U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANGELA M. GOMEZ and U.S. POSTAL SERVICE,
POST OFFICE, Aspen, CO

*Docket No. 00-1296; Submitted on the Record;*
*Issued July 18, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof to establish that she had any periods of total disability after November 14, 1996, for which she is entitled to wage-loss compensation, causally related to her accepted post-traumatic stress disorder; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's application for merit review on January 11, 2000.

On January 7, 1997 appellant, then a 32-year-old distribution clerk, filed an occupational disease claim, alleging that she sustained a psychiatric condition due to harassment, abusive treatment and a hostile work environment. She stopped work for the employing establishment on or around February 17, 1997, and by May 12, 1997 possibly sooner, began employment with a private company. In a decision dated March 26, 1997, the Office denied appellant's claim on the grounds that the factual and medical evidence failed to establish that she had sustained an injury as alleged. Appellant requested a review of the written record, and submitted additional evidence in support of her claim. In a decision dated August 7, 1997, an Office hearing representative affirmed the Office's prior decision. Appellant requested reconsideration and submitted additional factual and medical evidence in support of her request. On March 27, 1998 the Office referred appellant to Dr. Gary L. Martz for second opinion examination.

In his April 15, 1998 report, Dr. Martz diagnosed chronic post-traumatic stress disorder, causally related to accepted factors of appellant's employment. With respect to whether appellant was disabled, Dr. Martz noted that, at the time of his examination, appellant was working full time as a reservationist with a real estate company and further stated:

> "To my knowledge there are no past periods of disability due to a mental injury. Currently, both the claimant and I feel she is able to return to her regular employing establishment job provided there were different supervisors/coworkers as noted above. As there are legal proceedings, an EEOC [Equal Employment Opportunity Commssion] investigation as well as this stress claim being filed, I do n[o]t believe she would choose to return to her previous job due to the

presence of the individuals noted above as well as her perception of a system which does not work. Consequently, at the current time she is choosing not to return to work rather than from inability to return to work…."

After reviewing Dr. Martz's report, on May 8, 1998, the Office accepted appellant's claim for post-traumatic stress disorder, and advised appellant to file a claim for reimbursement for any medical treatment associated with the accepted condition. On September 5, 1998 appellant filed a claim for wage-loss compensation for the period November 14, 1996 through the present.

In a decision dated November 3, 1998, the Office denied appellant's claim for lost wages beginning November 16, 1996, on the grounds that appellant did not submit any factual or medical evidence which established that she was disabled from work due to her accepted condition. Appellant disagreed with the Office's decision and requested a review of the written record. By decision dated March 18, 1999, an Office hearing representative found that appellant failed to establish that she was disabled as a result of her accepted condition. By letter dated December 8, 1999, appellant requested reconsideration and submitted additional evidence in support of her request. In a decision dated January 11, 2000, the Office found the newly submitted evidence insufficient to warrant reopening appellant's claim for further merit review.

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

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1] An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[2] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[3] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated her condition is sufficient to establish causal relationship.[4] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[5] neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the

[1] *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

[2] *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

[3] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[4] *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[5] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[6]

In the present case, appellant submitted form and narrative reports from her treating physicians in support of her claim. In the earliest relevant report of record, dated November 16, 1996, Dr. Bruce Lippman, a Board-certified family practitioner, noted that appellant reported complaining of anxiety and depression, which she related to job harassment by her supervisor. The physician noted that appellant reported crying jags and trouble sleeping, and prescribed a trial run of medication. The next medical report of record is a February 6, 1997 report from Dr. John Maggiore, a Board-certified family practitioner, who noted that appellant had a great deal of stress and anxiety due to intimidation at work, further noted that she was obviously having some difficulty related to these conditions and recommended stress management counseling. In a follow-up report dated February 19, 1997, Dr. Maggiore noted that appellant reported having ongoing sexual harassment and further stated:

> "The patient is not doing the counseling as I previously suggested but she obviously needs to be doing this. Patient is relatively disabled from what I can see and I think a month off to get things organized would be appropriate … A note for a month of sick leave March 1 through April 1[, 1997] was given."

In a note dated March 25, 1997, Dr. Maggiore stated that appellant needed sick leave from March 1 through April 14, 1997, due to job-related stress, and in a follow-up note dated April 21, 1997, he stated that she was unable to work for 30 days due to stress at work. In a treatment note May 12, 1997, Dr. Maggiore noted that appellant had not returned to the employing establishment, on his recommendation, but was currently working as a reservationist for a private company and tolerating this work very easily. He concluded that as soon as the environment at the employing establishment changed and there was no longer a risk of harassment, appellant could return to work without restrictions. In periodic follow-up reports dating July 21, 1997 through May 20, 1999, Dr. Maggiore routinely stated that appellant could not return to work at the employing establishment but was happily and functionally employed in the private sector.

While the record clearly supports that appellant was not disabled from work by May 12, 1997, when she reported to her physician that she was happily working in the private sector, it is unclear from the record whether appellant had any periods of disability for work between November 14, 1996 and May 12, 1997. In his reports dating from February 17 through April 21, 1997, Dr. Maggiore stated that appellant was unable to work due to her employment-related stress, but he did not clarify, as he did in his later reports, whether he felt appellant was totally disabled for all work during this time or only precluded from returning to the employing establishment due to her fear of future harassment.[7] While the reports by Dr. Maggiore are not

[6] *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

[7] The Board has held that fear of future injury is not a compensable employment factor; *see Charles E. Evans*, 48 ECAB 692 (1997); *Beverly Diffin*, 48 ECAB 125 (1996). Disability compensation is payable only for an employment injury which causes disability for work; a fear of future injury is not compensable nor is a fear of a recurrence of disability. *James B. Christenson*, 47 ECAB 775 (1996).

sufficient to establish disability related to the accepted post-traumatic stress disorder after November 14, 1996, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. In addition, the Board notes that Dr. Martz, the Office referral physician, was also less than definitive on the issue of past disability, stating only that "to his knowledge" appellant had no past periods of disability due to a mental injury.

On remand, the Office should further develop the evidence by asking both Drs. Maggiore and Martz to submit a supplemental medical opinion on whether appellant had any periods of disability between November 14, 1996 and May 12, 1997 causally related to her accepted post-traumatic stress disorder. After such development as the Office deems necessary, a *de novo* decision shall be issued.[8]

The decisions of the Office of Workers' Compensation Programs dated January 11, 2000 and March 18, 1999 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
July 18, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[8] Due to the Board's disposition of the merits of this claim, the Office's January 11, 2000 decision is moot and need not be addressed.