

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SERMERION SMITH and DEPARTMENT OF THE ARMY,  
ARMY CORPS OF ENGINEERS, Seattle, WA

*Docket No. 02-794; Submitted on the Record;  
Issued April 17, 2003*

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DECISION and ORDER

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

The issues are: (1) whether appellant sustained a recurrence of total disability on or after March 14, 1997 causally related to her May 2, 1996 employment injury; and (2) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's medical benefits as of July 3, 1997.

On August 7, 1996 appellant, then a 48-year-old personnel officer, filed an occupational disease claim alleging that she sustained an acute stress disorder and possible post traumatic stress disorder because on May 2, 1996 she was verbally assaulted by subordinates and a facilitator at a training session.

On February 5, 1997 the Office of Workers' Compensation Programs accepted appellant's claim for a severe stress reaction to the event on May 2, 1996.<sup>1</sup>

By decision dated October 8, 1998, the Office denied appellant's claim for wage loss after July 3, 1997 on the grounds that she took voluntary retirement on that date.

By decision dated October 20, 1999 and finalized October 29, 1999, an Office hearing representative reversed the Office's October 8, 1998 decision and remanded the case for further development on the issue of whether appellant had any work-related disability on or after March 11, 1997.

In notes dated March 12, 1997, Dr. Irene Japha, appellant's attending physician, stated that appellant had been reassigned to another job but continued to feel stress. She stated that appellant had completed two assignments and had no more work to do. Dr. Japha indicated that the employing establishment had agreed to reassign appellant overseas on July 1, 1997 and that

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<sup>1</sup> On July 24, 1997, the Office also accepted a temporary aggravation of a pre-existing personality disorder.

appellant wanted to take off work until then to prepare. She indicated that appellant could return to full duty on July 1, 1997.

In a letter dated March 18, 1997, the employing establishment advised that appellant returned to work in a full-time light-duty status as a special assistant to the district engineer on October 28, 1996 under a flexi-place agreement (working three days a week at the employing establishment office and two days at home).

In a letter to appellant dated April 10, 1997, Vance Boelts, chief of the employing establishment's human resources department, stated that a March 12, 1997 note from appellant's attending physician, Dr. Japha, indicated that appellant wanted to take off work for four months until a reassignment overseas.

In a report dated June 27, 1997, Dr. Roy Clark, Jr., a psychiatrist and an Office referral physician, stated that appellant experienced a temporary aggravation of her pre-existing personality disorder due to the May 2, 1996 work incident and her current disability was partially related to the May 2, 1996 incident and its sequelae. He stated that appellant could have an increase in symptoms if exposed to reminders of the May 2, 1996 work incident.

In a report dated August 21, 1997, Dr. Richard Johnson, a psychiatrist, stated that appellant was asked to leave her job in March 1997 because of her emotional condition and had applied for retirement. He stated, "I have been encouraging her, while waiting for retirement to come through, to seek other employment. She complains that she does not feel she would be able to competently fulfill other responsibilities."

In a letter dated July 29, 1999, appellant stated that she took leave beginning March 17, 1997 on the recommendation of Dr. Japha.

By letter dated November 24, 1999 to the employing establishment, the Office noted that appellant's last day of work was March 14, 1997, she took sick leave starting March 17, 1997, and was accepted for early retirement effective July 3, 1997. The Office asked the employing establishment whether a time limit had been placed on the light-duty job appellant was performing when she stopped working in March 1997.

By letter dated November 24, 1999, the Office asked appellant to provide additional evidence, including her statement and supporting medical evidence explaining how her condition had changed over the period March 14 to 17, 1997 such that she could not continue working in her light-duty capacity.

By letter dated December 7, 1999, the employing establishment advised the Office that the work appellant was performing in March 1997 involved some assignments that were ongoing and were not completed at the time appellant stopped working, March 14, 1997, and, in fact, were not completed until some time in 1998 and 1999.

By letter dated December 20, 1999, appellant advised the Office that her light-duty job assignments, with the exception of one, had ended by January 1997. She stated that Dr. Japha suggested to her on March 12, 1997 that she leave work and concentrate on getting well in preparation for an overseas assignment that was being considered for her.

In a report dated March 28, 2000, Dr. Aubrey C. Smith, a Board-certified psychiatrist and an Office referral physician, provided a history of appellant's condition and diagnosed major depression, treated, improved, and a mixed personality disorder with narcissistic borderline compulsive features. He stated that appellant's personality disorder was the major contributing factor in her problems and pre-existed the employment injury on May 2, 1996. Dr. Smith stated:

“In my opinion [appellant] probably returned to her pre-injury status after [she] elected her retirement (early). While she was resentful of being forced to retire, feeling that she had no other alternative, she is doing, based on her history functioning, fairly well and feels that she is able to return to her present duties without any restrictions. Certainly she voiced an opinion that she would not want to be in the same high stress area...with the eight disgruntled employees but sees herself at this time functioning fairly well. This conclusion was reached on the basis of [appellant's] own statement of the accepted facts and her statement of her willingness to return to work.”

Dr. Smith indicated that appellant should work for six hours a day for two weeks and then could work eight hours a day.

By decision dated April 24, 2000, the Office denied appellant's claim on the grounds that the weight of the evidence of record, as represented by the report of Dr. Smith, established that she did not sustain a recurrence of total disability on March 14, 1997. The Office also found that appellant's entitlement to medical benefits terminated as of July 3, 1997 because the medical evidence established that her employment-related conditions had resolved as of that date.

By letter dated April 22, 2001, appellant requested reconsideration.

By decision dated October 24, 2001, the Office denied modification of its April 24, 2000 decision.

The Board finds that appellant failed to establish that she sustained a recurrence of total disability on or after March 14, 1997 causally related her May 2, 1996 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>2</sup> In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

In a letter dated March 18, 1997, the employing establishment advised that appellant returned to work in a full-time light-duty status as a special assistant to the district engineer on

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<sup>2</sup> See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989).

October 28, 1996 under a flexi-place agreement (working three days a week at the employing establishment office and two days at home). The record shows that appellant stopped work after March 14, 1997.

In a letter dated July 29, 1999, appellant stated that she took leave starting March 17, 1997 on the recommendation of her attending physician, Dr. Japha. However, in notes dated March 12, 1997, Dr. Japha indicated that the employing establishment had agreed to reassign appellant overseas on July 1, 1997 and that appellant wished to take off work until then to prepare. She indicated that appellant could return to full duty on July 1, 1997. Dr. Japha did not recommend that appellant take leave in March 1997 due to a change in the nature or extent of her employment-related conditions.

By letter dated December 20, 1999, appellant advised the Office that her light-duty job assignments, with the exception of one, had ended by January 1997. However, by letter dated December 7, 1999, the employing establishment advised the Office that the work appellant was performing in March 1997 involved some assignments that were ongoing and were not completed at the time appellant stopped working, March 14, 1997, and, in fact, were not completed until some time in 1998 and 1999. Appellant stated that Dr. Japha suggested to her on March 12, 1997 that she leave work and concentrate on getting well in preparation for an overseas assignment that was being considered for her. However, as noted above, Dr. Japha indicated in her March 12, 1997 notes that it was appellant's wish to take leave after March 14, 1997.

In a report dated June 27, 1997, Dr. Clark, a psychiatrist and an Office referral physician, stated that appellant experienced a temporary aggravation of her pre-existing personality disorder due to the May 2, 1996 work incident and her current disability was partially related to the May 2, 1996 incident and its sequelae. He stated that appellant could have an increase in symptoms if exposed to reminders of the May 2, 1996 work incident. However, in March 1997 appellant was no longer exposed to reminders of the May 2, 1996 incident because she was no longer working in her regular job. Dr. Clark did not opine that appellant could not perform her limited duty position in March 1997.

In a report dated August 21, 1997, Dr. Johnson, a psychiatrist, stated that appellant was asked to leave her job in March 1997 because of her emotional condition and she had applied for retirement. He stated, "I have been encouraging her, while waiting for retirement to come through, to seek other employment." This report is not based on an accurate factual background as record shows that the employing establishment did not ask appellant to leave her light-duty job. Furthermore, Dr. Johnson did not opine that appellant was unable to perform her light-duty position and he even encouraged her to work.

In a report dated March 28, 2000, Dr. Smith, a psychiatrist and an Office referral physician, provided a history of appellant's condition, diagnosed major depression, treated, improved, and a mixed personality disorder, and stated that appellant's personality disorder was the major contributing factor in her problems and pre-existed the employment injury on May 2, 1996. He indicated that appellant's work-related conditions had resolved as of her retirement date, July 3, 1997. Dr. Smith also indicated that appellant expressed her willingness to return to work.

As appellant failed to establish that she stopped work on March 14, 1997 due to a change in the nature or extent of her employment-related conditions, a severe stress reaction to a work incident on May 2, 1996 and a temporary aggravation of a pre-existing personality disorder, or a change in the nature or extent of her light-duty job requirements, the Office properly denied her claim for a recurrence of total disability on or after March 14, 1997.

The Board further finds that the Office met its burden in terminating appellant's medical benefits effective July 3, 1997.

The Office, to terminate authorization for medical treatment, has the burden of establishing that appellant no longer has residuals of the employment-related condition that requires further medical treatment.<sup>3</sup> The Office met this burden through the report of Dr. Smith who concluded that appellant's employment-related conditions had resolved as of July 3, 1997.

The decision of the Office of Workers' Compensation Programs dated October 24, 2001 is affirmed.

Dated, Washington, DC  
April 17, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> See *Jose Hernandez*, 47 ECAB 288, 295 (1996).