

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET WOODS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 00-2455; Submitted on the Record;
Issued May 29, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she was entitled to wage-loss compensation for the period May 1, 1998 to January 31, 1999 causally related to her employment-related emotional condition.

On May 18, 1998 appellant, then a 46-year-old clerk, filed a claim alleging that factors of employment caused an emotional condition.¹ In support of her claim, appellant submitted a statement and supporting documentation in which she outlined various employment factors that she believed contributed to her condition. On July 7, 1998, the employing establishment informed appellant that, effective June 18, 1998, her scheduled reporting time had been changed from 0400 to 2200. On July 10, 1998 appellant requested that she be reassigned and by letter dated July 21, 1998, the employing establishment informed her that the reassignment was within her medical restrictions and the change of hours would begin on July 18, 1998.

By letter dated January 13, 1999, the Office accepted that appellant sustained an employment-related major depression and anxiety.² On January 25, 1999 appellant filed a form CA-7, claim for compensation for the period May 1, 1998 to January 29, 1999. In a letter dated February 3, 1999, the Office informed appellant that the medical evidence of record was insufficient to establish that she was entitled to wage-loss compensation. She was given 30 days to provide sufficient medical evidence. In response, appellant submitted disability slips signed

¹ In a previous Board decision unrelated to the instant claim, the Board found that the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 25, 1997 on the grounds that disability resulting from an accepted aggravation of lumbosacral spondylosis had ceased. Docket No. 97-1552 (issued February 17, 1999).

² The Office found that a confrontation between appellant and her supervisor Liliane Valks on June 5, 1997 was a compensable factor of employment. The Office then referred appellant to Dr. Arthur C. Roberts, who is Board-certified in psychiatry and neurology, for a second opinion evaluation. Based on Dr. Roberts' opinion, the Office accepted the claim.

by Dr. Russell Simpson. In a decision dated March 18, 1999, the Office found that appellant was not entitled to wage-loss compensation for the period May 1, 1998 to January 31, 1999.

By letter dated October 29, 1999, appellant requested reconsideration and submitted additional medical evidence, which included reports dated January 11 and June 15, 1999 from Dr. Gil Milburn-Westfall, Psy.D.³ By decision dated November 18, 1999, the Office denied appellant's reconsideration request, finding that the evidence submitted was not probative. On March 10, 2000 appellant again requested reconsideration and submitted additional medical evidence, which included a report dated November 29, 1999 and March 13, 2000 from Dr. Margaret M. Reiland, Psy.D. In a decision dated March 21, 2000, the Office denied modification of the prior decision, finding the medical evidence insufficient to establish that appellant was entitled to wage-loss compensation for the period May 1, 1998 to January 31, 1999. The instant appeal follows.

The Board finds this case is not in posture for decision.

Under the Federal Employees' Compensation Act⁴ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁵

Causal relationship is a medical issue⁶ 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 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.⁷

³ These reports were also signed by a physician whose signature is illegible.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence relevant to appellant's ability to work for the period May 1, 1998 to January 31, 1999 includes⁸ disability slips in which Dr. Russell Simpson, an internist, advised that appellant could not work from May 6 to 22, 1998 and May 28 to June 8, 1998. In a duty status report dated June 22, 1998, Dr. Simpson advised that appellant could work eight hours a day. He further advised that appellant "must work days and must be seated in a chair." In a report dated August 18, 1998, Dr. Anne Garrett-Mills, a psychiatrist, advised that appellant could not work nights due to a sleep disturbance.

Dr. Arthur C. Roberts, who is Board-certified in psychiatry and neurology, provided a second opinion evaluation for the Office. In a report dated December 29, 1998, he diagnosed major depressive and chronic anxiety disorders, which were partially due to the compensable factor of employment, which had not resolved. Regarding her ability to work, Dr. Roberts stated:

"Although [appellant] would be reluctant to work in the [employing establishment's] system in general, she says emphatically that she could not work in the facility she was last at, that is, the central facility. [Appellant] might be able to work in a substation, but would prefer to work in some other facility of the federal government rather than the postal service."

In an attached work capacity evaluation, Dr. Roberts advised that, appellant could not work at the central mail facility because she had been highly stressed by the action of a supervisor. In a supplementary report dated January 19, 1999, in response to an Office inquiry regarding whether appellant continued to have residuals of her work injury, Dr. Roberts responded that 25 percent of appellant's disability was caused by the accepted factor.

Dr. Garrett-Mills provided an attending physician's report dated January 26, 1999, in which she diagnosed major depression and advised that appellant could not work. In reports dated January 11 and June 2, 1999, Dr. Gil Milburn-Westfall, Psy.D, diagnosed major depression and mild post-traumatic stress disorder and advised that appellant had been unable to work for the past six to eight months due to disabling depressive symptoms.⁹

While these reports taken as a whole are insufficient to establish that appellant was disabled from work for the period May 1, 1998 to January 31, 1999, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished.

⁸ Appellant also submitted reports from Jacquelyn D. Stanton, a licensed social worker. The Board has held that a report from a licensed clinical social worker is not medical evidence, as it is not the report of a "physician" as defined in section 8101(2) of the Act. Such a report has no probative value on the question of appellant's mental competence. *Frederick C. Smith*, 48 ECAB 132 (1996).

⁹ Appellant also submitted reports dated November 29, 1999 and March 13, 2000 from Dr. Margaret M. Reiland, Psy.D., who treated appellant in October and November 1999. She diagnosed post-traumatic stress disorder and major depressive disorder and advised that she should not work. These reports, together with those of Drs. Garrett-Mills and Milburn-Westfall, are relevant to appellant's disability subsequent to January 31, 1999 for which she filed a Form CA-7, claim for compensation. The Office has not issued a final decision regarding appellant's entitlement to wage-loss compensation for this period.

In his reports dated December 29, 1998 and January 19, 1999, Dr. Roberts indicated that appellant continued to have residuals from her employment-related condition. While he advised that she might be able to work at that time, he did not provide an opinion, nor was he asked to do so by the Office, regarding appellant's ability to work beginning May 1, 1998. Both Dr. Roberts and Dr. Garrett-Mills advised that appellant could not work nights due to a sleep disturbance and her duty hours were changed to begin at 10:00 p.m. In a report dated January 11, 1999, Dr. Milburn-Westfall advised that appellant had been totally disabled due to symptoms of depression for the preceding six to eight months.

The Board finds that these opinions are sufficient to require further development of the record.¹⁰ It is well established that proceedings under the Act are not adversarial in nature¹¹ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹² On remand the Office should either seek a supplementary report from Dr. Roberts or refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether her employment-related condition prevented her from work for the period May 1, 1998 to January 31, 1999. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated March 21, 2000 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
May 29, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ See *Lourdes Davila*, 45 ECAB 139 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹² See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).