

and to refer her to a specialist for an examination and an opinion as to whether her emotional condition was causally related to her employment. The decision of the Board is incorporated by reference.¹

The Office subsequently found in a May 9, 2000 decision that appellant sustained a work-related emotional condition, specifically, acute anxiety reaction (resolved). The Office relied on the medical report of Dr. Larry S. Bornstein, a Board-certified psychiatrist and Office specialist, who noted that the condition essentially ended when appellant left work in November 1990 and that, since she attended and graduated from law school after she left work, she had no disability as a result of her condition generally. The Office advised appellant that, if she believed that she was entitled to disability compensation, based on her acute anxiety reaction, she would be required to file a claim for wage-loss compensation and submit medical evidence for the appropriate time periods. The accepted employment factors included appellant's notice of posters of women wearing bathing suits with or without tops and other revealing items of clothing, a reference made by a male colleague that women and black people were not capable of learning to work in a specific work code, that appellant's supervisor and other leading military and civilian officers advised other employees to use caution in dealing with her, which was interpreted to mean that she should be avoided, a June 26, 1990 incident when appellant found a yellow squeeze toy which would reveal a toy penis upon squeezing and a June 27, 1990 incident when appellant was advised in an open meeting with her supervisor that she lacked team spirit, showed poor judgment and appeared unwilling to use the proper chain of command. At the same meeting, appellant was advised to submit an updated application for employment. Appellant also had job assignments reduced because the "head of the agency" advised managers to be cautious around her.

On November 16, 2000 appellant filed a claim for compensation for wage loss from January 1, 1991 to December 31, 1992² which the Office paid on January 12, 2001 in the amount of \$51,156.07. The Office stated that, because it did not have a copy of her Official Personnel File, it based its decision on other records.

On February 9, 2001 appellant filed a claim for compensation for wage loss from January 1, 1993 to December 31, 1995 and noted earnings of \$143.50 in 1993, \$135.00 in 1994 and \$2,616.00 in 1995. On February 23, 2001 the Office advised appellant that the medical evidence demonstrated that she had recovered from the effects of her work-related injury, and that there were no medical reports after December 1992 to establish that she was unable to work as a result of the residuals of her work-related injury. Appellant then submitted a March 9, 2001 report from Dr. Michael R. O'Leary, her attending clinical psychologist, who stated that she had acute anxiety reaction from January 1, 1993 to December 31, 1995. On March 24, 2001 the Office asked Dr. O'Leary to clarify his report.

¹ Docket No. 98-156 (issued September 28, 1999). The Board issued a prior decision on January 19, 1995 affirming the Office's denial of appellant's request for an oral hearing and its April 29, 1993 decision denying appellant's request for reconsideration. Docket No. 93-2050 (issued April 29, 1993).

² The Office stated that it received appellant's original claim for compensation for January 1, 1991 to December 31, 2001 on November 16, 2000.

On April 11, 2001 Dr. O’Leary stated that appellant “was at best partially disabled during this entire period [January 1, 1993 to December 31, 1995].” He noted that appellant showed symptoms of an acute anxiety reaction from September 26, 1991 which “worsened over the period ending January 1, 1993.” Dr. O’Leary stated that appellant was restricted from returning to her prior workplace because her post-traumatic stress syndrome had permanent residual symptoms which may “generalize to any setting which resembles or is similar to the setting in which the original trauma occurred.”

On October 26, 2001 the Office denied appellant’s claim for compensation for wage loss on the grounds that the record included no medical evidence to support total disability from January 1, 1993 to December 31, 1995. On January 23, 2002 appellant, through counsel, requested an oral hearing.³ A hearing was held on July 9, 2002 and a decision was issued on September 12, 2002 affirming the Office’s October 26, 2001 decision denying appellant’s claim for compensation for wage loss from January 1, 1993 to December 31, 1995.

LEGAL PRECEDENT

It is a well-settled principle of workers’ compensation law that if the medical evidence establishes that the residuals of an employment-related impairment are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁴ The general test of loss of wage-earning capacity is whether a claimant’s work-related impairment prevents her from engaging in the kind of work being performed when injured.⁵

To establish a causal relationship between appellant’s accepted acute anxiety reaction and any related period of disability, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background, 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.⁶

ANALYSIS

In the September 12, 2002 decision, an Office hearing representative affirmed the determination that the medical record lacked probative evidence to support appellant’s claim for disability from January 1, 1993 to December 31, 1995 as a result of the accepted employment

³ Appellant was paid wage-loss compensation from December 30 to 31, 2000.

⁴ *Joseph D. Duncan*, 54 ECAB ____ (Docket No. 02-1115, issued March 4, 2003).

⁵ *Paul T. Mazza*, 41 ECAB 854 (1990).

⁶ *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

injury. In support of her claim for wage-loss compensation for the period January 1, 1993 to December 31, 1995, appellant submitted an April 11, 2001 report from Dr. O'Leary, her attending clinical psychologist, who stated that appellant was, at best, partially disabled from January 1, 1993 to December 31, 1995. He added that her symptoms ended on January 1, 1993. The Board notes that Dr. O'Leary did not support his opinion that appellant was at best partially disabled with a rationalized medical opinion explaining the nature of the relationship between her condition on or after January 1, 1993 and her work-related acute anxiety reaction. Indeed, Dr. O'Leary stated that appellant's symptoms ceased as of January 1, 1993. The underlying issue in the claim is essentially medical in nature, *i.e.*, whether appellant was disabled for any period from January 1, 1993 to December 31, 1995, due to her accepted work-related condition of acute anxiety reaction. Appellant submitted no medical evidence which supports her claim of disability for the time period of January 1, 1993 to December 31, 1995.

CONCLUSION

The Board finds that, inasmuch as appellant did not submit medical evidence which supports her claim that her work-related condition of acute anxiety reaction resulted in disability from work from January 1, 1993 to December 31, 1995, she has failed to establish entitlement to wage-loss compensation for that time period.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2002 be affirmed.

Issued: July 7, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member