

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY RUSH and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Anchorage, AK

*Docket No. 01-1479; Submitted on the Record;
Issued May 10, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she sustained an emotional condition causally related to factors of her federal employment.

In May 1992 appellant, then a 46-year-old revenue officer, filed a notice of occupational disease alleging that she developed an anxiety reaction due to three successive encounters with irate taxpayers. The essential facts of this case are not in dispute. On April 17, 1990¹ during an appointment at a taxpayer's home, the taxpayer became very upset, threatened appellant and made a comment about committing mass murder, adding that appellant's presence in his home was causing him a great deal of stress. Appellant stated that the incident caused her some anxiety, but that after discussing it with her supervisor and the critical incident counselor, she was able to continue performing her normal job duties. Subsequently, on May 10, 1991 a second taxpayer, who worked for the gas company and against whom appellant had begun preliminary collection proceedings, became extremely irate in appellant's presence and stated that if appellant caused him to lose his job he might end his life and would use his gas company expertise to take a lot of people out with him. Again appellant discussed the incident with her supervisor and with a coworker who was a critical incident peer support counselor. She was detailed for several weeks to an area where she did not have contact with taxpayers and on October 3, 1991 she requested permanent reassignment to personnel in order to avoid further taxpayer contact, which was denied. Finally, on April 30, 1992 while at home, appellant noticed the smell of gas and called the gas company to arrange an emergency repair call. The taxpayer involved in the May 10, 1991 incident was the one who came to her home in response to the call. Appellant stated that while he was tightening the screw which had caused the leak, he began talking about houses and home inspections and mentioned that he had problems with high fuel bills, which was something they had discussed in the collection interview in May 1991. At that point, she began to fear that the taxpayer recognized her and became extremely anxious because

¹ This incident is alternately identified as the April 23, 1990 incident, as that was the date it was officially reported by appellant.

he now knew where she lived. Appellant reported the incident to her supervisor and to the police but neither could help her because the man had not actually caused her any harm. She thereafter began to feel that she had lost control of her safety and sought psychological counseling. Appellant stated that she felt that her employers did not take her distress seriously, did not consider her a valued employee and had handled the incident badly.

In support of her claim, appellant submitted several medical reports from her treating psychologist, Dr. Bruno Kappes, whom she had been seeing since June 17, 1992. In his report dated December 7, 1992, Dr. Kappes diagnosed post-traumatic stress disorder, due to the cumulative effect of the two encounters with the irate gas company employee taxpayer, combined with the unsupportive, inadequate and inappropriate response and mishandling of the event by the employing establishment. In a follow-up report dated January 25, 1993, he stated that appellant's relationship with her employer had become so damaged that she was unable to continue to perform her duties as a revenue officer in her current environment.

In a decision dated June 2, 1993, the Office of Workers' Compensation Programs denied appellant's claim for an employment-related emotional condition. Following an oral hearing held at appellant's request, in a decision dated November 10, 1994, an Office hearing representative accepted as factual that the April 17, 1990, May 10, 1991 and April 30, 1992 incidents occurred and further accepted that the first two threatening incidents were compensable factors of employment. In addition, the hearing representative found the medical evidence provided by appellant's treating psychologist, Dr. Kappes, was sufficiently probative to warrant further development of the claim.

On remand, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Wandal Winn, a Board-certified psychiatrist, for a second opinion. In a report dated November 22, 1995, Dr. Winn related appellant's history, complaints and findings on mental status examination. He diagnosed chronic, mild post-traumatic stress disorder and with respect to the cause of appellant's condition, stated:

"The incidences o[n] April 23, 1990 and May 10, 1991 did not cause [appellant's] symptoms, although they did 'lay a foundation' for her later traumatic event. In other words, those two incidents were necessary but not sufficient for the production of her post-traumatic stress disorder.... [Appellant's post-traumatic stress disorder] is most directly etiologically related to the traumatic incident o[n] April 30, 1992 combined with her perception of [the employing establishment's] handling of her situation. I say this, noting that I have no objective information substantiating the actuality of the employer's actions in this regard, but I simply state this, in that the symptomatic expression is related to [appellant's] perception rather than necessarily to any specific reality." (Emphasis in the original.)

Dr. Winn stated that appellant was physically capable of returning to her past duties as a revenue officer, but opined that "her psychological state specifically precludes a return to her past duties in general and especially at her past location of work. Exposure to that environment is quite likely to produce significant retraumatization with an exacerbation of [post-traumatic stress disorder] symptomatology." Dr. Winn concluded that appellant had been "undertreated" and would benefit from involvement in a course of cognitive behavioral oriented individual

psychotherapy in possible combination with the judicious use of psychotropic medications for symptom management and a “cautious and gradual return to work activities (non IRS setting).”

In a decision dated June 11, 1996, the Office denied appellant’s claim, finding that the medical evidence failed to establish that her emotional condition was causally related to the two accepted factors of employment, but rather supported a finding that her diagnosed condition was causally related to the April 30, 1992 nonemployment-related incident combined with her perception of improper treatment by the employing establishment, which was also noncompensable.

On October 4, 1996 appellant appealed the decision to the Board. However, by decision issued April 27, 1998, the Board noted that the Office had failed to transmit the case record to the Board pursuant to the requirements of the Board’s procedures and ordered that the case be remanded to the Office for reconstruction and proper assemblage, followed by the issuance of an appropriate decision in order to fully protect appellant’s appeal rights.²

On February 6, 2001 the Office reissued its June 11, 1996 decision.

The Board finds that the issue of whether appellant sustained an emotional condition causally related to her employment is not in posture for decision as there is a conflict in medical opinion.

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.⁴

To establish appellant’s claim that she has sustained an emotional condition in the performance of duty appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁵ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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

² Docket No. 97-18 (April 27, 1998).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

In this case, appellant attributed her emotional condition to three specific encounters with taxpayers, together with her perception that the employing establishment had badly handled the situation. With respect to appellant's assertions that a higher level officer had recommended a more lenient repayment schedule for the threatening taxpayer than that which she had proposed, the Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.⁷ In addition, with respect to appellant's assertions that no one at work had validated her trauma, the Board has held that a perceived lack of sympathy by coworkers is not a compensable employment factor.⁸ While appellant has failed to establish poor treatment on the part of the employing establishment, she has nonetheless submitted the essentials of a *prima facie* case in that she has established at least two compensable factors of employment, the April 17, 1990 and May 10, 1991 taxpayer encounters. In addition, while the third encounter with the taxpayer on April 30, 1992, which occurred while appellant was at home, is not itself compensable, as it occurred outside the performance of duty, by attributing her emotional condition to the cumulative effect of all three traumatic incidents which occurred while working at the employing establishment, appellant has implicated the first two compensable incidents in the ultimate development of her diagnosed post-traumatic stress disorder.

Dr. Kappes, appellant's treating psychologist, diagnosed post-traumatic stress disorder due to the cumulative effect of the May 10, 1991 and April 30, 1992 irate gas company employee incidents, combined with appellant's perceived unsupportive work environment. While the April 30, 1992 incident is not employment related and, similarly, the perceived unsupportive work environment is also noncompensable, Dr. Kappes did attribute appellant's condition to at least one compensable factor of employment, the May 10, 1991 incident.⁹ Dr. Winn, the Office second opinion physician, however, concluded that while the compensable April 23, 1990 and May 10, 1991 incidents "lay a foundation" for her later traumatic event and "were necessary" for the production of her post-traumatic stress disorder report, appellant's [post-traumatic stress disorder] is "most directly etiologically" related to the nonemployment-related traumatic incident of April 30, 1992 combined with her perception of her employer's handling of her situation, which the Board has also found to be noncompensable.

Section 8123(a) of the Act provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a

⁶ *Id.*

⁷ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

⁸ *O. Paul Gregg*, 46 ECAB 624 (1995).

⁹ Under the Act, compensable incidents need not be the sole cause or even the major cause of appellant's diagnosed post-traumatic stress disorder. Therefore, it is sufficient if a compensable incident is a contributing cause of appellant's diagnosed condition. *Mohamed George Fasla*, 32 ECAB 743 (1981).

third physician shall be appointed to make an examination to resolve the conflict.¹⁰ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.¹¹

The Board finds that, as there is a conflict in medical opinion evidence between Drs. Kappes and Winn as to whether appellant's diagnosed emotional condition is causally related to the accepted compensable employment factors, the Office shall prepare a statement of accepted facts and shall refer appellant for an impartial medical examination. After such further development as necessary the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated February 6, 2001 is hereby set aside in part and remanded for further development consistent with this opinion.

Dated, Washington, DC
May 10, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁰ *H. Adrian Osborne*, 48 ECAB 556 (1997); *Lawrence C. Parr*, 48 ECAB 445 (1997).

¹¹ *Charles M. David*, 48 ECAB 543 (1997); *Lawrence C. Parr*, *supra* note 10.