

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARLENE J. HOLMES and U.S. POSTAL SERVICE,
POST OFFICE, Palisade, CO

*Docket No. 00-155; Submitted on the Record;
Issued November 9, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant's work-related aggravation of a depressive disorder ceased as of June 9, 1998; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On June 16, 1998 appellant, then a 46-year-old postal clerk, filed an occupational disease claim alleging that she sustained an emotional condition, which she attributed to an increased work load while the postmaster was away for several months and due to increased population in the area served by her facility; fear that her stress would cause an increased risk of heart disease; conflict with a coworker; not having enough time to spend with her family; having her supervisor discuss possible disciplinary measures against her in front of her coworkers; having a confrontation with her supervisor regarding leave matters; being dissatisfied with the handling of work assignments, breaks and work schedules; being upset concerning an incident when a customer had an epileptic seizure and she was trying to assist him and also perform her job duties; having her supervisor speak rudely to her; and having difficulty in scheduling family matters due to her work schedule.

In notes dated June 9, 1998, which were divided into two sections he labeled "shoulder pain" and "stress," Dr. Frederic B. Walker, IV, appellant's attending Board-certified internist, diagnosed musculoskeletal pain aggravated by situational stress under the section marked "shoulder pain," and related that appellant was not working and should not return to her regular job. However, in the section of his notes labeled "stress," he stated that things were going better for appellant and she was pleasant, alert, and happy and had "good range of affect."

In a letter dated July 14, 1998, the employing establishment stated that appellant was told when she was hired that, as a part-time flexible employee, she could not be guaranteed a set schedule, that she generally worked within the 30 hours a week expected of her position, that there was a greater work load due to increased customers but appellant had worked only 14 out of the 25 weeks during the first half of 1998, that every extended sick or annual leave appellant

had taken in the past year corresponded to a major stress in her personal life, including her husband's back injury, the opening of a family restaurant, a home remodeling project, the opening of a second family restaurant and taking care of her mother who had Alzheimer's disease.

In a report dated August 11, 1998, Dr. Walker related that appellant had been a patient since 1995 and had experienced significant emotional stress due to a combination of family and work issues. He stated that in the spring of 1998 her symptoms had become more directly related to her job, specifically the issues of promotion of a coworker to be her immediate supervisor, loss of the postmaster for a year, increasing work with no additional staff and difficulties with her left shoulder which made it difficult to sort mail. Dr. Walker stated that he had advised appellant not to return to her work environment.

In a statement of accepted facts, the Office accepted as compensable factors of employment appellant's allegations that she had an increased work load and that her supervisor improperly discussed possible disciplinary measures against her in front of other employees. The Office found the other allegations to be noncompensable factors of employment or allegations not proven to be factual.

In a report dated February 9, 1999, Dr. Gerd C. Leopoldt, a Board-certified psychiatrist and neurologist and an Office referral physician, provided a history of appellant's condition and the results of a mental status examination. He noted that appellant had a history of significant depression dating back to 1987 relating to a separation from her husband and postpartum depression after the birth of each of her two sons. Dr. Leopoldt related that appellant feared going back to work because she believed that her former temporary supervisor would be angry with her. He stated his opinion that appellant's increased work load aggravated her underlying major depressive disorder but that the temporary aggravation had ceased as of June 9, 1998 when her attending physician, Dr. Walker, stated that things were going well for appellant and she was described as "pleasant, alert, happy, with good range of affect." Dr. Leopoldt stated that appellant's depression had resolved and she had no current psychiatric diagnosis.

By decision dated February 24, 1999, the Office accepted that appellant sustained a temporary aggravation of depressive disorder, which based upon the medical evidence of record, had resolved as of June 9, 1998.

By letter dated April 7, 1999, appellant requested reconsideration and submitted statements indicating her disagreement with the employing establishment's comments regarding her personal life and the Office's determination that her emotional condition had resolved as of June 9, 1998. She also submitted a copy of a memorandum from an employing establishment human resources specialist to her supervisor with suggestions on editing her statements about appellant's claim to more accurately represent the employing establishment's position regarding appellant's claim.

By decision dated June 14, 1999, the Office denied appellant's request for reconsideration without having conducted a merit review.

The Board finds that the Office met its burden of proof in finding that appellant had no continuing disability or medical condition after June 9, 1998 causally related to her employment.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ 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.⁴

In this case, by decision dated February 24, 1999, the Office accepted that appellant sustained an emotional condition attributable to the compensable employment factors of an increased work load and an incident when her supervisor improperly discussed possible disciplinary measures against her in front of other employees. The Office further found, based upon the medical evidence, that appellant's condition had resolved as of June 9, 1998.

In notes dated June 9, 1998, which were divided into two sections he labeled "shoulder pain" and "stress," Dr. Walker, an internist, diagnosed musculoskeletal pain aggravated by situational stress under the section marked "shoulder pain," and related that appellant was not working and should not return to her regular job. However, in the section of his notes labeled "stress," he stated that things were going better for appellant and she was pleasant, alert, and happy and had "good range of affect." Although he indicated that appellant's shoulder pain was aggravated by stress, his description of appellant in the section of his notes concerning her stress condition appeared to indicate that her depression had resolved. In his August 11, 1998 report, Dr. Walker related that in the spring of 1998 appellant's stress symptoms had become more directly related to her job, specifically the issues of promotion of a coworker to be her immediate supervisor, loss of the postmaster for a year, increasing work with no additional staff and difficulties with her left shoulder which made it difficult to sort mail. He stated that he had advised appellant not to return to her work environment. However, it is not clear whether he had advised appellant not to return to work due to the shoulder problem or her emotional condition. If the latter, then his recommendation not to return to work would seem to conflict with his notes two months earlier on June 9, 1998 when he described appellant as pleasant, alert and happy.

In a report dated February 9, 1999, Dr. Leopoldt, a Board-certified psychiatrist and neurologist and an Office referral physician, provided a history of appellant's condition and the results of a mental status examination. He noted that appellant had a history of significant depression dating back to 1987 relating to a separation from her husband and postpartum

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Leroy R. Rupp*, 34 ECAB 427 (1982).

³ *Id.*

⁴ *See Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990).

depression after the birth of her sons. Dr. Leopoldt related that appellant feared going back to work because she believed that her former temporary supervisor would be angry with her. He stated his opinion that appellant's increased work load aggravated her underlying major depressive disorder but that the temporary aggravation had ceased as of June 9, 1998 when her attending physician, Dr. Walker, stated that things were going well for appellant and she was described as "pleasant, alert, happy, with good range of affect." Dr. Leopoldt stated that appellant's depression had resolved and she had no current psychiatric diagnosis.

The Board finds that the February 9, 1999 report of Dr. Leopoldt establishes that appellant's work-related aggravation of depression had resolved as of June 9, 1998. As a Board-certified psychiatrist, he is a specialist with regard to appellant's emotional condition and he provided a thorough analysis and evaluation of her condition based upon a complete and accurate factual background. Therefore, the Office properly relied on Dr. Leopoldt's opinion in determining that appellant's aggravation of her depression had resolved as of June 9, 1998.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

Section 10.606(b)(2) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁵ Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁶

In this case, in support of her request for reconsideration, appellant submitted statements indicating her disagreement with the employing establishment's comments regarding her personal life and her disagreement concerning the Office's determination that, based on the medical evidence of record, her emotional condition had resolved as of June 9, 1998. However, incidents concerning appellant's personal life do not relate to her job duties and are not compensable factors of employment. Therefore, her statements concerning the employing establishment's comments about her personal life do not constitute relevant and pertinent evidence not previously considered by the Office. Her argument that her emotional condition had not resolved as of June 9, 1998 does not constitute relevant and pertinent evidence not previously considered by the Office as lay persons are not competent to render a medical opinion.⁷

⁵ 20 C.F.R. § 10.606(b)(2) (1999).

⁶ 20 C.F.R. § 10.608(b) (1999).

⁷ See *James A. Long*, 40 ECAB 538 (1989).

The June 14 and February 24, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 9, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member