U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOIS J. CUNNINGHAM (BOATWRIGHT) and DEPARTMENT OF VETERANS AFFAIRS, COLMERY O'NEIL VETERANS ADMINISTRATION MEDICAL CENTER, Topeka, KS

Docket No. 99-2206; Submitted on the Record;
Issued September 12, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she developed post-traumatic stress disorder (PTSD), causally related to a July 18, 1990 stabbing attack by a psychiatric patient in the performance of duty.

This is appellant's second appeal before the Board on this issue. In the prior appeal, the Board found that further development of the medical evidence of record was required by the Office of Workers' Compensation Programs.[1] The facts and circumstances of the case are set forth in the prior Board decision and are hereby incorporated by reference.

Upon remand, the Office referred appellant, together with the complete case record, a statement of accepted facts and questions to be answered, to Dr. Stephen E. Peterson, a Board-certified psychiatrist, for a second opinion examination.

By report dated June 1, 1998, Dr. Peterson extensively reviewed the medical records and performed multiple psychological tests; he reviewed appellant's history of the July 18, 1990 attack by a psychiatric patient and he discussed her current symptomatology. He noted that testing results demonstrated possible diagnoses of schizophrenia of the paranoid type, depression, anxiety disorder and adjustment disorder with depressed mood. Dr. Peterson opined that three psychological tests suggested prolonged personality difficulties, dysthymia or major depression, long-standing anxiety difficulties, schizophrenic-like thinking without full-blown schizophrenia, obsessional rumination, problems with organizational thinking "and some symptoms consistent with post-traumatic stress disorder." He opined: "[appellant's] symptoms do not fit neatly into any other mood diagnosis" and that appellant was given the diagnosis of "Depressive disorder not otherwise specified" because her symptoms did not fit major depressive disorder, dysthymia or post-traumatic stress disorder. Dr. Peterson noted appellant's family

[1] Docket No. 96-0753, issued January 21, 1998.

history of schizophrenia and diabetes and appellant's history of divorce, having had four marriages. He noted that "It is unclear whether [appellant] experienced an emotional condition in September 1994" and indicated that she may have been depressed after a hysterectomy. Dr. Peterson noted that appellant gave a convoluted history and only once acknowledged any contribution to her difficulties other than the stabbing attack in 1990 "so it is difficult to identify the true origin. The weight of the information suggests that the stabbing event was actually incidental, but served as a focus of the many other traumas and losses she was feeling." Dr. Peterson noted that appellant filed her September 1994 emotional condition claim six weeks following a hysterectomy, in the same month as the anniversary of her sister's death, in the same month as the anniversary of her mother's death, in the same month as her abusive ex-husband's birthday and in the same month as her birthday. He noted that the other physicians of record identifying and/or supporting a diagnosis of post-traumatic stress disorder were psychiatric residents and were not yet Board-certified. Dr. Peterson noted that "it [did] not appear [appellant's] claim of disability in September 1994 was causally related to the attack in 1990. It is possible that such events in 1994 could cause or aggravate residual or delayed PTSD symptoms," but admitted that "It is not known whether [appellant's] complaints in September 1994 would have arisen without the 1990 work incident."

By decision dated June 4, 1998, the Office rejected appellant's claim finding that Dr. Peterson's report constituted the weight of the medical opinion evidence of record.

Appellant requested reconsideration and submitted the report of Dr. George S. Thompson, a Board-certified psychiatrist at the clinic where she had been receiving mental health treatment. Dr. Thompson saw appellant for one session and performed no additional diagnostic testing. He reviewed her clinic history and records history, including Dr. Peterson's report, in preparation for his report. Dr. Thompson noted that Dr. Peterson's report appeared complete and comprehensive and addressed his differences in the conclusions reached by Dr. Peterson. Dr. Thompson reviewed appellant's history of the 1990 injury and her following activities and circumstances; he reviewed the DSM IV criteria for diagnosing PTSD, noted that appellant was certainly confronted with an event involving actual or threatened death or serious injury and that her reaction may have involved intense fear, helplessness or horror. He noted that the traumatic event was persistently reexperienced in the form of distressing dreams in which appellant was choked or stabbed and that her dreams were specific to the event that occurred in 1990. Dr. Thompson noted that appellant manifested persistent avoidance of stimuli associated with the trauma and experienced a numbing of general responsiveness. He noted that appellant's inability to form a logical and orderly progression of events which she clearly and accurately remembered was not likely to be evidence that she was trying to mislead the evaluator, but rather was most likely evidence that she had PTSD. Dr. Thompson stated:

> "DSM IV makes provisions to subclassify [PTSD]. Since [appellant's] symptoms lasted for longer than three months, [she] qualifies for the "chronic" designation. DSM IV also allows for specification of [PTSD] 'with delayed onset.' This diagnosis is made if the onset of symptoms is at least six months after the stressor. Dr. Peterson's report calls into question whether a person can develop symptoms a long time after a traumatic event occurs. Clearly, DSM IV recognizes that this is an accepted clinical reality.

Dr. Thompson opined that appellant met the criteria for "[PTSD], chronic with delayed onset." He explained that it was a recognized clinical reality that a traumatic event may not lead to PTSD symptoms for many months after the event and that often the onset of symptoms is triggered by subsequent stressors or events that remind the person of the initial event. Dr. Thompson noted that, in appellant's case, "two lines of evidence suggest that the 1990 assault caused the occurrence of [PTSD] in September 1994." The first, he noted, was that appellant's symptoms in 1994 were specifically related to the 1990 assault, *i.e.*, she had nightmares of being stabbed and choked. As there was no other report of record that appellant had been stabbed or choked in the past, Dr. Thompson noted that it was reasonable to conclude that these nightmares were related to post-traumatic fears and intrusive recollections of the assault. He indicated that appellant was afraid of psychiatric patients, another trauma-specific symptom and that she was nervous when at the employing establishment, the site of the assault. Dr. Thompson noted that Dr. Peterson's report that appellant had more symptoms on locked units than on unlocked units suggested that her traumatic symptoms were associated with having been on a locked unit at the time of the assault. He noted that, although Dr. Peterson asserted that other stressful events led to appellant's emotional condition and that undoubtedly the other stressful events played a role in the development of her post-traumatic symptoms, the specific symptoms that appellant experienced in September 1994 could not be explained on the basis of those other events. Dr. Thompson noted that these symptoms were specific to the events of the 1990 assault. He noted that it was well established that one reason for a delayed onset of PTSD was that the symptoms were triggered by subsequent stressful events. Dr. Thompson explained how the trauma of appellant's hysterectomy 12 days before the anniversary of the assault could "call forth the post-traumatic symptoms," particularly as appellant had been stabbed in the abdomen and the surgery involved cutting into her abdomen and may have been sufficient to reawaken traumatic memories of the 1990 assault. He opined that it was "compellingly likely that the 1990 assault caused delayed [PTSD] in [appellant] in 1994 as a result of these subsequent stressors."[2]

Dr. Thompson noted that Dr. Peterson's report evidenced no malingering or defensiveness, that his psychological testing suggested PTSD and that appellant met the DSM IV criteria for PTSD, chronic, with delayed onset and that there was compelling evidence that the assault in 1990 was the precipitant of the development of these symptoms.

By decision dated June 3, 1999, the Office denied modification of its June 4, 1998 decision finding that Dr. Thompson's report was insufficient to provide a medical connection between the PTSD and the 1990 assault. The Office found that Dr. Peterson's report constituted the weight of the medical opinion evidence.

The Board finds that this case is not in posture for decision due to an unresolved conflict in medical evidence.

The Office found that Dr. Peterson negated a causal relationship between the 1990 stabbing incident and appellant's 1994 emotional condition. Dr. Peterson noted that it was not

[2] Stressors which Dr. Thompson noted included the hysterectomy, divorce, tubal pregnancy, the onset of diabetes and hypertension and the anniversaries of her mother's death and sister's death and her ex-husband's birthday.

known whether appellant's complaints in September 1994 would have arisen without the 1990 work incident. He found, however, that appellant's symptoms did not fit neatly into any specific mood disorder, but noted that she had some symptoms consistent with PTSD. He acknowledged that it was difficult to identify the true origin of appellant's 1994 symptomatology. He commented on appellant's family history of schizophrenia, diabetes and four prior marriages and indicated that diagnostic testing demonstrated possible diagnoses of paranoid schizophrenia, depression anxiety disorder and an adjustment disorder with depressed mood. He noted her recent hysterectomy and the anniversary of deaths occurring in her family. Dr. Peterson stated that "it is possible that such events (in 1994) could cause or aggravate residual or delayed PTSD symptoms."

Dr. Thompson, however, reviewed appellant's medical reports of record, including the report of Dr. Peterson. Based on his record review interview of appellant, Dr. Thompson diagnosed PTSD with delayed onset. He explained the psychopathology of the PTSD relationship with the 1990 stabbing incident, relying in part upon the diagnostic test results and outcomes derived from Dr. Peterson's examination. Dr. Thompson explained why he believed appellant's 1994 onset of PTSD was causally related to the 1990 incident. He noted that appellant's symptomotology had lasted for over three months and that the condition was delayed to 1994 based on two factors: appellant's nightmares as intrusive recollection of the 1990 incident and surgery to her abdomen as reawakening traumatic memories of the stabbing incident.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The Board finds that there is a conflict in medical opinion between Drs. Peterson and Thompson.

Therefore, the case will be remanded so that the Office may refer appellant, together with the case record, a statement of accepted facts and specific questions to be answered to an appropriate Board-certified specialist for an examination and a rationalized medical opinion on whether appellant's emotional condition and disability beginning in September 1994 was caused or aggravated by her 1990 stabbing injuries.

The decision of the Office of Workers' Compensation Programs dated June 3, 1999 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
September 12, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member