

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTIE J. CONLEY and DEPARTMENT OF THE NAVY,  
NAVAL AIR STATION, Jacksonville, FL

*Docket No. 00-1259; Submitted on the Record;  
Issued October 18, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has any disability after June 30, 1995 causally related to her employment-related depressive episode; (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim on January 12, 2000.

This case has been before the Board previously. By decision dated March 17, 1998, the Board remanded the case to the Office. The Board found that, as appellant established two compensable factors of employment, the case would be returned for the Office to develop the medical evidence.<sup>1</sup> The facts as set forth in the previous Board decision are hereby incorporated by reference.

Subsequent to the Board's March 17, 1998 decision, by letter dated April 17, 1998, the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Atul M. Shah, who is Board-certified in psychiatry and neurology, for a second opinion evaluation. In a decision dated November 16, 1998, the Office accepted that appellant sustained an employment-related depressive episode that had resolved by June 30, 1995. On December 15, 1998 appellant requested a review of the written record and submitted additional evidence. In a March 31, 1999 decision, an Office hearing representative affirmed the prior decision.

By letter received by the Office on June 14, 1999, appellant requested reconsideration. In a July 22, 1999 decision, the Office denied modification of the prior decision. By letter received by the Office on November 19, 1999, appellant requested reconsideration and submitted additional evidence. In a decision dated January 12, 2000, the Office denied appellant's reconsideration request. The instant appeal follows.

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<sup>1</sup> Docket No. 96-480.

The Board notes that the January 12, 2000 decision in which the Office purportedly denied appellant's reconsideration request, reveals that the Office conducted a merit review of the April 22, 1998 medical report from appellant's treating Board-certified psychiatrist, Dr. Emanuel Martinez. The Office found that the factors identified by the doctor were not considered factors of employment. The Board finds that the Office conducted a merit review and, therefore, the January 12, 2000 decision is a decision on the merits of appellant's claim.

The Board finds that appellant has failed to establish that she had any disability after June 30, 1995 causally related to the employment injury.

By decision dated November 16, 1998, the Office accepted that appellant sustained a depressive episode that had resolved by June 30, 1995, based on the opinion of Dr. Atul M. Shal, a Board-certified psychiatrist who provided a second opinion evaluation. The Office noted that the accepted employment factors were that appellant was overworked for the period December 1993 through January 1994 and again in December 1994 and that she had difficulty organizing and implementing an event for the employing establishment in October 1994.

The test of "disability" under the Act is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured.<sup>2</sup> Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>3</sup> In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>4</sup>

To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup> Causal relationship is a medical issue,<sup>6</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty,

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<sup>2</sup> *Corlisa Sims*, 46 ECAB 963 (1995).

<sup>3</sup> *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>4</sup> *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>5</sup> See 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

The relevant medical evidence includes reports from appellant's treating Board-certified psychiatrist, Dr. Judith Hallstrom, who provided an attending physician's report dated December 14, 1994 in which she noted a history of progressive depression beginning the previous July due to "work-related stress." She noted symptoms of declining functioning, concentration, energy and motivation with increased worry, sensitivity and anxiety, and decreased sleep and appetite. Dr. Hallstrom diagnosed a major depressive episode, checked the "yes," box, indicating that the condition was employment related and stated: "stresses all work related prior to development of major depressive disorder." She prescribed therapy and medication and advised that appellant was partially disabled from July 27, 1994 to "present." In a brief letter dated April 24, 1995, Dr. Hallstrom advised that appellant was "currently unable to work due to job-related stress." By report dated June 1, 1995, Dr. Hallstrom described her findings and diagnosis and advised:

"Shortly after having been prescribed medication [appellant] evidenced improvement in her condition. Unfortunately, on April 3, 1995 she reported again becoming depressed as she realized that her stress and conflicts at work were going to continue. Since that date she has missed work and several letters were written requesting that she have time off to help restore her equilibrium.

"Presently her prognosis is guarded. As in all work stress situations, the health and productivity of both management and employee is contingent on their abilities to communicate and problem solve. If issues cannot be resolved in some mutually satisfying way, then there may be little improvement in [her] condition."

In a June 16, 1995 note, Dr. Hallstrom advised that appellant was "unable to work at present. She will be reevaluated in three weeks." In a report dated September 25, 1995, Dr. Hallstrom stated:

"[Appellant] may return to work on October 2, 1995 on a trial basis. However, due to her present condition she should not work on the end of the year report due to the stress involved."

Dr. Atul M. Shah, who provided a second opinion evaluation, provided a report dated May 14, 1998 in which he diagnosed major depressive episode, chronic moderate versus dysthemic disorder, rule-out malingering. He did not believe that this was due to work stress "even though that could have contributed to the overall precipitating event at the outset." He opined that if work were the cause, it would have resolved when she stopped work. In an attached work capacity evaluation dated May 12, 1998 in which he advised that appellant could perform her usual job but that if she had not been working for six months, she should only return to work on a part-time basis and work up gradually to full time.<sup>8</sup> In comments stamped received

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<sup>7</sup> Gary L. Fowler, 45 ECAB 365 (1994); Victor J. Woodhams, 41 ECAB 345 (1989).

<sup>8</sup> The record indicates that appellant stopped work on April 3, 1995. She returned to work on October 1, 1995 and voluntarily retired on December 30, 1997 at which time she received a \$25,000.00 separation incentive.

by the Office on September 3, 1998, Dr. Shah advised that in all medical probability appellant's mental condition was not solely caused by work stress, reiterating that removal from the workplace did not relieve her stress. He stated that, at best, work stress could cause an adjustment reaction which would typically last for a few months. By report dated October 2, 1998, Dr. Shah advised that, if the accepted employment factors precipitated appellant's depressive reaction, this would resolve in approximately six months.

Appellant further submitted a report dated July 9, 1998 in which Dr. Emanuel Martinez, a Board-certified psychiatrist, advised that her depression was aggravated by the fact that appellant was "forced" to take early retirement in December 1997. By report dated December 10, 1998, Dr. Martinez advised that appellant's depression was exacerbated due to the holiday season and secondary to the workers' compensation "bureaucratic process." In an attending physician's report dated January 22, 1999, he diagnosed a major depressive episode that was work related. By report dated April 27, 1999, Dr. Martinez advised that appellant was psychiatrically stable and there was no reason she could not work.

Regarding Dr. Martinez' observations that appellant's condition was caused by the "bureaucratic process" in processing her claim, the Board has held that handling of a workers' compensation claim is not a compensable factor of employment.<sup>9</sup> Likewise, regarding Dr. Martinez' observation that appellant was "forced" to take early retirement, administrative or personnel matters, although generally related to employment, are administrative functions of the employer rather than regular or specially assigned work duties of the employee.<sup>10</sup> Where disability results from an employee's emotional reaction to certain administrative or personnel matters unrelated to the employee's regular or specially assigned work duties, the disability does not fall within coverage of the Act.<sup>11</sup> Coverage under the Act will attach if the factual circumstances surrounding an administrative or personnel action establish error or abuse by employing establishment superiors in dealing with a claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated.<sup>12</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>13</sup> In this case, the record indicates that appellant voluntarily retired on December 30, 1997 at which time she received a \$25,000.00 separation incentive. There is, therefore, nothing to indicate that the employing establishment committed error or abuse in this regard. Therefore, her separation from the government is not a compensable factor of employment.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Shah. While Dr. Hallstrom advised that appellant cannot work due to work-related stress, she provides no explanation for this conclusion. Likewise, Dr. Martinez either opines that

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<sup>9</sup> *Bettina M. Graf*, 47 ECAB 687 (1996).

<sup>10</sup> *Gregory N. Waite*, 46 ECAB 662 (1995).

<sup>11</sup> *Michael L. Malone*, 46 ECAB 957 (1995).

<sup>12</sup> *Sandra Davis*, 50 ECAB \_\_\_\_ (Docket No. 97-117, issued July 8, 1999).

<sup>13</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994).

appellant's condition is due to factors that have not been accepted as employment-related or merely repeated Dr. Hallstrom's conclusions.<sup>14</sup> Dr. Shah, however, provided comprehensive reports explaining the basis for his opinion that any work-related condition had resolved by June 30, 1995. Appellant, therefore, failed to establish any work-related disability after that date.<sup>15</sup>

The decision of the Office of Workers' Compensation Programs dated January 12, 2000 is hereby affirmed as modified. The decisions dated July 22 and March 31, 1999 are hereby affirmed.

Dated, Washington, DC  
October 18, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>14</sup> The Board notes that the attending physician's report submitted by Dr. Martinez dated January 22, 1999 contains, word for word, the language found in the attending physician's report submitted by Dr. Hallstrom on December 14, 1994.

<sup>15</sup> Appellant seems to be additionally contending that she has not received compensation for the period she did not work prior to June 30, 1995. The record, however, indicates that for this period she took leave and, thus, had no wage loss. Appellant was notified that she was entitled to leave buy back and her request has been processed by the employing establishment.