

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFREDIA L. HARRIS and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 00-2800; Submitted on the Record;
Issued March 26, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective February 28, 1998 on the grounds that her accepted personality disorders had ceased on or before that date.

On July 19, 1989 appellant, then a 33-year-old Equal Employment Opportunity (EEO) counselor and investigator, sustained an aggravated narcissistic personality disorder with paranoid and hysterical features, adjustment disorder with depressed mood and temporary aggravated hypertension. She stopped work on July 19, 1989 and did not return.

A statement of accepted facts was drafted in 1989, amended in 1992 and revised again on June 24, 1993.¹ According to the revised statement of accepted facts, the Office accepted the following compensable factors of employment: Phyllis Kadison, appellant's supervisor, exceeded the scope of her managerial authority by interfering in EEO cases assigned to appellant; she pressured appellant to resolve old, incomplete cases; Ms. Kadison related coworker complaints against upper management; she made a racist remark to appellant and later chastised her for repeating this remark to a coworker; she assigned appellant to work at another branch to obtain information as to whether one of Ms. Kadison's romantic interests was on drugs; in the fall of 1987, appellant upheld an EEO complaint against her own upper level supervisors, who in August 1988 threatened to lower her performance rating in retaliation; on September 15, 1988, Ms. Kadison removed appellant from an EEO meeting and accused her of deliberately interfering with a scheduled staff meeting, then rudely walked away as appellant tried to explain; on September 15, 1988, during a lunch break, Ms. Kadison criticized appellant in a hostile manner; she assigned appellant additional work after appellant cleared the case

¹ In a May 14, 1993 memorandum, the Office conceded that the 1992 statement of accepted facts omitted several accepted work factors and was, therefore, inaccurate. The Office, therefore, prepared a new statement of accepted facts issued June 24, 1993 and found the April 22, 1992 version originally supplied to Dr. Randolph W. Pock, a Board-certified psychiatrist and second opinion physician, "void."

backlog on her own tour; Ms. Kadison required appellant to take telephone inquiries from employees all day long, which appellant found mentally and physically exhausting; she assigned appellant four complex promotion cases simultaneously, which were “politically hostile;” she improperly assigned appellant an investigation commenced by another counselor and a sexual harassment case that was a conflict of interest; Ms. Kadison told other managers that appellant was “burned out;” appellant was assigned a disproportionate load of complex work; she had to cover for Ms. Kadison while she was out of the office; appellant trained new EEO counselors and investigators; Ms. Kadison required appellant to provide medical documentation for sick leave requests; and she required her to do case intakes, which appellant refused.

Appellant submitted reports from Dr. Warren J. Gadpaille, an attending Board-certified psychiatrist and neurologist, dated from September 6, 1989 to November 18, 1992. Dr. Gadpaille found appellant totally disabled for work due to an adjustment disorder precipitated by harassment by Ms. Kadison, her supervisor and threatened retaliation for accepting an EEO claim against upper level management. As of November 1992, Dr. Gadpaille also diagnosed post-traumatic stress disorder. He explained that appellant’s disability “related to her total mistrust of ever being able to work for anyone else or any organization in which her employment life or well being would be under the control of others.”

In a January 17, 1990 report, Dr. George Kalousek, a Board-certified psychiatrist and second opinion physician, in association with Dr. John McCorry, a clinical psychologist, diagnosed “narcissistic personality disorder with both paranoid and hysterical features,” with possible depressive disorder. Dr. Kalousek opined that appellant’s personality disorder was aggravated by the “situations as described in the statement of accepted facts,” in particular her relationship with Ms. Kadison. He opined that appellant still had residuals of the accepted conditions.²

In June 1991, appellant completed a 15-week paralegal training course as part of her approved vocational training program.

By notice dated September 23, 1991 and finalized October 23, 1991, the Office reduced appellant’s compensation benefits effective November 17, 1991 on the grounds that she had the ability to earn wages as a paralegal at the rate of \$519.23 per week. The Office Branch of Hearings and Review vacated this decision on January 14, 1992, finding that the Office did not meet its burden of proof, as the final vocational report was dated more than one year prior to the wage-earning capacity determination and did not adequately describe the job selected. The hearing representative remanded the case for reinstatement of compensation and a *de novo* decision.

In a March 13, 1992 closure report, an Office vocational rehabilitation specialist determined that the position of paralegal assistant was suitable work within appellant’s

² In a March 1990 report, Dr. W.F. Peacock, an attending internist and Dr. Gadpaille opined that appellant’s hypertension was due to job stress. In an August 5, 1990 report, Dr. Philip Vigoda, a cardiologist and second opinion physician, concurred that appellant’s “labile essential hypertension” “appear[e]d to be aggravated by her present work situation,” but was not “improved by her not working at all.”

functional capacities. Based on this report, by March 27, 1992 notice finalized April 28, 1992, the Office reduced appellant's compensation benefits, finding her able to earn \$323.08 per week as a paralegal assistant. The Office found that the paralegal assistant position was suitable work with her medical restrictions.

Appellant disagreed with this decision and in a May 11, 1992 letter requested an oral hearing, which was held November 30, 1992, at which she asserted that she could only work as an attorney, as she was psychiatrically incapable of working under supervision.

In an August 3, 1992 report, Dr. Pock in association with Dr. Leslie Cohen, a clinical psychologist, noted that appellant's "intense and inappropriately personal relationship" with Ms. Kadison was not documented in the 1992 statement of accepted facts. Dr. Pock diagnosed dysthymic disorder, rule out major depression with possible psychotic symptoms and a personality disorder with borderline features. Dr. Pock stated that appellant was disabled for work due to the diagnosed conditions, but concluded that "[u]nder the criteria" of the statement of accepted facts, he was "unable to confirm that there was at any time a psychiatric condition related to factors of employment."

By decision dated March 11, 1993 and finalized March 15, 1993, the Office hearing representative affirmed the April 28, 1992 wage-earning capacity decision, but remanded the case to the Office to resolve the conflict between Dr. Gadpaille and Dr. Pock regarding whether appellant continued to have work-related residuals.

In a May 11, 1993 supplemental report, Dr. Pock noted that a "number of facts deemed compensable" in the 1989 version of the statement of accepted facts, but omitted in the 1992 version used in his August 3, 1992 report, were "causally related to the development of [appellant's] symptoms." Dr. Pock stated that using the criteria in the 1989 statement of accepted facts, in particular Ms. Kadison's "enmeshed" and inappropriate relationship with appellant, there was a "clear ... causal relationship between factors of employment and [appellant's] development of depression and somatic symptoms."

In a July 22, 1993 letter, the Office referred appellant, the revised statement of accepted facts and the medical record to Dr. Milton F. Gipstein, a Board-certified psychiatrist, to resolve the conflict of medical opinion between Dr. Gadpaille and Dr. Pock. In a September 2, 1993 report, he diagnosed post-traumatic stress disorder with anxious and depressive features and a history of hypertension. Dr. Gipstein opined that appellant remained disabled for work due to the effects of the accepted employment factors.

By decision dated September 24, 1993, the Office reversed the November 15, 1991 wage-earning capacity determination. Appellant was paid appropriate compensation for the period November 17, 1991 to October 17, 1993.

The record demonstrates that in 1994, appellant sustained acute bacterial meningitis, leaving her profoundly and permanently deaf, with loss of vestibular function, anosmia and

visual difficulties. On December 16, 1994 appellant graduated from the University of Denver Law School and married on March 5, 1996.³

In August 19 and October 18, 1996 reports, Dr. Galen Weaver, a Board-certified internist specializing in psychiatry, diagnosed chronic post-traumatic stress disorder and secondary dysthymic disorder.

In a March 31, 1997 letter, the Office referred appellant to Dr. Kalousek for a second opinion examination. When the Office determined that Dr. Kalousek had already performed a second opinion examination on January 17, 1990, the Office referred appellant to Dr. Laura Klein, a psychiatrist, for a second opinion psychiatric examination.

In an August 19, 1997 letter to appellant, the Office noted that “Dr. Klein is not Board-certified and, therefore, her report could not be given greater weight than prior examining physicians.... [T]he Statement of Accepted Facts was deficient in many respects ... we will need to revise the Statement of Accepted Facts and reschedule an appointment with a Board-certified psychiatrist.”

In a September 26, 1997 report, Dr. Klein conducted a psychiatric examination and psychological testing, showing “significant depression, along with significant amounts of thought disorder and paranoia.” He diagnosed dysthymic disorder, personality disorder not otherwise specified, with narcissistic, borderline and paranoid features and hypertension. Dr. Klein opined that the dysthymic and personality disorders predated appellant’s postal employment and were not exacerbated by work. Dr. Klein asserted that it was implausible that an exacerbation of the dysthymic disorder could occur for eight years following these incidents. He noted that it was reasonable to assume that any work-related residuals abated sufficiently “to have enabled her to complete law school successfully and deliver a commencement address.” Dr. Klein opined that appellant did not meet the criteria for post-traumatic stress disorder set forth in the American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. 1994 (DSM IV), requiring the patient to have “experienced, witnessed or been confronted by an event or events that involved actual or threatened death or serious injury or a threat to the physical integrity of self or others.” Dr. Klein stated that appellant was capable of working under supervision as an attorney or paralegal.

By notice dated November 6, 1997, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that her accepted work-related condition had ceased, based on Dr. Klein’s report as the weight of the medical opinion. The Office acknowledged that the statement of accepted facts provided to Dr. Klein contained errors, but that they were “all in [appellant’s] favor.”

In a November 18, 1997 letter, appellant opposed the proposed termination of compensation. She asserted that Dr. Klein’s husband, Dr. Jeffrey Brent, had treated her in a

³ In a March 20, 1995 report, Dr. Gadpaille stated that appellant was unable to take the bar examination or practice law due to the effects of meningitis. In an April 30, 1996 memorandum, the Office noted that Dr. Lee Garlett, an attending internist, stated that appellant’s cochlear implant had failed.

hospital emergency room for meningitis and that she was suing four doctors for malpractice related to that hospitalization. Appellant, therefore, contended that Dr. Klein had a conflict of interest. She also noted the Office's acknowledgement that Dr. Klein was not Board-certified in psychiatry and that the 1992 statement of accepted facts omitted compensable factors of employment accepted in the April 1989 version. Appellant enclosed a November 20, 1994 hospital admission report by Dr. Brent, who treated appellant for meningitis. The report mentions that appellant was being treated for depression and was on psychotropic medication.

In a November 24, 1997 report, Dr. Lawrence LaBaw, an attending psychiatrist, found appellant totally disabled by generalized anxiety disorder, dysthymic disorder and post-traumatic stress disorder, causally related to factors of her federal employment.

In a December 1, 1997 report, Dr. Anthony Bandele, an attending clinical psychologist, supported a causal relationship between appellant's depression and post-traumatic stress disorder and her dealings with Ms. Kadison.⁴

By decision dated February 13, 1998, the Office terminated appellant's compensation effective February 28, 1998 on the grounds that her work-related disability had ceased, based on Dr. Klein's September 26, 1997 report as the weight of the medical evidence. The Office found Drs. Bandele's and LaBaw's reports insufficiently rationalized to outweigh Dr. Klein's opinion. The Office also found that the documentation concerning a conflict of interest with Dr. Klein did not disqualify her from serving as a second opinion physician.

Appellant disagreed with this decision and in a February 21, 1998 letter, requested an oral hearing, which was held on July 21, 1998. At the hearing, appellant asserted that she could only be gainfully employed as an attorney in solo practice, with no supervisor. She submitted additional evidence.

In a May 6, 1998 report, Dr. LaBaw opined that appellant's "treatment on the job caused severe depression, anxiety and numerous symptoms which interfered with her ability to function in the world." Dr. LaBaw noted that the DSM IV changed the criteria for post-traumatic stress disorder from its third edition. He conceded that appellant might not meet all of the most current criteria, but that applying the manual in this way was "rigid" and "cookie-cutter."

In a November 24, 1998 report, Dr. Jeffrey L. Anker, an attending Board-certified psychiatrist and neurologist, noted treating appellant since February 27, 1998 and reviewed the record and statement of accepted facts. He noted that appellant was continuously disabled since 1989 due, in part, to work-related stress, complicated by paranoia due to childhood experiences of violence against her family by white police officers.

By decision dated and finalized April 14, 1999, the Office hearing representative affirmed the February 13, 1998 decision terminating appellant's compensation benefits.

⁴ Dr. Bandele submitted progress notes dated June to November 1997.

Appellant disagreed with this decision and in an April 5, 2000 letter, requested reconsideration. She submitted additional evidence.

In an April 2, 2000 report, Dr. LaBaw disagreed with Dr. Klein's opinion that appellant did not have post-traumatic stress disorder according to DSM IV criteria.

In an April 5, 2000 report, Dr. Anker opined that appellant's diagnoses were "a direct consequence of the work-related factors ... (partly) and it is the conditions of these problems that currently are disabling the claimant." He characterized appellant's experiences at the employing establishment as "secondary trauma," as appellant was "more vulnerable to the trauma of this workplace setting than the average individual" based on "life-threatening" childhood trauma."

By decision dated June 16, 2000, the Office denied modification of the February 13, 1998 decision. The Office found that the reports did not establish that appellant was disabled due to the accepted work factors on and after February 28, 1998. The Office acknowledged that while the Office hearing representative "made several medical conclusions not supported by the record ... it [could] not be determined that this resulted in" an erroneous legal interpretation."⁵

The Board finds that the Office improperly terminated appellant's compensation benefits as there was an outstanding conflict of medical evidence between Dr. Klein, for the Office and Drs. Anker, Bandele and Gadpaille, for appellant.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation benefits.⁶ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁷ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁹

In this case, the Board finds that the Office did not meet its burden of proof at the time of the February 13, 1998 termination decision, as there was a conflict of medical evidence between Drs. Anker, Bandele, LaBaw, Gadpaille and Weaver, for appellant and Dr. Klein, for the government.

⁵ The hearing representative noted that appellant was advised by an August 19, 1997 letter, to submit her law school expenses for consideration for reimbursement as vocational rehabilitation. However, the Office did not issue a formal decision on this issue prior to June 16, 2000.

⁶ *Raymond W. Behrens*, 50 ECAB 221 (1999).

⁷ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁸ *Raymond W. Behrens*, *supra* note 7.

⁹ *Talmadge Miller*, 47 ECAB 673, 679 (1996).

Appellant submitted numerous reports from her attending psychiatrists and psychologists supporting a causal relationship between the accepted work factors and diagnosed psychiatric disorders. Dr. Warren J. Gadpaille, an attending Board-certified psychiatrist, diagnosed an adjustment disorder and post-traumatic stress disorder in reports from September 1989 to November 1992 and supported a causal relationship between those disorders and work factors, in particular the accepted threatened retaliation for approving an EEO claim against her supervisors. Dr. Galen Weaver, an attending psychiatrist, submitted 1996 reports diagnosing chronic post-traumatic stress disorder and secondary dysthymic disorder related, in part, to work factors. In November 1997 and May 1998 reports, Dr. LaBaw diagnosed depression and post-traumatic stress disorder caused, in part, by Ms. Kadison, appellant's supervisor. Dr. Bandle, an attending clinical psychologist, submitted December 1997 and May 1998 reports opining that appellant's dealings with Ms. Kadison caused depression and post-traumatic stress disorder. Dr. Anker submitted November 1998 and April 2000 reports stating that appellant was disabled since 1989 due, in part, to work-related depression and paranoia.¹⁰

In contrast Dr. Klein submitted a September 26, 1997 report opining that appellant had never developed a work-related psychiatric condition of any type and that work factors did not exacerbate her preexisting dysthymic and personality disorders. This created a conflict of medical opinion.¹¹

Consequently, the Office failed to meet its burden of proof in terminating appellant's compensation benefits effective February 28, 1998, as there was a conflict of medical evidence.

¹⁰ Additionally, each of the second opinion physicians of record, with the exception of Dr. Klein, supported causal relationship. In a January 18, 1990 report, Dr. Kalousek, a Board-certified psychiatrist, diagnosed "narcissistic personality disorder with both paranoid and hysterical features," with possible depressive disorder. He opined that Ms. Kadison's inappropriately enmeshed relationship with appellant, as well as the threatened retaliation for pursuing the EEO complaint, caused these disorders. Dr. Pock, also a Board-certified psychiatrist, opined in his May 11, 1993 report that, appellant's dysthymic disorder with possible major depression and personality disorder were causally related to the "enmeshed" relationship between Ms. Kadison and appellant as described in the Statement of Accepted Facts. Also, Dr. Gipstein, a Board-certified psychiatrist and independent medical examiner, diagnosed post-traumatic stress disorder with anxious and depressive features, causally related to the accepted employment factors.

¹¹ The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The decision of the Office of Workers' Compensation Programs dated June 16, 2000 is hereby reversed.

Dated, Washington, DC
March 26, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member