U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE OTTMANN and DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR DISEASE CONTROL, Atlanta, GA

Docket No. 98-2279; Submitted on the Record;
Issued June 6, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation for refusal to undergo vocational rehabilitation.

On June 5, 1992 appellant, then a 55-year-old program assistant, filed a claim for work-related stress which she attributed to her supervisor, which became intolerable to the point that she stopped working on May 6, 1992. In an October 23, 1992 statement, appellant indicated that her job was to obtain, monitor and ensure the security of several hundred official and diplomatic passports for the international travel of employees of the employing establishment. She noted that she had no control over the lead time for submission of passport requests. Appellant indicated that on May 4, 1992 she had come to work without facing a significant backlog of priority work since she had spent the prior weekend working uncompensated overtime to catch up on urgent passport and visa requests. She anticipated being able to work on other essential tasks that had been accumulating beyond her control. However, when she began work, employees confronted her with late requests for visas or passports. Appellant stated that she had no one to assist her and no one to direct another employee to help her. She noted that the late requests were a frequent occurrence but she felt more frustrated and overwhelmed than usual.

In several reports, Dr. Joan Reed, a psychologist, diagnosed situational anxiety and stress. She related appellant's condition to her work, particularly the events of early May 1992. Dr. Reed indicated that appellant was disabled from work at the employing establishment due to the situation she faced at the employing establishment. The Office accepted appellant's claim for situational depression and anxiety and began payment of temporary total disability compensation effective February 1, 1993 after appellant had exhausted her leave.

In a June 26, 1992 decision, the Office reduced appellant's wage-earning capacity to zero percent on the grounds that she had refused to undergo vocational rehabilitation and the medical evidence established that the disability due to the employment injury had ceased not later than July 21, 1996. Appellant requested a hearing before an Office hearing representative, which was

conducted on February 24, 1998. In a May 27, 1998 decision, the Office hearing representative found appellant had refused to undergo vocational rehabilitation offered by the Office. He concluded, however, that since appellant had gone beyond the preliminary steps of vocational rehabilitation, her compensation should not have been reduced to zero percent. The Office hearing representative stated that appellant's compensation should be reduced based on the position of personnel recruiter, which was the position that would have been available to appellant upon completion of the vocational rehabilitation. He remanded the case to the Office for a determination of appellant's wage-earning capacity based on the position of personnel recruiter. In a June 19, 1998 decision, the Office found that appellant had a 35 percent loss of wage-earning capacity based on the position of personnel recruiter.[1]

The Board finds that the Office properly reduced appellant's compensation for refusing to complete vocational rehabilitation.

The Federal Employees' Compensation Act, in 5 U.S.C. § 8113(b), states:

> "If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this Act, the [Office], on review under section 8128 of this title and after finding that in the absence of the failure, the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the [Office]."

The Office referred appellant to Dr. Marvin Brantley, a Board-certified psychiatrist, for an examination and second opinion. In a March 4, 1994 report, Dr. Brantley diagnosed adjustment disorder with depressed mood. He stated appellant was capable of employment and needed to be employed as a definite part of her recovery. Dr. Brantley commented that appellant needed to work not solely for financial reasons but because it was an essential part of her identity.

The Office referred appellant for vocational evaluation. In a July 25, 1994 report, a rehabilitation counselor stated testing showed appellant had high average cognitive capacity and was expected to master newly presented skills and information at an above average rate. He indicated that appellant should have no difficulty performing new work requiring higher level reasoning, thinking, decision-making, or inference. Dr. Brantley commented that appellant's functional academic abilities were high average and would allow her to perform managerial, supervisory and administrative functions if given an opportunity for on-the-job training or special training. He noted that appellant had many transferable skills for a return to work.

On January 25, 1995 appellant signed a rehabilitation plan agreement in which she agreed to take four authorized computer training courses and engage in an active job search. Appellant, however, subsequently indicated that she felt pressured to sign the agreement and

[1] The Office's June 19, 1998 decision was a reduction of compensation pursuant to 5 U.S.C. § 8113(b).

expressed a desire to obtain a college degree. In a June 13, 1995 letter, an Office rehabilitation specialist indicated that, if the Office were to sponsor training for appellant to get a bachelor's degree in human resources, it would be at Georgia State University. Appellant was instructed to complete all requirements for acceptance into the university by the fall 1995 term and be accepted. She would also be required to carry a full-time load of courses, attend school year round and maintain at least a 2.00 average. The specialist estimated that it would take seven quarters for appellant to complete the work for her degree.

In a May 15, 1995 report, Dr. Brantley indicated that he has again examined appellant. He noted that appellant had attempted to return to work but a plan for the return to work or training had not materialized. Dr. Brantley commented that he could not tell whether the difficulty was due to appellant's resistance or to a lack of a realistic plan. He stated that appellant needed to return to work or some training and commented that he saw no depression or anxiety that would prevent appellant's return to work or training.

In an August 31, 1995 report, a rehabilitation counselor indicated that appellant had been accepted into the program at Georgia State University. She stated that completion of the degree program would qualify appellant for a job as an employer relations representative, personnel recruiter or employment interviewer. The counselor noted that the salary range for these positions was from $18,000.00 to $25,000.00 a year. She prepared an individual training plan for appellant to sign. The counselor related that, in an August 22, 1995 telephone conversation, appellant objected to some aspects of the plan, particularly in the requirement to report to the counselor twice a month and the granting of permission for the counselor to speak directly to appellant's teachers on her progress. The counselor reported that the Office rehabilitation specialist agreed to amend the plan to allow appellant to submit progress reports from her teachers in the middle of the term. She indicated that appellant had until September 14, 1995 to enroll for classes.

In a September 8, 1995 letter, a supervisory Office claims examiner noted that appellant had stated to the Office rehabilitation specialist that she was unable to sign the rehabilitation plan for medical reasons. The supervisory claims examiner stated that there was no medical evidence to support her claim that she could not participate in a rehabilitation training program. The claims examiner warned appellant that failure to participate in a rehabilitation plan when directed by the Office could result in a reduction in her compensation, including a reduction to zero percent for refusing to participate in the early stages of rehabilitation. Appellant was given 30 days to participate in the vocational rehabilitation or presents reasons why she was unable to do so. The supervisory claims examiner warned appellant that if she did not comply with these instructions, the rehabilitation effort would cease and steps to reduce her compensation would be taken.

In a September 17, 1995 letter, appellant indicated that the rehabilitation counselor had not discussed the rehabilitation plan with her before it was formally prepared and had not talked to her once between January and August 1995. Appellant indicated that she had requested additional time for the results of further medical testing.

Appellant submitted a September 19, 1995 report from Dr. Ross F. Grumet, a Board-certified psychiatrist, who stated that appellant was disabled and unable to work. In a letter of

the same date, the Office informed appellant that it had reviewed the rehabilitation plan and found that the job duties of the prospective jobs were within appellant's work limitation. The Office stated that appellant was expected to cooperate fully so as to return to work. The Office indicated that the rehabilitation counselor's survey of the local labor market showed that appellant would have a wage-earning capacity of $21,500.00 and, in all likelihood, would have her compensation reduced at the end of the rehabilitation period. In a May 10, 1996 letter, the Office warned appellant that her compensation would be reduced for not cooperating in rehabilitation efforts unless, within 30 days, she contacted her rehabilitation counselor and agreed on a plan that would demonstrate her full cooperation with rehabilitation efforts or submit reasons for her failure to cooperate.

In a June 3, 1996 response, appellant stated that she had not refused to cooperate with rehabilitation efforts but had an inability to assume additional stress. She stated she would cooperate when it was within her capacity to due so. Appellant submitted a May 30, 1996 report from Dr. Grumet who indicated that, although appellant had been ready for a rehabilitation program since 1994, there had been a number of failures, which had increased her anxiety and depression. He commented that a proposal to attend travel agent school was considered too stressful. Dr. Grumet stated that she was directed toward a degree in human resources but it was subsequently decided that such a position would also be too stressful and unrealistic due to her age. Dr. Grumet noted that he had been treating appellant since August 1995 with antidepressant medication. He reported that her depression was better but she seemed significantly anxious and did not appear ready to begin an intensive program of rehabilitation.

In a March 17, 1998 report, Dr. Grumet stated that the medical reports concurred that appellant had depression and anxiety due to job stress. He indicated that, in the prior few months, appellant had a worsening of symptoms, with her feeling more hopeless, fatigued and unstable. Dr. Grumet stated that appellant was unable to return to a work situation. He noted that he had previously written about miscommunications in rehabilitation planning. Dr. Grumet indicated that appellant currently was not a candidate for a formal rehabilitation program.

Appellant has contended that she was unable to participate in vocational rehabilitation for medical reasons, citing the reports of Dr. Grumet. In his May 30, 1996 report, Dr. Grumet indicated that appellant had been ready to participate in vocational rehabilitation since 1994. While Dr. Grumet in subsequent reports indicated that attendance at a travel agent school or in human resource classes would be too stressful for appellant, he never explained why medically appellant would be unable to participate in such training programs. As Dr. Grumet never explained, with medical rationale, the nature of appellant's medical restrictions, his reports were of diminished probative value, in establishing that appellant was medically unable to participate in vocational rehabilitation.[2] Appellant therefore did not establish "good cause" for failing to fully cooperate with vocational rehabilitation. The Office acted properly in reducing appellant's compensation for failure to participate in rehabilitation efforts.

The decisions of the Office of Workers' Compensation Programs, dated June 19 and May 27, 1998, are hereby affirmed.

[2] *See Yusaf D. Amin*, 47 ECAB 804 (1996).

Dated, Washington, D.C.
June 6, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member