

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUZETTE E. PULLUM and U.S. POSTAL SERVICE,
POST OFFICE, Carbondale, IL

*Docket No. 02-1217; Submitted on the Record;
Issued April 15, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 9, 2000.

On July 28, 1986 appellant, then a 24-year-old postal clerk, filed an occupational disease claim alleging that the employing establishment's failure to abide by the terms of a March 6, 1986 settlement of her Equal Employment Opportunity (EEO) complaint against a manager caused her stress and anxiety at work.¹

Appellant filed a recurrence of disability claim on March 2, 1987.² The Office denied both claims on May 5, 1987. Appellant requested a hearing. An Office hearing representative set aside the denial and remanded the case for the Office to develop the claim, based on the report of appellant's treating psychologist, Dr. Marcella Ballesteros.

Appellant filed a second occupational claim on January 25, 1988 and a recurrence of disability claim on March 3, 1988. Her last day of work was January 14, 1988. On May 16, 1988 the Office accepted the claim for post-traumatic stress disorder (PTSD), based on the report of Dr. Thomas T. Flynn, Board-certified in psychiatry.

Appellant underwent vocational rehabilitation for more than four years. She had a baby and took a two-year training program in accounting.

¹ Appellant had been working in a limited-duty position due to back and shoulder injuries.

² Appellant reopened her EEO complaint, which was adjudicated on March 5, 1987 with a finding of no discrimination.

Appellant won judgment in her lawsuit against the employing establishment.³ She was to be transferred to another postal facility without loss of seniority and her sick and annual leave was to be restored. The employing establishment offered appellant a limited-duty position at Marion, Illinois, which she initially refused but ultimately accepted.

Appellant was due to report to work on May 25, 1996 but claimed in a letter to the Office that she did not know this. The Office found the position to be suitable on July 11, 1996 and complied with its procedural requirements of notice before terminating appellant's compensation because she refused an offer of suitable work.

She requested a hearing. An Office hearing representative set aside the August 1, 1996 decision terminating her compensation and remanded the case because Dr. Ballesteros had opined that appellant could not work for the employing establishment and the Office had not addressed this issue.

On remand, the Office prepared a statement of accepted facts and referred appellant to Dr. Meera P. Gandhi, a Board-certified psychiatrist. He concluded in a November 20, 1996 report that, if appellant's PTSD were work related, it should have resolved following the 10 years after the incident because she had been away from work and in therapy. Dr. Gandhi found appellant incapable of any work for the employing establishment because she had chronic depression and problems with social relationships, blaming all others for her own reactions.

In a February 25, 1997 report, Dr. Ballesteros stated that appellant's condition was unlikely to resolve because of the continued stress caused by her work-related discrimination complaint. He added that appellant was not capable of working for the employing establishment, due to the intense mental reactions she had in her interactions with it. Dr. Margaret Hayes, then appellant's treating psychiatrist, stated in a September 4, 1996 report that appellant functioned well until contact with the employing establishment, which caused her to become anxious and agitated.

Finding that a conflict in the medical opinion evidence existed between Dr. Gandhi and appellant's physicians, the Office referred appellant to Dr. Fred W. Gaskin, a Board-certified psychiatrist. In his January 9, 1998 report, Dr. Gaskin clarified appellant's issues, noting her comment that "they need to pay me for the rest of my life."⁴ He diagnosed malingering and stated that her ongoing emotional state was not related to work factors but to underlying personality factors. Dr. Gaskin concluded that appellant was capable of performing the duties of the modified clerk position, but did not address the accepted PTSD condition and failed to provide a clarifying addendum when requested.

Accordingly, the Office referred appellant to a second impartial medical examiner. In a September 24, 1998 report, Dr. Wayne A. Stillings, a Board-certified psychiatrist, examined

³ The judge found that the testimony of both appellant and the manager accused of sexually harassing her was less than credible and that neither witness was totally candid or truthful. Nonetheless, he found appellant's case of sexual harassment proved. The record supports that the manager, then intoxicated at a golf outing, asked her for sex in return for changing her work hours and then harassed her again about this arrangement.

⁴ The Office of Personnel Management approved appellant's disability retirement.

appellant and provided a detailed factual, medical and work history from the medical records and factual history he reviewed. He diagnosed secondary gain disorder, based on mental testing and stated appellant had no psychiatric disorder related to her federal employment. Her mental illness was preexisting and personality related. Appellant was perfectly capable of working if she so desired. The Office subsequently determined that another impartial medical specialist review was necessitated.

Based on three reports from Dr. Scott J. Arbaugh, a Board-certified psychiatrist, the Office proposed to terminate appellant's compensation on October 3, 2000 on the grounds that she had no residuals of the accepted PTSD condition.

Appellant submitted a letter and two medical reports, which the Office found to be insufficient to overcome the special weight accorded the opinion of the impartial medical examiner, Dr. Arbaugh. On November 15, 2000 the Office terminated appellant's compensation and medical benefits.

Appellant requested a hearing, which was held on May 30, 2001. At the hearing, she and another witness explained what happened on August 20, 1996 when she reported to the Marion facility to start her limited-duty job. Appellant submitted additional medical evidence, articles on sexual harassment, complaint forms, a list of individuals who were sexually harassed, the names of people in management positions and medical releases from her treating physicians.

On August 31, 2001 the hearing representative affirmed the decision terminating appellant's compensation, based on the weight of Dr. Arbaugh's opinion as referee physician that appellant no longer had any residuals of the accepted emotional condition.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁶

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.⁷ The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.⁸

⁵ *Betty Regan*, 49 ECAB 496, 501 (1998).

⁶ *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

⁷ *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

⁸ *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

In this case, the Office properly determined that a conflict of medical opinion existed between Dr. Stillings and appellant's treating physicians over whether appellant's accepted emotional condition had resolved and selected Dr. Arbaugh to resolve the issue. In his February 14, 2000 report, Dr. Arbaugh stated that appellant did not currently suffer from PTSD but had a history of recurrent major depression and an underlying personality disorder. He added that appellant would not ever be capable of working for the employing establishment but that with continued treatment she could be gainfully employed.

Asked to clarify his opinion that appellant never did have PTSD, Dr. Arbaugh stated that appellant's emotional reaction to the sexual harassment had nothing to do with her recurrent depression, which was not caused by any work factor. There was also no relationship between her personality disorder and any work factors.

In a March 30, 2000 report, Dr. Arbaugh added appellant had a great deal of anger and resentment toward the employing establishment because of the manner in which her sexual harassment claim was handled and thus would be unable to work effectively for the employing establishment. Her major depressive disorder was not related to the harassment or to any factors of employment. Dr. Arbaugh concluded that appellant had no residuals of the emotional condition caused by the work-related incident.

Dr. Arbaugh reviewed the case record and various reports on appellant's medical treatment since the 1984 sexual harassment incidents. He interviewed appellant thoroughly, discussed his clinical findings and provided medical rationale for his conclusion that appellant's work-related emotional condition had resolved. Thus, Dr. Arbaugh provided an opinion that was sufficiently well rationalized to support his conclusion that appellant had no residuals of the emotional trauma she sustained and that her current depression was not work related. The Board finds that Dr. Arbaugh's opinion is entitled to the special weight accorded a referee specialist and establishes that appellant's accepted work injuries had resolved.⁹

Appellant submitted an October 25, 2000 report from Dr. Elizabeth Mansfield, a licensed clinical psychologist, who stated that appellant was overcome with a variety of post-traumatic reactions whenever she had any exposure to the employing establishment, including nausea, headaches, crying spells, irritability and panic. Dr. Mansfield added that appellant had suffered greatly and that her life would never be the same.

Appellant also submitted an October 25, 2000 report from Dr. Denise Dechow, an osteopathic practitioner in psychiatry. Dr. Dechow reiterated that appellant's chronic PTSD and depressive symptoms became more severe with any contact with the employing establishment. She recommended that appellant not return to work because of the possibility of exacerbating her symptoms of PTSD and depression.

The Board finds that neither of these opinions is sufficiently probative to overcome the special weight accorded the opinion of the impartial medical examiner, Dr. Arbaugh, because

⁹ See *Jimmie H. Duckett*, 52 ECAB ____ (Docket No. 99-1858, issued April 6, 2001) (opinion that appellant's back condition was due to the natural progression of his spondylolisthesis was sufficiently rationalized to establish that his work-related back condition had resolved and to meet the Office's burden of proof in terminating compensation).

Dr. Mansfield provided no medical rationale for her conclusion that appellant was still experiencing residuals of the sexual harassment incidents. Both she and Dr. Dechow stated that appellant could not return to work for the employing establishment because her symptoms would be exacerbated. However, the fact that appellant might react adversely to returning to work is not evidence that she has an ongoing work-related disability.¹⁰ Inasmuch as neither of these opinions is rationalized, the weight of the medical opinion evidence remains with Dr. Arbaugh.¹¹ Therefore, the Office met its burden of proof in terminating appellant's compensation.¹²

The August 31, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 15, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ See *Charles E. Evans*, 48 ECAB 692, 695 (1997) (a physician's advice that appellant not return to delivering the mail because of potential injury is preventive in nature and the Federal Employees' Compensation Act does not provide for a present award of compensation to cover the possibility of a future disabling injury or condition).

¹¹ See *Richard L. Rhodes*, 50 ECAB 259, 263 (1999) (finding that the impartial medical examiner's opinion that appellant's hysterical conversion disorder had resolved was sufficiently well rationalized to merit special weight).

¹² See *Barbara J. Warren*, 51 ECAB 413, 416 (2000) (finding that additional reports from appellant's treating physician that reiterated her findings and opinion were insufficient to overcome the special evidentiary weight accorded the impartial medical examiner).