

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUZANNE EDWARDS and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Des Plaines, IL

*Docket No. 98-1408; Submitted on the Record;
Issued July 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for a merit review on February 26, 1998.

On May 14, 1993 appellant, then a 32-year-old air traffic control specialist, filed a notice of occupational disease alleging that in the course of her federal employment she suffered major depression due to sexual harassment, sexual discrimination, a hostile work environment and the stress of her air traffic control work. She stated that she became aware of the disease or illness, and that it was caused or aggravated by her employment on January 6, 1993.

On June 4, 1993 Dr. Caroline Morrison, a specialist in internal medicine and appellant's treating physician, diagnosed a major depression, recurrent. She indicated that appellant informed her that her symptoms of depression intensified in response to work-related stressors.

On June 4, 1993 Dr. Mary E. Halpin diagnosed major depression and histrionic character traits. Although Dr. Halpin indicated that she had a doctorate degree, she did not indicate in what field her doctorate was obtained.

The Office subsequently accepted the claim and awarded appellant compensation for the period of March 23 through May 12, 1993.

On March 22, 1994 Dr. Dixon F. Spivy, a Board-certified psychiatrist, reviewed appellant's history and conducted a second opinion examination for the Office. He diagnosed a personality disorder. Dr. Spivy stated that factors of her employment aggravated this preexisting condition, but that the aggravation ceased in May 1993. He opined that appellant was not disabled due to any condition.

By decision dated June 23, 1994, the Office rejected the claim because the weight of the medical evidence established that disability on or after May 13, 1993 was not causally related to factors of employment. The Office found that the following incidents constituted compensable

factors of employment: the requirement that appellant be retested in training areas she already passed, her supervisor rubbing her shoulders, her supervisor and coworkers calling her “darling,” her supervisor striking her rear with a leather key fob, her Chicago supervisor shouting at her for requesting a break to attend a meeting, appellant receiving verbal abuse from a coworker in a training session, a supervisor telling appellant he “loved her as a friend” and appellant’s verbal altercation with two coworkers attending a mandatory cultural diversity workshop. The Office found that the temporary aggravation ceased by May 13, 1993, based on the opinion of Dr. Spivy. The Office noted that Dr. Spivy opined that appellant had a significant preexisting condition which was temporarily aggravated as the work factors were isolated events. The Office further noted that appellant’s treating psychiatrist was not Board-certified and provided no opinion or rationale to support that appellant’s condition was work related. It further noted that Dr. Halpin’s opinion could not be accepted as medical evidence.

On June 17, 1995 appellant’s representative requested reconsideration and submitted a report from Dr. Eleanore A. Ryan, a clinical psychologist. She diagnosed a major depressive episode and post-traumatic stress disorder. Dr. Ryan stated that the condition was directly related to appellant’s employment activities, particularly her participation in cultural diversity workshops.

By decision dated December 2, 1996, the Office reviewed the merits of the case and found that the evidence submitted was not sufficient to warrant modification of its prior decision. The Office noted that Dr. Ryan’s June 13, 1995 report cited noncompensable factors of employment and failed to address appellant’s preexisting condition. The Office found that Dr. Ryan’s opinion was not based on a complete and accurate factual and medical history. Consequently, the Office found that the weight of the medical evidence remained with the report of Dr. Spivy.

On November 30, 1997 appellant requested reconsideration. She argued that the numerous reports submitted by her treating physicians outweighed the report of Dr. Spivy, which was based solely on a 45-minute examination. Appellant also contended that Dr. Spivy relied on an inaccurate history. In this regard, she noted that Dr. Spivy mistakenly stated that appellant was not close to her family despite the fact that her sister was present at his examination. She stated that Dr. Spivy was confused concerning who requested her psychological examination in 1989. Appellant indicated that Dr. Spivy mistakenly recorded that she had an affair with a married man which resulted in a confrontation with the man’s wife and legal proceedings to keep her from visiting with their children. Appellant stated that Dr. Spivy erred in stating that she had two boyfriends because she had the same boyfriend until May 1994. She noted that Dr. Spivy may have erred in concluding that she experienced sexual abuse and that he erred in recording that appellant wanted \$300,000.00 in compensation. Appellant stated that Dr. Spivy misinterpreted her nickname of “hardbody” to suggest she was difficult to get along with. She stated that Dr. Spivy misidentified Drs. Bowling, Currie and Prince as treating physicians. Finally, she stated that Dr. Spivy erred in stating that her cultural diversity workshop was a lecture.

Appellant also submitted medical records to support her request for reconsideration. She submitted a January 13, 1995 report from Dr. E. Eliot Benezra, a Board-certified psychiatrist and

neurologist. He indicated that appellant continued to be depressed and anxious, but he did not explain how these conditions related to factors of appellant's employment. Appellant submitted various medical records from the employing establishment physicians, which also failed to address whether appellant continued to suffer disability due to compensable factors of employment. In addition, appellant submitted progress notes from the Community Counseling Center of the Fox Valley, Inc. In these notes, Dr. Krishnamurthy Gururajan, a psychiatrist, diagnosed a recurrent episode of major depression on November 16, 1993 without addressing the cause of the condition. Finally, on November 28, 1997 Dr. Michael S. Shapiro, a Board-certified psychiatrist and neurologist, indicated that he treated appellant for a recurrent major depressive disorder and post-traumatic stress disorder. Although Dr. Shapiro reviewed the history of the treatment appellant received, he failed to explain why he felt appellant's present condition was related to her employment.

By decision dated February 26, 1998, the Office denied reconsideration finding that the evidence was cumulative and not sufficient to warrant a review of its prior decision.

The Board finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128 of the Federal Employees' Compensation Act.

Pursuant to 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.² Moreover, evidence that does not address the particular issue involved, in this case the causal relationship between appellant's neck condition and factors of her employment, also does not constitute a basis for reopening a case.³

In the present case, appellant failed to submit any medical opinion evidence addressing the medical connection between her disability and the accepted employment factors. The medical reports submitted by Dr. Benezra, a Board-certified psychiatrist and neurologist, Dr. Gururajan, a psychiatrist, Dr. Shapiro, a Board-certified psychiatrist and neurologist and those from the employing establishment physicians simply did not address how appellant's present condition related to the compensable factors of employment. Consequently, these reports are not probative in determining whether appellant remains disabled due to the accepted aggravation of her preexisting personality disorder.⁴ Moreover, appellant's arguments that

¹ 20 C.F.R. § 10.138(b)(2).

² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁴ *Martin Standel*, 47 ECAB 306 (1996).

Dr. Spivy, a Board-certified psychiatrist, relied on inaccurate history, is insufficient to reopen the case for a merit review. The Office, therefore, properly refused to reopen appellant's case for a merit review.

The decision of the Office of Workers' Compensation Programs dated February 26, 1998 is affirmed.

Dated, Washington, D.C.
July 11, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member