

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN ENGLE BAUMER and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, CENTRAL REGION, Kansas City, MO

*Docket No. 00-1635; Submitted on the Record;
Issued March 8, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective April 19, 1999 on the grounds that her work-related condition had ceased.

On August 21, 1996 appellant, then a 37-year-old, air traffic controller filed a traumatic injury claim, alleging that she sustained post-traumatic stress disorder (PTSD) following an operational error in the course of her federal employment duties.¹ She was removed from air traffic control duties on August 20, 1996. On September 10, 1996 appellant returned to administrative duties.

On May 16, 1997 the Office accepted that appellant developed employment-related PTSD as a result of the November 22, 1994 incident and two subsequent incidents occurring in August 1996. Appellant stopped work on June 9, 1997 as the employing establishment indicated that limited duty was no longer available. The Office placed appellant on the periodic rolls and paid appropriate compensation benefits.

On July 3, 1997 the Office referred appellant to a nurse, to assist in her return to work.

¹ The record reflects that several incidents preceded this event. On November 22, 1994 appellant was directing two airplanes that became involved in a collision and resulted in the loss of life of two individuals. Appellant was not considered at fault. In July 1996, appellant began to feel uncomfortable at work and started to trade shifts to avoid heavy traffic times. In early August 1996, two pilots became involved in a deviation during evening hours on ground, it was determined that the aircraft had reentered without clearance and it was determined that appellant had not contributed to the error. The record also reflects that on August 21, 1997, the Office changed appellant's claim from a traumatic injury claim to an occupational disease claim.

On August 22, 1997 the Office referred appellant to Dr. Stacey L. Smith, a Board-certified psychiatrist, for a second opinion examination.²

In a September 26, 1997 report, Dr. Smith, provided an assessment of PTSD, chronic with delayed onset, in partial remission and major depression, in remission. Dr. Smith indicated that appellant was “temporarily fully disabled from being an air traffic controller, but that her prognosis should be good for having a full recovery after approximately eight to twelve desensitization treatments with the therapist, gradually reexposing her to the feared setting.” Dr. Smith proffered that the expected time course for this recovery would be approximately two to six months. He also stated: “[Appellant] is not disabled in any way from working in other work settings.”

In a March 19, 1998 report, Dr. Dave Overstreet, appellant’s treating psychologist, recommended that appellant undergo an on-site systematic desensitization treatment of her remaining PTSD symptoms.

On April 2, 1998 the Office advised appellant that an effort to return her to limited duty was being implemented.

In an April 20, 1998 report, Dr. Linda Housman, a clinical psychologist, who concurred with the need for an onsite desensitization program, described the effects of her initial meeting with appellant, which took place on April 10, 1998. She determined that appellant was currently unable to return to her position as an air traffic controller, however, she recommended gradually reexposing appellant to the work environment in order to extinguish the intense anxiety she currently experiences when exposed to the setting. She recommended a treatment plan of three times a week for approximately 1 hour for a period of 12 to 15 sessions. Dr. Housman’s prognosis for treatment was good, if combined with the appropriate participation and motivation.

In a September 11, 1998 report, Dr. Housman, discussed appellant’s course of treatment, regarding the onsite desensitization program, which included 23 sessions. She indicated that appellant would need to spend time on site daily, until such time as a decision is made as to whether she would be approved for return to work. Dr. Housman provided an assessment of PTSD, chronic, with delayed onset, in full remission. She stated that appellant “continues to report uncertainty that she will be able to function adequately if returned to her old position as an air traffic controller, particularly if she is faced with a crisis situation.” Dr. Housman recommended monthly outpatient follow-up visits.

On October 2, 1998 a vocational rehabilitation plan was implemented and appellant returned to work on December 2, 1998 to receive air traffic assistant training.

On December 2, 1998 the Office apprised appellant that they were informed that she was taking prescribed medication. She was advised that there was no medical evidence of file to support the need for medication and that a medical report from her physician, with rationale was requested.

² On August 25, 1997 appellant received a second letter advising her of a time change.

On December 7, 1998 the Office referred appellant together with a statement of accepted facts and the medical evidence of record, to Dr. Wayne A. Stillings, a Board-certified psychiatrist, for a second opinion examination.

In a December 11, 1998 report, Dr. Joseph M. Corvallis, a Board-certified family practitioner and appellant's family care physician, indicated that she was not able to work as an air traffic controller at this time, due to stress and the effect that it has on her with palpitations and anxiety. Dr. Corvallis noted that appellant must take tranxene for her anxiety and could not do her job as an air traffic controller at this time. He noted that she was also on Restoril to help her sleep at night.

In a December 15, 1998 report, Dr. Stillings, the second opinion physician, noted appellant's history of injury and treatment. He diagnosed: Partner relational problem (multiple); history of physical and emotional abuse (multiple); PTSD, delayed onset, in remission; parent child relational problem. Dr. Stillings stated:

“[Appellant] has a history of parent child relational problems, partner relational problems and emotional and physical abuse which are not causally related to, nor aggravated by, the conditions of her employment with the employing establishment.

“[Appellant] developed a [p]ost-[t]raumatic [s]tress [d]isorder primarily causally related to the November 24, 1994 work incident. This was aggravated by the August 19, 1996 work incident. Other contributing factors are her history of significant multiple life [stress disorders], including [the] partner relational problems, parent child relational problems and a complex history of abuse.

“At this juncture, [Appellant] has no residual[s] or emotional condition due to the two aforementioned work incidents as described in the [s]tatement of [a]ccepted [f]acts with the possible exception that she is fearful of returning to work as an [air traffic controller].”

Dr. Stillings discussed appellant's ability to return to work as an air traffic controller and opined that this was a complicated issue. He specified that a barrier to the success of the plan was that appellant had not functioned as an air traffic controller for greater than two years and continuation of her current benefit/wage plan could reduce her motivation during vocational retraining. He noted that this could be addressed in therapy with Dr. Housman, on a weekly basis for a limited time, to be determined by her psychologist, to assist and support her in the reentry process. If she successfully completed the phase of the program as an assistant air traffic controller and was reassigned the job duties of an air traffic controller, it would be advisable for her to be transferred to a smaller airport and continue under the care of her psychologist. He further opined that there was no guarantee that she would be able to function in the job of an air traffic controller. Dr. Stillings noted further that if she did return, there was no guarantee that she would be able to function appropriately in crisis situations. He also stated that there was no need for appellant to be on medication.

By letter dated January 22, 1999, Dr. Stillings was asked to provide a supplemental report clarifying whether the problems regarding appellant's return to work were due to a work-related condition or due to appellant's underlying and preexisting factors.

In a March 8, 1999 supplemental report, Dr. Stillings stated: "In relation to your question about the examiner's opinion number four, the barriers contained therein are not causally related to her work conditions, but are due to separate underlying and preexisting or coexisting factors."

On March 19, 1999 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence established that appellant's work-related condition had resolved.

By letter dated April 12, 1999, appellant's representative requested an extension of time to submit additional evidence.

In an April 19, 1999 decision, the Office terminated entitlement to further benefits.

On August 6, 1999 appellant went out on disability retirement.

Appellant, through her representative, requested a hearing, which was held on September 22, 1999. At the hearing, appellant submitted a copy of her disability retirement package and health and medical requirements for the air traffic controller position. She included an October 1, 1996 report from her psychologist, Dr. Overstreet. Appellant also provided a September 10, 1996 report, from Dr. Joel A. Dickmann, an osteopath and the regional flight surgeon. He noted that appellant was incapacitated and unable to qualify to perform her duties. Besides the fact that these reports were outdated, neither of these reports contained any discussion of causal relationship.

In a January 10, 2000 decision, the Office hearing representative found that the Office met its burden of proof in terminating appellant's compensation and affirmed the Office's April 19, 1999 decision terminating appellant's benefits.

The Board finds that the Office properly terminated appellant's compensation effective April 19, 1999, on the grounds that her employment-related condition had ceased.

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.³ After the Office has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ The Office's burden includes the

³ *Lawrence D. Price*, 47 ECAB 120 (1995).

⁴ *Id*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. 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 analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.⁶

In this case, the Office accepted that appellant sustained post-traumatic stress disorder in the course of her federal employment duties and paid appropriate medical benefits.

After providing appellant with the recommended treatment, the Office referred her for a second opinion examination with Dr. Wayne Stillings, a Board-certified psychiatrist. On December 15, 1998, he conducted a thorough review of appellant's history of injury and treatment. Dr. Stillings diagnosed several conditions related to problems outside of her work environment, which included parent/child relational problems and partner relational problems coupled with emotional and physical abuse which were not causally related to her employment. He further diagnosed post-traumatic stress disorder, which was associated with the accepted employment-related conditions and stated that she had no residuals or emotional conditions due to the aforementioned incidents with the exception of being fearful of returning to work as an air traffic controller. The Board has held that fear of future injury is not a compensable factor of employment.⁷ In a supplemental report dated March 8, 1999, Dr. Stillings explained that the barriers to appellant's return as an air traffic controller were not causally related to appellant's work conditions but due to separate underlying and preexisting or coexisting factors. Subsequent to this opinion, appellant did not provide any contemporaneous medical reports.

Prior to this opinion, the only recent reports provided by appellant were the reports of Dr. Housman, who stated in her September 11, 1998 report, that appellant's post-traumatic stress disorder was in full remission. The report from Dr. Corvallis, a family practitioner, stated that appellant was unable to work as an air traffic controller due to stress but did not provide a rationalized opinion.

The Board finds that at the time the Office terminated medical benefits, the weight of the medical evidence rested with Dr. Stillings, who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant had no residuals or emotional condition due to her accepted employment injury. Dr. Stillings further opined that there were barriers to her return as an air traffic controller, however, these barriers were not causally related

⁵ *Raymond W. Behrens*, 50 ECAB 221 (1999).

⁶ *See Connie Johns*, 44 ECAB 560 (1993).

⁷ *Paul A. Clarke*, 43 ECAB 940 (1992).

to her work conditions but due to separate underlying and preexisting or coexisting factors. He also indicated that further medical treatment was unnecessary.

The Board finds that the report of Dr. Stillings contains a well-rationalized opinion negating any continuing residuals due to the accepted employment injuries. As the weight of the medical opinion evidence, his report justifies the Office's termination of appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated January 10, 2000 is hereby affirmed.

Dated, Washington, DC
March 8, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member