

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE B. DELATORRE and DEPARTMENT OF THE NAVY,
U.S.N.S. PECOS, MILITARY SEALIFT COMMAND, San Francisco, CA
Docket No. 00-1290; Submitted on the Record;
Issued June 6, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that her psychiatric condition on and after October 31, 1995 was due to residuals of an accepted anxiety disorder.

On April 20, 1994 appellant, then a 52-year-old steward utility worker, filed a notice of occupational disease, alleging that she sustained emotional stress due to abusive, threatening behavior by supervisor Robert Allen in 1993.¹ She alleged that Mr. Allen yelled at her, made threatening remarks and assigned her arduous physical tasks not usually given to women. Appellant also described remarks by Mr. Allen regarding his hatred for persons of African heritage, she stopped work on April 6, 1994 and returned to work on June 15, 1994.

In support of her claim, appellant submitted numerous reports from October 1993 through June 14, 1994, from Dr. George D. Karalis, an attending Board-certified psychiatrist, who provided a detailed description of the alleged employment incidents, diagnosed anxiety and depression and opined that appellant was totally disabled for work in April and May 1994. He opined that appellant's anxiety and depression were due to Mr. Allen's remarks and behavior.

The Office of Workers' Compensation Programs initially denied appellant's claim by the May 31, 1995 decision. Appellant disagreed with this decision and in a June 6, 1995 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review.

¹ The record contains documents relating to an April 22, 1985 incident, filed as Claim No. A13-71614, in which appellant sustained dizziness and musculoskeletal symptoms when a shipboard elevator, in which she was a passenger, dropped four decks. This claim is not before the Board on the present appeal.

By decision dated and finalized September 8, 1998,² the Office hearing representative set aside the May 31, 1995 decision and remanded the case for further development. The hearing representative found that appellant had established four compensable factors of employment, including three incidents of Mr. Allen yelling at her or making threatening remarks in 1993 and her reaction to being assigned to “pull lines” on May 12, 1993.³ The hearing representative found that Mr. Allen’s behavior toward appellant in 1993 was “abusive.”

In August 27 and November 6, 1998 reports, Dr. Karalis reviewed the hearing transcript, provided a detailed discussion of the accepted employment factors and explained how and why those incidents caused the development of appellant’s depression and anxiety.

On remand, the Office referred appellant, the case record and a statement of accepted facts to Dr. Robert Hepps, a Board-certified psychiatrist, and Dr. Jillian Daly, a clinical psychologist, for a second opinion evaluation and opinion regarding any causal relationship between the claimed anxiety and depression and the accepted employment factors. Dr. Hepps submitted a February 7, 1999 report, in which he reviewed the medical record and discussed the accepted work factors. Based on the results of his psychiatric examination and psychological testing, Dr. Hepps diagnosed anxiety and dysthymic disorders. He opined that, based on the accepted employment factors contained in the statement of accepted facts, the diagnosed depression and anxiety would have been expected to last approximately two years, resolving by October 1995. Dr. Hepps stated that appellant did not have any period of total disability related to the accepted factors. He concluded that appellant’s current symptoms were not due to work factors.

By decisions dated February 24, 1999, the Office accepted that appellant sustained an anxiety disorder due to accepted employment factors, which had resolved by October 31, 1995. The Office also found that appellant did not have any work-related residuals of the accepted anxiety disorder after October 31, 1995, based on Dr. Hepps as the weight of the medical evidence.

Appellant disagreed with this decision and requested an oral hearing, which was held on August 27, 1999. At the hearing, appellant asserted that she still experienced stress and anxiety due to Mr. Allen’s abusive behavior towards her in 1993.

Appellant also submitted additional evidence, a May 17, 1999 report by Dr. John Dusay, an attending Board-certified psychiatrist, who reviewed various medical reports and provided a detailed account of the accepted work factors. Dr. Dusay opined that, while appellant’s emotional condition had improved sufficiently for her to return to work, she could never again work with Mr. Allen. Dr. Dusay explained that situations similar to the accepted 1993 incidents, including criticism, “harassment,” or an environment in which appellant perceived she was being

² The hearing was postponed at appellant’s request as she had returned to the employing establishment and was posted to a ship at sea. Appellant was terminated from the employing establishment in 1997, as she was found permanently unfit for sea duty due to her emotional condition.

³ “Pulling the lines” involved manually operating a reciprocal rope line strung between two ships, used to pass messages from vessel to vessel.

treated unfairly, would trigger depression and anxiety. Dr. Dusay also mentioned 1997 workplace incidents, described by appellant including alleged rumors that her work was deficient and that she was to be terminated from the employing establishment and problems with carpal tunnel syndrome. He attributed appellant's current disability in part to these 1997 incidents. Dr. Dusay explained that, while the accepted 1993 incidents were not "still the primary cause of [appellant's] psychiatric impairment ... like stresses under similar circumstances would cause her some level of impairment," as Mr. Allen's abusive behavior had "sensitized" her to future criticism or harassment.

By decision dated November 15 and finalized November 16, 1999, the Office hearing representative affirmed the Office's February 24, 1999 decision, finding that appellant had not submitted sufficient rationalized medical evidence to establish that her psychiatric condition on and after October 31, 1995 was causally related to the accepted factors of employment. The hearing representative found that Dr. Hepps represented the weight of the medical evidence.

The Board finds that appellant has not established that her psychiatric condition on and after October 31, 1995 was causally related to residuals of accepted anxiety disorder.

Once the Office accepts a claim and pays compensation, it has the burden of justifying termination or modification of compensation.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.⁷

In this case, the Office referred appellant to Dr. Hepps for a second opinion regarding causal relationship. The Board finds that his February 7, 1999 report is well rationalized based on a thorough clinical examination and relies on a complete medical and factual background. Therefore, Dr. Hepp's opinion must be accorded special weight on the issue of whether appellant had any residuals or disability resulting from the accepted anxiety disorder on and after October 31, 1995.

The Board notes that Dr. Hepp's opinion outweighs that of Dr. Karalis. Although Dr. Karalis did provide a description of the accepted employment factors and supported causal

⁴ *Raymond W. Behrens*, 50 ECAB ____ (Docket No. 97-1289, issued January 14, 1999).

⁵ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁶ *Raymond W. Behrens*, *supra* note 4.

⁷ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

relationship, he did not submit any reports from June 14, 1994 to August 27, 1998. During this interval, appellant returned to work in her date-of-injury position at the employing establishment, until she was terminated from employment in 1997. Dr. Karalis did not explain either the gap of four years in treatment or whether appellant's return to work during this interval signified a cessation of work-related disability and residuals. Without such rationale addressing the critical issue of causal relationship, Dr. Karalis' opinion is of greatly diminished probative value.⁸

As the weight of the medical opinion evidence on this issue, Dr. Hepp's report justifies the Office's termination of appellant's compensation effective October 31, 1995. The burden of proof now shifts to appellant.

Subsequent to the Office's February 24, 1999 decision terminating appellant's compensation, appellant submitted Dr. Dusay's May 17, 1999 report. The Board finds that his report is insufficient to establish appellant's claim of continuing disability on and after October 31, 1995. Although Dr. Dusay alluded that some part of appellant's psychiatric condition continued to be related to the accepted work factors, he did not provide an explanation as to how and why the 1993 incidents would continue to cause appellant's condition on and after October 31, 1995. Dr. Dusay noted that appellant had successfully returned to work at the employing establishment from 1994 through 1997, but did not explain the impact of this significant improvement in her condition and the apparent cessation of work-related disability, on the issue of causal relationship. Without such medical rationale addressing causal relationship, Dr. Dusay's report is of greatly diminished probative value.⁹ He also attributed appellant's current psychiatric condition to alleged 1997 workplace incidents that have not been found to be accepted factors of employment. The critical issue in this case is whether or not the accepted employment factors from 1993 caused appellant's psychiatric condition on and after October 31, 1995. Therefore, the 1997 incidents are irrelevant to this issue.

Consequently, appellant has not established that her condition on and after October 31, 1995 is causally related to the accepted anxiety disorder, as she submitted insufficient rationalized medical evidence to establish a causal relationship between that disorder and her continuing condition.

⁸ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁹ *Id.*

The November 16, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member