

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIT K. ALASIN and U.S. POSTAL SERVICE,
POST OFFICE, Warren, MI

*Docket No. 99-471; Submitted on the Record;
Issued May 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition in the performance of duty.

On September 16, 1997 appellant filed a claim for a panic attack on September 15, 1997 that she attributed to a verbal attack that day by her supervisor. By decision dated November 13, 1997, the Office of Workers' Compensation Programs found that appellant had failed to demonstrate that her injury arose out of the course of her employment. By letter dated November 19, 1997, appellant requested reconsideration and submitted additional evidence. By decision dated February 19, 1998, the Office found that the new evidence established that appellant's supervisor abused his authority and harassed her on September 15, 1997 but the medical evidence was insufficient to establish a work-related condition.

By letter dated June 29, 1998, appellant requested reconsideration and submitted a report dated June 19, 1998 from her attending physician, Dr. Ira Sabbagh, an osteopath. By decision dated September 30, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision, because Dr. Sabbagh's reports did not provide medical reasons explaining how appellant's condition was related to the events of September 15, 1997 and because an opinion from a psychiatrist was required by the Federal Employees' Compensation Act.

The Board finds that the case is not in posture for a decision.

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that

justice is done.¹ It is improper for the Office summarily to reject a claim where it is supported by all the medical evidence in the case record, with no medical evidence to the contrary.²

In the present case, the Office accepted that appellant's supervisor abused his authority and harassed her on September 15, 1997. Appellant's attending physician, Dr. Sabbagh, examined her on September 17, 1997 and in a report of that date, diagnosed a panic disorder. In a report dated November 11, 1997, Dr. Sabbagh stated: "In short, it is my opinion that this patient does have a panic disorder with underlying depression and anxiety. I believe the beratement she received from her supervisor at work definitely contributed to her condition." In a report dated June 19, 1998, Dr. Sabbagh stated:

"I am restating the fact that I believe the verbal beratement that [appellant] received while in your employ directly caused her panic attack because the patient is extremely sensitive to verbal abuse. She states that previously this has triggered panic attacks and her supervisor verbally berated her during work on or about September 15, 1997. Secondly, I believe [appellant] was unable to continue working because she felt ill and would not effectively perform her work duties. She was suffering from a panic disorder and she would be unable to work, again, because she would be unable to concentrate and effectively perform her work duties."

The Office's procedure manual states: "A claim for emotional condition must be supported by an opinion from a psychiatrist or clinical psychologist before the condition can be accepted."³ Because Dr. Sabbagh is not a psychiatrist or clinical psychologist and because Dr. Sabbagh provided little rationale for his opinion supporting causal relation, the medical evidence is not sufficient to meet appellant's burden of proof. However, given Dr. Sabbagh's support of causal relation, the absence of any medical evidence negating causal relation and relative circumstances of appellant collapsing to the floor crying during the "verbal attack" by her supervisor that strongly suggests a causal relation,⁴ the evidence is sufficient to require that the Office further develop the evidence. The Office should prepare a statement of accepted facts and submit it and the case record to an appropriate medical specialist for a reasoned opinion whether appellant sustained a panic disorder or other psychological condition as a result of the September 15, 1997 employment incident and, if so, for an opinion on the period of disability related to such a condition. The Office should then issue an appropriate decision on appellant's claims for a September 15, 1997 employment injury and for a recurrence of disability from October 6 to 10, 1997.

¹ *Isidore J. Gennino*, 35 ECAB 442 (1983).

² *Earnest J. Reece, Jr.*, 32 ECAB 1508 (1981); *Lois J. Kilbourne*, 27 ECAB 97 (1975).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(6) (June 1995).

⁴ See *Sylvia Lucas*, 32 ECAB 1582 (1981); *Kathryne R. Charles*, 12 ECAB 427 (1961) (for discussion of the "relative circumstances" doctrine).

The decisions of the Office of Workers' Compensation Programs dated September 30 and February 19, 1998 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
May 4, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member