

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN K. WEBB and U.S. POSTAL SERVICE,
POST OFFICE, Tulsa, OK

*Docket No. 00-747; Submitted on the Record;
Issued September 19, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective November 7, 1999.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective November 7, 1999.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁴

On May 19, 1992 appellant, then a 39-year-old mailhandler, filed a claim for traumatic injury alleging that on May 13, 1992 while in the performance of duty, she was assaulted by a postal customer who fondled her breast. She stopped work on the date of the injury and has not

¹ *Lawrence D. Price*, 47 ECAB 120 (1995).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

returned.⁵ After a period of medical and factual development, on July 24, 1992 the Office accepted her claim for aggravation of depression with agoraphobic features.

Appellant's current treating physician is Dr. Ronald C. Passmore, a Board-certified psychiatrist whom she has been seeing since August 8, 1992, apparently after a suicide attempt. In his initial narrative report of record dated March 11, 1993, Dr. Passmore noted that appellant showed evidence of both situational and chronic depression, and stated that "the condition of the injury May 13, 1992, might have worsened the depression and perhaps precipitated the worsening of symptoms with the resultant overdose. I think her depression though is more long-standing and chronic." He further noted that appellant was unable to work at that time, due to difficulty concentrating. In follow-up reports dated May 23, 1994, May 25, 1995, April 16 and June 6, 1997, Dr. Passmore essentially reiterated this diagnosis. In reports dated July 16, 1998 and May 21, 1999, Dr. Passmore stated:

"[Appellant] is continuing to see me. She continues to have episodes when she feels suicidal and has to stay in. Basically she lives a life where she does n[o]t go anywhere and if she does n[o]t see anybody she said it helps her. She stays in bed for days at a time. As I have told you before, this is a chronic condition and I do n[o]t expect it to ever particularly resolve. I think a lot of her withdrawal is due to the asocial aspects of her personality, and I do n[o]t think that this would contribute to her ever returning to work. As I have told you before, this is chronic and not necessarily related to when she tried suicide, which was the first time I saw her. After the incident at the [employing establishment] she tried suicide and I saw her in Intensive Care at the hospital."

On July 21, 1999 at the request of the Office, appellant was seen by Dr. Keith Johansen, a Board-certified psychiatrist, for a complete medical evaluation and second opinion. The Office provided Dr. Johansen with a statement of accepted facts, a list of specific questions to answer and the relevant medical evidence of record. In a report dated July 26, 1999, Dr. Johansen noted that, during his interview with appellant, she stated that she was "doing fine" regarding the May 13, 1992 assault, claiming that she slept well and had no daytime sleepiness. He further noted that appellant related to him that she leads an active life, taking care of her 16-year-old son, her household, two horses and dogs. Appellant also reported making a three-hour round trip visit to see her ailing mother, once a week and added that she was quite depressed about her mother's illness. She also stated that she seldom saw her mother through much of her life and now when she would like to spend more time with her, she is not going to live long. Appellant stated that this is the cause of her current depression, and became quite tearful. Dr. Johansen diagnosed appellant as suffering from adjustment disorder with depression secondary to her mother's illness and personality disorder and stated:

"There is objective evidence of depression at this time but no evidence of agoraphobic features. The depression is not disabling. [Appellant] is actually very active taking care of her household, her family, driving considerable distances to take care of her mother and looking after domestic animals.

⁵ At the time of the incident, appellant was working limited duty due to an employment-related bilateral elbow condition.

[Appellant's] current adjustment disorder is secondary to her mother's illness and expected decline. Her personality disorder arises from her abusive childhood at the hands of her father and the lack of protection by her mother who is quite ill and will leave this world without ever giving [appellant] what she thinks she has coming. In my opinion, the aggravation of depression with agoraphobic features secondary to the injury of 1992 was temporary. Both in keeping with my examination and as explained by [appellant], her current psychological condition is the result of childhood injuries and her mother's illness and is not in any way related to the incident on May 13, 1992. [Appellant] is not currently disabled to work in her job as a mailhandler because of a previous aggravation of depression with agoraphobic features nor is the preexisting psychological disorder of her personality disorder disabling. There is no psychological reason preventing her return to work at the present time. [Appellant] is not disabled from her job as a mailhandler secondary to any psychological work[-]related conditions. I cannot speak to her claim about problems with her elbows."

On August 4, 1999 the Office forwarded Dr. Johansen's report to Dr. Passmore for comment. In his reply dated August 18, 1999, Dr. Passmore reiterated his care and treatment of appellant and stated:

"I think a lot of her withdrawal is due to asocial aspects of her personality and I do n[o]t think this would ever contribute to her returning to work. Even if we can keep her depression under control, she would not be able to go back to work. She has a sister who has attempted suicide and her paternal grandfather died of suicide, so it would appear to me that depression runs in the family. As I have indicated in my reports before, I thought that this was a chronic ongoing problem and that we have basically dealt with the problem that initiated it in 1992. I do not think that she should be returning to work at this time."

Based on the medical evidence of record, the Office proposed to terminate appellant's compensation benefits on September 8, 1999. The Office allowed appellant 30 days to submit additional evidence or argument, but received no response.

In a decision dated October 29, 1999, the Office terminated appellant's compensation benefits effective November 7, 1999. By letter to her congressman dated November 1, 1999 and forwarded to the Office by the congressman on November 4, 1999, appellant objected to the Office's October 29, 1999 decision terminating benefits. Appellant stated that she remained totally disabled from performing her usual job as a mailhandler and added that she had never received the September 8, 1999 notice of proposed termination referenced by the Office in its decision. Finally, appellant stated that she had filed an appeal with the Department of Labor. The Office informed the congressman that appellant needed to specify which avenue of appeal she wished to pursue. By letter dated November 16, 1999, appellant requested a review of the written record; however, as appellant had filed the present appeal with the Board on November 4, 1999, the Office no longer had jurisdiction over the instant case and forwarded the case file to the Board accordingly.

With respect to appellant's assertion that she did not receive the Office's notice of proposed termination, the Board notes that the Office, in terminating compensation benefits, must provide a pretermination notice before removing an appellant from the periodic compensation rolls.⁶ In the instant case, the record reflects that the Office properly sent the September 8, 1999 notice to appellant's correct address. Under the "mailbox rule," it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.⁷ As appellant has provided no evidence that the Office did not send the notice to the correct address or otherwise provide evidence that she did not receive the notice, appellant has not established that the Office erred in this regard.

The Board further finds that, with respect to the merits of this claim, the weight of the medical evidence rests with the well-reasoned opinion of Dr. Johansen, the Office referral physician upon whom the Office principally relied in terminating appellant's benefits. Dr. Johansen provided a detailed report, relying on the statement of accepted facts, as well as appellant's personal history and medical records and concluded that the aggravation of depression with agoraphobic features secondary to the injury of 1992, was temporary and that appellant's current psychological condition is the result of childhood injuries and her mother's illness and is not in any way related to the incident on May 13, 1992. Dr. Johansen further stated that appellant is not disabled from her job as a mailhandler secondary to any psychological work-related conditions. While Dr. Passmore, appellant's treating physician, clearly believes that appellant continues to be totally disabled for work due to her psychological condition, he essentially agrees with Dr. Johansen that the specific effects of the May 13, 1992 employment-related injury have resolved, stating that appellant's current condition is "not necessarily related" to the incident at the employing establishment and that "we have basically dealt with the problem that initiated it in 1992."

As the weight of the medical evidence establishes that appellant's accepted employment-related aggravation of depression with agoraphobic features has resolved, and that her current condition is unrelated to the employment incident of May 13, 1992, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective November 7, 1999.

⁶ *Teresa B. Russ*, 47 ECAB 444 (1996).

⁷ *A.C. Clyburn*, 47 ECAB 153 (1995).

The decision of the Office of Workers' Compensation Programs dated October 29, 1999 is hereby affirmed.

Dated, Washington, DC
September 19, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member