

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE M. REDD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Tuscaloosa, AL

*Docket No. 00-663; Submitted on the Record;
Issued April 18, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

This is appellant's third appeal before the Board. In the prior appeal, the Board remanded the case to the Office of Workers' Compensation Programs for further development.¹ The facts and circumstances are detailed in the prior Board decision and are hereby incorporated by reference.

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

Upon remand the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the complete case record, for a second opinion examination to Dr. J. Ashley Hagemeyer, a Board-certified psychiatrist.

By report dated August 2, 1999, Dr. Hagemeyer reviewed appellant's factual and medical history, noted that she claimed that her current stress and depression were caused by the problems she encountered with her repetitive strain injuries, noted that appellant stated that she was not allowed to use her hands but was expected to get her work done which was impossible without the use of her hands and indicated that appellant felt persecuted and put upon by the employing establishment because of her limitations. He noted that appellant claimed that she could not go to the employing establishment building, that she had feelings of panic when she got near and that she had dreams of the employing establishment which permeated her life and he opined that her symptoms were consistent with post-traumatic stress disorder. Dr. Hagemeyer performed a mental status examination and diagnosed mild depression, rule out adjustment

¹ Docket No. 97-421, issued March 4, 1999. The Board found that the Office abused its discretion in denying appellant's request for further review of her case on its merits. Appellant's claim was accepted by the Office for tendinitis of both wrists. In the December 24, 1997 decision, the Board found the Office did not meet its burden of proof to terminate appellant's compensation benefits.

disorder, rule out mild post-traumatic stress disorder. In the discussion of his findings Dr. Hagemeyer reported extensively what appellant stated, noting that she “report[ed] that her depressive symptoms and anxiety symptoms worsened after she left employment,” that she “report[ed] that it was the trauma of going through the appeals process and the disability process that has caused her to be like this,” that “she does experience pain because of her physical condition and this pain is causing her to have difficulty with her depression and anxiety” and that “she does give evidence of post-traumatic stress disorder and this would preclude her from working at the [employing establishment].” He further noted, “Her type of post-traumatic stress injury with relationship directly to her employment should be treatable.”

Dr. Hagemeyer noted that “[a]gain, per [appellant], her disabling symptoms from a psychological standpoint, started after she left her employment.” He identified post-employment stress as resulting from appellant’s anxieties regarding her compensation claims and he considered the fact that appellant had had a previous claim accepted for bilateral tendinitis, in his opinion that appellant should be on disability for her physical ailments. Dr. Hagemeyer stated that “[Appellant’s] psychological distress placed upon her by her job when she was working would be of the mild range.” He also indicated that he agreed with the April 28, 1994 report of Board-certified psychiatrist, Dr. Charles E. Herlihy, regarding specific responses to questions posed by the Office. Dr. Hagemeyer noted, “[Appellant] does have a pain disorder. She does have an adjustment disorder with mixed emotional features. There is a causal relationship to [appellant] employment situation and her psychiatric illness, however, at the time she was employed this was of a mild nature and it is the following battle for compensation that has worsened her symptoms.” Dr. Hagemeyer found appellant totally disabled and unable to return to her former employment.

By report dated April 28, 1994 Dr. Herlihy, reviewed appellant’s history, noted her development of bilateral wrist pain, numbness and tingling and that a diagnosis of “chronic pain syndrome” associated with “repetitive motion syndrome” was made, recounted various stressful events and actions that occurred while appellant was employed at the employing establishment, noted appellant’s psychological responses including panic attacks characterized by extreme anxiety, frightfulness, a lot of anger and serious depression with sleep disturbance and opined that upon examination appellant “did show depression and anxiety” and an “obsessional preoccupation with problems at work and what she feels has been done to her.” Dr. Herlihy diagnosed somatoform pain disorder and adjustment disorder with mixed emotional features and noted that appellant’s “current problems have appeared to bring to the surface some characterological problems such as extreme anger [and] outbursts of threats in her own mind against people who she feels have hurt her.” He noted that appellant’s complaints of pain were very real to her and that she did have a somatoform pain disorder. Dr. Herlihy opined that, “there is a causal relationship to the employment-related condition since she was said to have tendinitis and carpal tunnel syndrome which apparently cleared up ... but now she is completely out of control as far as being able to make an adjustment to her previous position of employment. This condition has not resolved. I consider [appellant] totally disabled because of her somatoform pain disorder. Her adjustment disorder with mixed emotional features should clear up ... [but] she will not return to work at her former position.” Dr. Herlihy opined that he believed “[appellant] cannot perform either of the positions described in her job description because of her somatoform pain disorder” and that “[s]he will continue to have chronic pain.”

An April 22, 1994 attached report from Dr. Alan D. Blotcky, a psychologist, regarding appellant's psychometric testing results, noted that "the MMPI [Minnesota Multiphasic Personality Inventory] produced an invalid profile because [appellant] endorsed a large number of psychiatric symptoms and characteristics" and that on the Rorschach, appellant "showed some signs of anxiety that seemed to be more prominent than any depressive affect. More than anxiety, there are rather strong signs of dependent and passive-aggressive characterological problems" and he indicated that "the present test data are most consistent with significant anxiety with mild depression intermixed."

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."

Dr. Herlihy, who examined appellant most contemporaneously with her compensable employment incidents, diagnosed somatoform pain disorder and adjustment disorder with mixed emotional features, causally related to appellant's employment and her accepted conditions of tendinitis and carpal tunnel syndrome. The Board notes that Dr. Herlihy did not have the benefit of a statement of accepted facts, upon which to predicate his opinions.²

Dr. Hagemeyer, who did not examine appellant until seven years after the employment incidents found compensable had occurred and who did not base his opinion on the statement of accepted facts, diagnosed mild depression, rule out adjustment disorder, rule out mild post-traumatic stress disorder and appeared to opine that appellant's emotional condition occurred after her employment had ceased and was related, according to appellant, to compensation claim-related stresses.

As Dr. Herlihy's report is in conflict with Dr. Hagemeyer's report with respect to diagnosed conditions and whether or not they occurred related to specific factors of appellant's employment, the case must be remanded for reconstruction of a new statement of accepted facts, delineation of the pertinent questions in the case³ and for referral to an impartial medical specialist for a rationalized medical opinion to resolve the existing conflict.

² Dr. Herlihy apparently did answer some questions posed by the Office but these questions do not appear in the case record. The record further contains no evidence that Dr. Herlihy was a second opinion examiner selected by the Office.

³ The pertinent issue in this case is whether the accepted compensable factors of employment caused, contributed to or aggravated appellant's emotional condition at the time when she became unable to work.

Consequently, the decision of the Office of Workers' Compensation Programs dated August 13, 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
April 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member