

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUDY R. TOMLIN and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Denver, CO

*Docket No. 99-759; Submitted on the Record;  
Issued February 15, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly suspended appellant's eligibility for compensation because she refused to attend a medical examination.

On August 28, 1992 appellant, then a 49-year-old office supervisor, filed a notice of occupational disease, alleging that she sustained an emotional condition while in the performance of duty. Dr. Michael Mead, a clinical psychologist, diagnosed a panic disorder and depression due to supervisory harassment at work. Following a second opinion evaluation performed by Dr. George Kalousek, a Board-certitude psychiatrist, on August 20, 1995, the Office accepted appellant's claim for a temporary aggravation of adjustment and dysthymic disorder.

In a decision dated November 14, 1995, the Office determined that the temporary aggravation of appellant's emotional condition had resolved by October 25, 1994. Appellant had not worked since August 24, 1992. She received appropriate compensation from August 24, 1992 through October 25, 1994.

Appellant disagreed with the Office's November 14, 1995 determination that her medical condition had resolved and requested reconsideration on June 24, 1996. With her reconsideration request, she submitted an April 20, 1996 report from Dr. Mead, which stated that appellant had continuing disability caused by work-related emotional distress.

In a decision dated August 16, 1996, the Office found the evidence insufficient to warrant modification of its November 14, 1995 decision.

Appellant requested reconsideration on September 11, 1996 and submitted an addendum report dated August 27, 1996 from Dr. Mead.<sup>1</sup>

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<sup>1</sup> In the addendum report dated August 27, 1996, Dr. Mead opined that appellant's diagnosed conditions of dysthymia, panic disorder and generalized anxiety disorder were the result of harassment in the workplace and caused by the events identified by the Office as "compensable" in an Office decision dated November 14, 1995.

In a December 17, 1996 letter, the Office advised appellant that a conflict existed in the medical opinion evidence between Drs. Kalousek and Mead on whether she had continuing disability on or after October 25, 1994 due to a work-related emotional condition.

In letters dated December 4, 1996 and January 28, 1997, appellant advised that she could not see “another strange” doctor or attend any future examinations with Dr. Kalousek because she had a panic attack from being examined by Dr. Mead. Appellant requested that the Office decide her claim for continuing compensation based on the evidence of record.

In a decision dated February 5, 1997, the Office denied modification following a merit review of the record.

On February 2, 1998 appellant filed another request for reconsideration.

In a letter dated June 30, 1998, the Office notified appellant that she was scheduled for a medical appointment with Dr. Susan Bograd, a Board-certified psychiatrist, on July 28, 1998 at 1:00 p.m. for an impartial medical evaluation. The Office advised appellant that the impartial medical evaluation was required to resolve a conflict in the medical opinion evidence between Drs. Kalousek and Mead.

In a July 6, 1998 letter, appellant indicated that her illness precluded her from seeing any new physicians or Dr. Kalousek. She stated: “I am not refusing the examination, rather my mental limitation preclude me from going ... I get severe emotional reactions even thinking about doing these things.”

In a letter dated July 8, 1998, the Office advised appellant that she would be subject to sanctions, barring her from receipt of compensation, if she failed to keep her scheduled appointment.

An Office report of a telephone or office call dated August 4, 1998 noted that appellant was a “no show” at Dr. Bograd’s office on July 28, 1998.

On August 4, 1998 the Office issued a notice of proposed suspension of compensation based on appellant’s failure to appear for the impartial medical examination with Dr. Bograd. She was advised that she had 15 days to reschedule the appointment with Dr. Bograd or the Office would suspend her eligibility for compensation. The Office added that appellant’s reasons for not attending the examination were not supported by objective medical opinion evidence and therefore did not justify her obstruction of the impartial evaluation.

Appellant subsequently submitted an August 19, 1998 report from Dr. Mead, indicating that appellant had a severe panic attack several days prior to the scheduled impartial medical evaluation and was unable to attend the examination on July 28, 1998 because she feared having to relive the events of her harassment at work. Dr. Mead stated:

“From my review of the file, [appellant] also had extreme difficulties in seeing me for the first time and even back then, experienced similar panic reaction. It has been my experience over the last 20 year[s] [of] practice after having dealt with hundreds of previous patients with similar workers’ compensation claims that this

type of reaction in [appellant] is not at all unusual. Her degree of reaction, however, is extreme yet understandable considering the previous verbal job harassment to which she was subjected. This harassment has created in her an inability to cope with future confrontations with others, especially authority figures. These types of confrontations with authority figures, such as medical doctors, ... force [appellant] to recall harassment perpetrated against her by her previous supervisors.... It is my opinion that based upon my repeated evaluations and observation of [appellant] that it is not at all probable that she will be competent to attend these type of [impartial medical] evaluations in the future.”

By decision dated September 3, 1998, the Office found that appellant had obstructed an examination by Dr. Bograd and that she failed to establish good cause for refusing to undergo the medical evaluation. She was advised that her eligibility for benefits under the Federal Employees’ Compensation Act<sup>2</sup> was suspended for the period of the obstruction. However, she would be eligible for benefits once the obstruction ceased and she reported for the examination.

The Office also determined that the evidence of record was in conflict and therefore insufficient to modify the Office decisions dated November 14, 1995 and February 5, 1997.

The Board finds that the Office properly suspended appellant’s eligibility to compensation on the grounds that she obstructed a medical examination.

Section 8123(a) of the Act provides:

“An employee shall submit to examination by a medical officer of the United States or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required...”<sup>3</sup>

Section 8123(d) provides:

“If an employee refuses to submit to or obstructs an examination, [her] right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.”<sup>4</sup>

Additionally, the Office’s Federal (FECA) Procedure Manual provides:

“*Failure to Appear.* If the claimant does not report for a scheduled appointment, he or she should be asked in writing to provide an explanation within 14 days. If good cause is not established, entitlement to compensation should be suspended in

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8123(a).

<sup>4</sup> 5 U.S.C. § 8123(d).

accordance with 5 U.S.C. § 8123(d) until the date on which the claimant agrees to attend the examination.”<sup>5</sup>

The Board has reviewed the evidence of record and finds that appellant obstructed the July 28, 1998 medical examination scheduled with Dr. Bograd. The Office properly determined that a conflict in the medical record existed between the opinions of appellant’s treating physician and the Office referral physician.<sup>6</sup> Appellant argues that there is no true conflict because both physicians found that she has “an ongoing disabling emotional medical condition.” The conflict arises because Dr. Kalousek opined that the temporary aggravation of appellant’s mental disorder had resolved and Dr. Mead stated that her mental disorder was still work related. Accordingly, appellant was referred to a Board-certified psychiatrist for an impartial medical evaluation to determine whether she was disabled due to a work-related emotional condition after October 25, 1994.

By letter dated July 16, 1998, appellant was instructed to attend a medical appointment with Dr. Bograd on July 28, 1998 at 1:00 p.m. The Office, however, was notified on August 4, 1998 that appellant failed to appear for the scheduled medical appointment. Appellant submitted a report from her attending physician, stating that her emotional condition precluded her from attending any further medical evaluations scheduled by the Office. The Office medical adviser reviewed this report and concluded that Dr. Mead’s conclusion was unreasonable and reinforced the need for another opinion from a psychiatrist. The Board finds Dr. Mead’s statements to be unsupported by any medical rationale and therefore insufficient to justify appellant’s failure to attend a referee evaluation.

Because appellant’s refusal to attend an impartial medical evaluation appears from the record to result from her own subjective fears and there is no reasoned medical opinion to establish that such an evaluation would aggravate appellant’s emotional condition, the Board concludes that appellant has not shown good cause for her refusal to attend an impartial medical evaluation. Consequently, because appellant failed to provide sufficient justification for her failure to undergo an impartial medical evaluation with Dr. Bograd, the Office properly suspended her eligibility for compensation.

Additionally, the Board finds that the Office properly denied modification of the decisions dated November 14, 1995 and February 5, 1997. Until appellant undergoes an impartial medical evaluation, the medical evidence remains insufficient to warrant modification of her claim to reflect that she was disabled from a work-related condition on or after October 25, 1994.

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<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (November 1998).

<sup>6</sup> Section 8123(a) of the Act provides that, if there is 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. 5 U.S.C. § 8123(a); *see Charles E. Burke*, 47 ECAB 185 (1995).

The September 3, 1998 decisions of the Office of Workers' Compensation are hereby affirmed.

Dated, Washington, DC  
February 15, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member