

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TAMMI L. HALL and U.S. POSTAL SERVICE,
POST OFFICE, San Bernardino, CA

*Docket No. 02-264; Submitted on the Record;
Issued July 17, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that residuals of appellant's accepted employment injury had ceased by August 28, 1999.

On January 26, 1999 appellant, then a 40-year-old postal clerk filed an occupational disease claim alleging emotional stress due to employment factors. In a narrative statement submitted with the claim, she alleged that on January 21, 1999 she was singled out and accused of falsifying work hours for leaving the office building after having clocked in. Appellant also discussed that she had problems with her supervisor, Horace Porche; that, in November 1998, she was targeted in an investigation for accusations of being absent without leave (AWOL) and had previously been denied overtime. She indicated that she developed a rapid heartbeat in December 1998, for which she sought medical attention, however she did not inquire with her physician whether her heart condition could be related to stress at work. Appellant did not stop work following the January 21, 1999 incident.

On August 4, 1999 appellant submitted another statement in which she further alleged discrimination concerning the AWOL investigation, the incident on January 21, 1999 and harassing statements made by Mr. Porche, her supervisor. She indicated that, as a result of work-related stress, she had recently experienced light-headedness, difficulty breathing and a rapid heart beat with palpitations, and consequently had been off work for two weeks. Appellant also submitted a copy of an echocardiogram dated December 18, 1998. She also submitted a disability slip from the Loma Linda International Heart Institute dated August 26, 1999 which noted that appellant had been off work beginning August 19, 1999 for "this same condition" but could return to light duty at that time. Appellant further submitted a statement dated August 30, 1999, which specifically indicated that she returned to light-duty work on August 28, 1999.

By decision dated September 27, 1999, the Office denied appellant's emotional condition claim on the grounds that she had not established an injury in the performance of duty as alleged.

By letter dated November 15, 1999, appellant requested a hearing. She later submitted evidence including a medical report dated November 29, 1999, which diagnosed mitral regurgitation, a condition which causes a back flow of blood from the left ventricle into the left atrium, which could result from conditions including heart valve disease or abnormalities.

A hearing was held on March 29, 2000. Appellant testified that following her problems at work from November 1998 through January 1999, she began to physically suffer from a heart condition and panic attacks, which she considered stress related and attributed to employment factors. At the conclusion of the hearing, she submitted additional evidence.

Appellant submitted a witness statement from Junues Booze, a coworker, who asserted that he witnessed improper conduct demonstrated by appellant's supervisor, Mr. Porche. Mr. Booze indicated that he and appellant worked together in Automation from 1995 to December 1998 and on various occasions, Mr. Porche would walk by their workspace and make sexual remarks, such as "Hey man, you want some of that, it ain't no good." He asserted that Mr. Porche would stand in the supervisor's area and if appellant walked by while other men were present, Mr. Porche would repeat the joke.

Appellant also submitted treatment notes, which discussed the alleged harassment witnessed by Mr. Booze and that appellant had a week of disability in December 1998 and again in 1999 for heart problems.

By decision dated June 22, 2000, an Office hearing representative determined that appellant had established one employment factor; that her supervisor had made inappropriate comments in her presence between 1995 and 1998. The Office hearing representative affirmed the September 27, 1999 decision, as modified, for failure to establish a causal relationship between the claimed emotional condition and the accepted employment factor. The Office hearing representative found that there was no rationalized medical opinion whatsoever indicating that appellant sustained any medical condition causally related to comments made between 1995 and 1998.

On May 21, 2001 appellant requested reconsideration. She submitted a medical report dated September 14, 1999 from Dr. Mark Richmond, a Board-certified physician in emergency medicine who indicated that he saw appellant on August 28, 1999 for a racing heart and heart palpitations, which she related to chemical exposure at work. He opined that appellant take off work until reevaluated by cardiology. Appellant also submitted a report dated March 20, 2001 from Dr. Christine Jaynes-Bell, a licensed clinical psychologist who indicated that appellant had been referred for treatment of acute anxiety and depression resulting from work-related stress and harassment. She discussed appellant's heart condition and stated that emotional stress as well as fatigue resulting from excessive physical exertion would exacerbate her condition. Dr. Bell related appellant's history, that her supervisors and coworkers were not accepting of her diagnosis and accused her of getting preferential treatment when she was assigned to light duty. She further related that it had been difficult for appellant to work effectively while enduring continual criticism and harassment, that handling heavy equipment was contraindicated for her heart condition and her exhaustion necessitated her taking time off. Dr. Bell stated that appellant's fear of going to work in a hostile environment had caused appellant to suffer from anxiety and depression on a daily basis. She diagnosed major recurrent depressive disorder,

generalized anxiety disorder, mitral valve prolapse and working under hostile conditions. Dr. Bell further recommended a work reassignment.

Appellant submitted another report dated June 6, 2001 from Dr. Margaret Yates, attending physician, who indicated that Dr. Bell referred appellant for evaluation for medication for anxiety and depression. Dr. Yates discussed her condition, concurred with Dr. Bell's diagnoses and recommendations and prescribed medication.

By decision dated June 21, 2001, the Office denied modification of the prior decision. The Office found that, although appellant submitted evidence establishing a diagnosis for anxiety and depression, it did not establish a causal relationship between appellant's diagnosed condition and comments made by Mr. Porche between 1995 and 1998, the sole employment factor accepted by the Office.

In a letter dated July 30, 2001, appellant requested reconsideration of the prior decision and submitted additional evidence. She submitted another report from Dr. Yates dated July 6, 2001 in which she stated:

"It is not possible to state with absolute certainty that the stress of sexual harassment can uncover symptoms of MVP (rapid and irregular heartbeat, dizziness, burning in her chest and fatigue). However, she has no prior psychiatric history of any kind and the onset of her symptoms is clearly correlated with her workplace harassment. Although MVP causes no symptoms in most instances, in 10 percent of cases symptoms are debilitating and may lead to serious heart disease such as mitral valve insufficiency and the need for valve replacement. The experiences of being abused verbally, feeling helpless and trapped in her work situation are indeed high stressors and clearly contributed to her mitral valve symptoms."

On August 22, 2001 the Office referred appellant for second opinion examinations to determine whether any medical connection existed between appellant's heart and emotional condition and the accepted work factor. In a report dated September 13, 2001, Dr. Ajit Raisinghani, a Board-certified internist and cardiologist, reviewed appellant's history of injury, the statement of accepted facts and medical records. Following a physical examination, Dr. Raisinghani determined that appellant had no obvious cardiac diagnosis, condition or disability related to the accepted factor of her employment. Dr. Raisinghani determined that appellant was essentially asymptomatic and fairly active, had no physical limitations from a cardiology standpoint and could work full duty.

In a psychiatric report dated September 21, 2001, Dr. Reynaldo Abejuela, a Board-certified psychiatrist and neurologist, reviewed appellant's employment and personal history, the statement of accepted facts and medical records. He discussed appellant's prior psychiatric evaluation and medical treatment and noted that appellant had been back to work for the past two years in a light-duty position. Dr. Abejuela stated that there was no evidence of depression or anxiety and that appellant was not being treated from a psychiatric standpoint at that time. He found no psychiatric diagnoses and rationalized that appellant did not display any evidence of anxiety, depression or panic attacks during his evaluation, nor did she meet the criteria for any

DSM IV diagnosis on Axis I or II. Dr. Abejuela opined that no future psychiatric therapy or medication was indicated and that, since appellant had been back to work, she could continue to perform her duties without difficulty.

In a letter dated September 28, 2001, the Office requested that Dr. Abejuela clarify his opinion as to whether or not appellant suffered a psychiatric or emotional condition as a result of her supervisor's comments from 1995 through 1998, and if so, whether the condition had ceased. In a clarifying report dated October 6, 2001, Dr. Abejuela indicated that based on a review of medical reports from 1998 through 2001 and the statement of accepted facts which discussed the accepted factor of employment, there was sufficient evidence to support that appellant had an emotional condition; namely depressive disorder and anxiety disorder attributed to the accepted employment factor. He reasoned that appellant had suffered from symptoms of anxiety and depression and that there was reported verbal abuse with feelings of hopelessness and nervousness in highly suggestive situations. As to whether Dr. Abejuela opined that the emotional condition had ceased, he stated:

“I do not have the exact date of when the patient returned to work, however, I would calculate it [to] coincide with when the patient returned to work on a full-time basis. This would be the estimated time of when the condition ceased, *i.e.*, when she returned to work and able to function occupationally ... on the date delineated in the reports of Dr[s]. Bell and Yates.”

By decision dated October 26, 2001, the Office modified the June 21, 2001 decision, and accepted that appellant developed a major depressive disorder and generalized anxiety disorder as a result of the accepted employment factor; however, the condition resolved as of her return to work on August 28, 1999. The Office determined that no medical benefits were due for the alleged cardiac condition and that medical benefits for the emotional condition beyond August 28, 1999 were denied. The Office found that the weight of the medical evidence established that appellant did not have a work-related cardiac condition and that she ceased to suffer from the emotional condition upon her return to work.

The Board finds that the Office properly determined that residuals of appellant's emotional condition ceased by August 28, 1999.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The Board finds that the reports by Dr. Abejuela are sufficient to meet the Office's burden of proof in terminating eligibility of compensation. Dr. Abejuela stated that there was sufficient evidence to support that appellant previously had an emotional condition; namely depressive disorder and anxiety disorder attributed to the accepted employment factor. He found, however, that based on psychiatric evaluation and testing at the time of his report, there was no evidence of depression or anxiety and that appellant was not being treated from a psychiatric standpoint. Dr. Abejuela noted that appellant had been back to work for two years in a light-duty position and opined that no future psychiatric therapy or medication was indicated. The Board notes that appellant had previously submitted a medical report to the record, which established that she returned to the light-duty position on August 28, 1999. In his report, Dr. Abejuela rationalized that, since appellant had been back to work, she could continue to perform her duties without difficulty.

The Board, therefore, finds that the weight of the medical evidence rests with the opinion of Dr. Abejuela, the second opinion physician, who provided a rationalized explanation of why appellant had no emotional condition causally related to the accepted employment factor upon her return to work on August 28, 1999. His opinion is sufficient to meet the Office's burden of proof in terminating eligibility of compensation benefits after August 28, 1999.

The October 26, 2001 decision of the Office of Workers' Compensation Programs, modifying the June 21, 2001 decision is hereby affirmed.

Dated, Washington, DC
July 17, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member