

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DWAYNE M. SIMONTON and U.S. POSTAL SERVICE,
POST OFFICE, Farmingdale, NY

*Docket No. 00-417; Submitted on the Record;
Issued August 10, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's disability on or after March 18, 1996 is causally related to his March 13, 1996 employment injury.

On April 12, 1996 appellant, then a 37-year-old letter carrier, filed an occupational disease claim, asserting that his cardiac and emotional conditions¹ were causally related to harassing incidents at work. On March 13, 1996 someone left a photograph of male genitalia on his case; on March 15, 1996 someone called him a vulgar name in front of a supervisor; on March 25, 1996 someone stole his work knife; and on March 26, 1996 he found his stool turned upside down, which he asserted had sexual implications.²

Appellant stopped work on or about March 18, 1996; returned to work on March 25, 1996 but used annual and sick leave to cover his reduced work hours; stopped work on April 9, 1996; returned again to part-time work on April 16, 1996 but covered his lost time with sick leave for three days; and then stopped work entirely on May 4, 1996, incurring leave without pay.

On March 22, 1996 Dr. William Goldwasser, appellant's attending physician, reported: "Due to [appellant's] acute exacerbation and medical condition, patient required to be out of work for one week from March 18, 1996." On March 28, 1996 Dr. Goldwasser reported: "[Appellant] under severe stress with symptoms of depression, insomnia and exhaustion which endangers his working under driving condition and; therefore, work should be limited to just going into work in the morning, setting up route and leaving."

¹ Appellant described the nature of his disease or illness as "cardiac condition, nervous order, involuntary trembling, headaches, severe stress, cannot sleep, exhausted, panic attacks, vomiting, nosebleeds, nightmares, light headed, dizzy, involuntary spells of crying, depressed [and] appetite loss."

² The Office of Workers' Compensation Programs eventually determined that, while there was some indication that other allegations were true, the only incident that could be accepted as an established, compensable factor of employment was the March 13, 1996 incident involving the lewd photograph.

On April 3, 1996 Dr. Patrick J. Monteleone, appellant's attending cardiologist, related to Dr. Goldwasser the findings from a cardiac catheterization and coronary angiography on February 16, 1996. He reported:

"As you are aware, [appellant] has been under a great deal of stress at work at the [employing establishment], secondary to harassment regarding his sexual preferences. He has been under your care and the care of several psychologists for severe depression and has had significant sleep abnormalities and has had problems with concentration and other difficulties as well. He is presently looking to legal redress regarding his situation. It certainly would appear that the stress level at his job is deleterious to his cardiac status at this point and I have so advised [appellant]."

On April 15, 1996 Dr. Goldwasser advised that appellant had been off work since April 9, 1996 due to an emotional breakdown. He noted that appellant was under intensive crisis and undergoing other types of counseling in addition to drug therapy. Dr. Goldwasser reported: "He may return to limited[-]day work consisting of setting up the route an average of four hours a day. These instructions should be followed until April 24, 1996."

On April 24, 1996 Dr. Robert Katz, a Board-certified psychiatrist, reported that appellant first saw him on April 11, 1996 for symptoms dealing with a mixture of depression and anxiety. Appellant related a history of sexual and physical harassment at work over the preceding nine years. Dr. Katz noted: "The event that brought him to see me was a photo taken of male genitalia that was placed on his desk at the job site." Appellant felt that he was being harassed because of his sexual orientation. Other stressors included the death of his mother in November 1995 and adaptation to his atherosclerotic heart disease. After describing appellant's symptoms and medication, Dr. Katz reported: "At this point in time, I have no way in telling whether the patient's experiences at work are subjective or objective. Despite this, at the present time he appears to be disabled with a major depression, generalized anxiety, panic attacks and possibly with post[-]traumatic stress syndrome."

On June 26, 1996 Dr. Monteleone noted that appellant was currently not working at the recommendation of his psychiatrist. He added: "Once again I feel the stress of his work at the [employing establishment] is deleterious to his cardiovascular status and that he should not return to employment at the [employing establishment]."

On July 25, 1996 Dr. Katz reported that he was still seeing appellant for major depression and generalized anxiety disorder. He added: "At this point in time [appellant] still feels as if his position in the [employing establishment] is the primary stressor leading to his symptomatology."

On September 8, 1996 Dr. Katz related that the history of appellant's current illness "goes back to approximately March 1996 when the patient sought out intervention with ... a psychotherapist." He noted that appellant had complained of constant harassment in the work setting, that harassment had been going on for approximately nine years at the work site. Dr. Katz stated: "In his initial presentation to me, his chief complaint in essence was the presentation of a picture of male genitalia that was placed on his desk of employment." After relating appellant's complaints and his findings on mental status examination, Dr. Katz reported that appellant had a major depression in partial remission, along with generalized anxiety

disorder. Appellant also seemed to have nightmares and flashbacks. This, Dr. Katz explained, associated with appellant's anxiety, led to a provisional diagnosis of post-traumatic stress disorder.

Dr. Katz stated that, as of his last visit with appellant on July 25, 1996, appellant was ready to return "to a work site other than the [employing establishment]." He noted a marked difference in appellant's functioning when he attempted to work and when he decided he could no longer function at the employing establishment: Appellant's affect, mood and behavior showed clear cut signs of improvement, and he experienced a marked decrease in the number of anxiety attacks during the day. Dr. Katz noted other stressors, such as the death of his mother and his chronic cardiac condition, but reported: "Despite these two stressors, it appears fairly clear that at this point in time the harassment at his job site has been the primary cause for his current diagnosis."

On September 16, 1996 Dr. Monteleone reported that appellant had been under his care since a myocardial infarction in 1993. He described appellant's medical history and noted that appellant became more symptomatic beginning in mid-March 1996. Dr. Monteleone noted: "This increase in symptomatology certainly is coincidental with an increase in harassment at the workplace related to the patient's sexual preferences and it would, therefore, appear to me that there is a direct relationship between the patient's increased harassment and his increase in symptomatology. Furthermore, the stress brought on by the patient's work environment is deleterious to his overall cardiac condition and I would concur with the recommendation that he not return to work at the [employing establishment] at this time."

On November 21, 1996 the Office notified appellant that it had accepted his claim for depression and aggravation of heart disease.

In a December 8, 1997 report, Dr. Goldwasser reported to the employing establishment as follows:

"[Appellant] has been a patient of mine for years during which time he has been treated for primarily high blood pressure and later premature coronary heart disease in conjunction with significant hyperlipidemia. His condition seemed to deteriorate associated to multiple stressful situations at work (gay bashing) which drove him to episodes of severe anxiety and work phobia. This ultimately also led to increased smoking and weight gain as an attempt to release some of the stress.

"Patient reports of multiple episodes when he attempted to notify his superiors only to either not be believed or be accused of fabricating and exaggerating situations.

"I have seen with sadness this young man being transformed from a productive active individual to an emotionally disabled and withdrawn personality with associated deterioration therapy compliance and at times abuse of dangerous and risky activities in a desperate attempt to relieve his stressful environment.

"I believe you can verify my report by reviewing both the reports from the Cardiologist and Psychiatrist. I believe that it is in the best interest of both my patient and your employee to try to correct his present situation."

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Richard S. Horowitz, a cardiologist, and Dr. Solomon Miskin, a Board-certified psychiatrist, for opinions on whether appellant's diagnosed condition was causally related to the employment incident of March 13, 1996, and if so, whether appellant was disabled from his regular work duties as a result.

On March 13, 1998 Dr. Horowitz related appellant's medical history and symptoms. He reported: "The symptoms are clearly exacerbated by significant stress at work. He details his homosexual lifestyle and claims to have been ridiculed and harassed in the workplace which has significantly exacerbated his symptoms." After describing his findings on examination, Dr. Horowitz diagnosed atherosclerotic cardiovascular disease status post myocardial infarction, status post PTCA; hypertension; and hypercholesterolemia. He concluded that, while appellant could not return to work at full physical capacity given his underlying coronary disease, a position with limited physical exercise "and a supportive nonharassing work environment" would be suitable.

On March 18, 1998 Dr. Miskin detailed the documents submitted for his review. He related appellant's history and complaints. After describing his findings on mental status examination, he diagnosed depressive disorder, not otherwise classified, with anxiety features, chronic, moderate severity. On the issue of causal relationship, Dr. Miskin stated:

"There appears to be a relationship between the claimant's symptoms and the alleged work-related stressors specifically associated with reported harassment regarding the claimant's sexual orientation. This relationship appears to be one of direct cause. There [are] no accompanying data to indicate an objective verification of the claimant's claims. If the claimant's claims are valid, the claimant would not be a candidate for a return to regular work duty, and this would be due to employment-related conditions and the inability to perform his regular duties at the present time would be expected to be of indefinite duration. The claimant could return to light duty on a full[-]time basis without other restrictions at a different work site. In other respects, the claimant would benefit from continued outpatient psychiatric therapy consisting of ongoing treatment on a once every two-week basis. He can be reevaluated in three months to assess his response to treatment and ascertain his need for additional psychiatric intervention. There appears to be no indication for diagnostic testing."

Upon receipt of the opinions given by Dr. Horowitz and Dr. Miskin, the Office determined that neither physician specifically addressed the relationship between each of appellant's diagnosed conditions and the one accepted employment incident of March 13, 1996, and neither reported whether any disability was due to residuals of this employment incident. The Office therefore requested supplemental opinions from both physicians.

In an addendum dated June 4, 1998, Dr. Horowitz clarified as follows:

"Certainly the stress of harassment may temporarily increase symptoms from underlying atherosclerotic cardiovascular disease but this clearly only would be a temporary phenomena without any significant permanent sequelae. Hypertension also may be exacerbated by a significant emotional stress but again this is clearly only a temporary phenomena which would last a short time. There would be no

significant effect of this event on his underlying hypercholesterolemia. The effects of this event would clearly only last hours at most and would not have any permanent residual effect. In summation [appellant's] current medical condition was not directly due to the residuals of the employment incident of March 13, 1996. If there are any further questions please do not hesitate to contact me.”

In an addendum dated May 28, 1998, Dr. Miskin clarified as follows:

“Please note in regard to the diagnosis of ‘depressive disorder, not otherwise classified with anxiety features, chronic, moderate severity’ that the claimant’s symptoms bear a direct relationship to the date of the injury alleged, March 13, 1996, in that his clinical presentation is derived from reported instances of sexual harassment at his job which he indicates was constant and pervasive. The harassment was accompanied by isolation and social avoidance at his workplace and was denigrative, threatening and deprecatory. There appears to have been no other significant clinical issues that would have functioned as competent producing causes of the claimant’s psychiatric symptoms or as competent producing causes of the claimant’s diagnosed disorder. The claimant’s disability, which appears to be moderate in severity, is directly due to residuals of the employment incident of March 13, 1996 and is related to the severity of his clinical symptoms and his marked avoidance of involvement with coworkers or his employment work site. As indicated, the claimant would be a candidate for return to work on a light-duty basis full time without other restrictions at a different work site. The claimant’s condition, as indicated, appears to be directly related to the alleged incident date of March 13, 1996. The claimant’s symptoms appear to have a direct causal relationship to the incident date of March 13, 1996 and appear to result from reported feelings of threat, anxiety, rejection, harassment, denigration and exclusion.

In a decision dated July 6, 1998, the Office denied compensation on the grounds that the evidence failed to establish that the claimed recurrences were causally related to the accepted employment injury of March 13, 1996. The Office accepted that appellant was entitled to five days compensation from March 13 to 18, 1996 for aggravation of heart disease and the one emotional episode.³ The Office emphasized that the heart problem was not a factor in appellant’s alleged disability beyond the five-day period. Further, the Office added that in emotional stress claims a new claim should always be filed and advised that appellant should consider filing new claims for his ongoing emotional condition.

On June 10, 1999 appellant requested reconsideration. In a decision dated September 3, 1999, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision.

The Board finds that this case is not in posture for decision. The evidence obtained from Dr. Miskin, the Office referral psychiatrist, establishes that appellant continues to suffer disabling residuals of his employment-related emotional condition, but the Office neglected to ask this physician to address specific periods of disability following appellant’s March 13, 1996

³ It is unclear what entitlement, if any, the Office approved with decision.

employment injury. Dr. Miskin made clear that appellant could not return to his date-of-injury work site and that his disability was directly due to residuals of the employment incident of March 13, 1996.

On remand the Office shall further develop the evidence. The Office should request a supplemental report from Dr. Miskin clarifying whether appellant's disability for work on and after March 18, 1996 (including his total disability from March 18 to 25, 1996⁴ his partial disability from March 25 to April 9, 1996, his total disability from April 9 to 16, 1996 his partial disability from April 16 to May 4, 1996 and his total disability thereafter) resulted from his emotional reaction to the incident that occurred at work on March 13, 1996, when he found a photograph of male genitalia on his case.

After such further development as may be necessary, the Office shall issue an appropriate final decision.

The September 3, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
August 10, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁴ Assuming the Office has not already accepted this period of disability.