden shifted to appellant to provide evidence to overcome the opinions of Drs. Obolsky and Franklin, Board-certified specialists in psychiatry and gastroenterology, respectively, that she had no disability causally related to her employment injury. The Office is not required to reinstate compensation merely because the claimant subsequently submits new evidence, which is of such nature as to lead the Office to conclude that further inquiry is needed.⁴

In a report dated April 28, 1997, Dr. Parrish stated that appellant had been disabled since June 22, 1995 due to stress anxiety and depression as well as an ulcer, hiatal hernia and gastritis secondary to job-related stress. He noted that appellant had undergone surgery for her gastritis condition and it had resolved by May 30, 1996 but that appellant continued to complain of depression and anxiety and was unable to return to full duty. However, Dr. Parrish did not provide a sufficiently rationalized opinion explaining how appellant's emotional condition aggravated her gastritis condition or was causally related to specific factors of her employment. The Board has held that the weight of medical evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵ In addition to the fact that Dr. Parrish provided insufficient medical rationale for his opinion that appellant was disabled, he is a general practitioner and his opinion regarding a psychiatric condition is of less probative value than that

⁴ *Virginia Davis-Banks*, 44 ECAB 389, 392 (1993).

⁵ *Adrienne L. Winthrop*, 38 ECAB 373, 379-80 (1987).

of the Board-certified psychiatrist, Dr. Obolsky, who found no employment-related emotional condition or disability.⁶

In a report dated May 15, 1997, Dr. Parrish stated that an ultrasound of the gallbladder had revealed cholelithiasis with an obstruction of the hepatic duct secondary to a gallstone and that she underwent an emergency cholecystectomy on April 28, 1997. He stated that she required at least four weeks to recover from her surgery. However, he provided no medical rationale explaining how this condition was causally related to appellant's accepted gastritis condition or other factors or her employment. Therefore, appellant has not met her burden of proof to establish that she had a continuing disability causally related to her gastritis condition.

The decisions of the Office of Workers' Compensation Programs dated November 10 and April 18, 1997 are affirmed.

Dated, Washington, D.C.
January 3, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ See *Lee R. Newberry*, 34 ECAB 1294, 1299 (1983).