

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. GODDARD and U.S. POSTAL SERVICE,
POST OFFICE, Portland, OR

*Docket No. 03-648; Submitted on the Record;
Issued March 29, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective April 30, 2002.

On October 22, 1986 appellant, then a 33-year-old letter carrier, filed a claim alleging that she developed an emotional condition as a result of her employment duties. Appellant stopped work on October 14, 1986 and worked intermittently thereafter.¹ The Office accepted the claim for post-traumatic stress disorder and appellant was paid appropriate compensation.²

In the course of developing the claim, the Office referred appellant to several second opinion physicians and also to impartial medical examiners.³ Appellant submitted reports from Dr. Douglass S. Johnson, a Board-certified internist and appellant's attending physician, dated November 11, 1999 and March 1, 2000, who advised that appellant remained disabled due to her original injury and the termination of her benefits.

¹ Appellant filed other claims for work-related injuries including a February 11, 1984 right hand contusion; a May 6, 1985 strain of the lower back and an October 12, 1987 left knee injury. It is unclear whether any of these injuries were accepted by the Office as work related.

² The Office accepted that appellant sustained an emotional condition as a result of an incident which was proven to have occurred in the performance of duty: on October 14, 1986 appellant's supervisor became upset with her during a meeting after she informed him that she was unable to deliver all the mail after the Columbus Day Holiday. The supervisor raised his hands and threw his pad of paper down in a threatening manner.

³ By decision dated October 4, 1999, the Office terminated appellant's compensation benefits effective the same date on the grounds that the weight of the medical evidence established that the work-related injury had resolved. In a letter dated October 22, 1999, appellant requested reconsideration. In a decision dated January 28, 2000, the Office vacated the decision of October 4, 1999 because the statement of accepted facts did not conform with the Office procedures as it did not include that an emotional condition had been accepted as employment related and also that the statement provided information which was not verified by factual evidence with regard to the status of appellant's 1992 marriage. The Office returned appellant to the periodic rolls effective January 30, 2000.

On December 10, 2001 the Office referred appellant, together with appellant's medical records, a statement of accepted facts, as well as a detailed description of appellant's employment duties, for a second opinion evaluation to Dr. Thomas Welch, a Board-certified psychiatrist. In a medical report dated January 4, 2002, Dr. Welch indicated that he reviewed the records provided to him and noted a history of appellant's condition and performed a physical examination. He diagnosed appellant with major depressive disorder, recurrent, moderate; panic disorder with agoraphobia; and paranoid personality disorder, which were characterized by moderate symptoms of depression and anxiety. Dr. Welch stated that appellant had psychiatric conditions predating the employment incident, noting that records as far back as 1981 indicated that she described symptoms of depression, labile emotions, irritability and low self-esteem. He noted that there was sufficient evidence to support that appellant's paranoid personality disorder had existed since early adulthood and that the incidents described in the statement of accepted facts permanently aggravated her preexisting panic disorder and major depressive disorder, thus indicating that appellant had not recovered and was unable to work. He did not believe that appellant currently or ever met the criteria for the diagnosis of a post-traumatic stress disorder. Dr. Welch noted that at the time of appellant's initial claim the guidelines for meeting the criteria for post-traumatic stress disorder was that the person had been exposed to a stressor outside the range of normal human experience and current guidelines provide that the person witnessed or was exposed to a life-threatening situation. He indicated that appellant was neither exposed to a life-threatening experience nor to trauma beyond the normal tolerance. Dr. Welch concluded that appellant continued to suffer psychiatric residuals of her employment incident in that it exacerbated her depression and panic disorder.

In a letter dated January 24, 2002, the Office requested that Dr. Welch submit a supplemental report addressing the incidents and dates in the statement of accepted facts which caused the permanent aggravation of appellant's preexisting condition as noted in his report.

In a supplemental report dated February 7, 2002, Dr. Welch noted that the October 14, 1986 incident, in which appellant's supervisor became upset with her during a meeting and raised his hands and threw his pad of paper down in a threatening manner, aggravated appellant's preexisting condition. He indicated that this incident would have triggered a recrudescence of her preexisting major depressive disorder and panic disorder. On February 21, 2002 the Office revised the statement of accepted facts and, in a letter dated February 21, 2002, the Office requested that Dr. Welch submit a supplemental report to determine if his opinion would change after consideration of the revised statement of accepted facts which indicated that the October 14, 1986 incident in which appellant's supervisor raised his hands and threw his pad of paper down in a threatening manner had been reclassified as having occurred but not in the performance of duty as previously set forth in the statement of accepted facts. In a report dated March 11, 2002, Dr. Welch noted that the reclassification of appellant's work incident of October 14, 1986 would not change his opinion and that this incident caused a permanent aggravation of appellant's preexisting panic disorder and major depressive disorder but had no bearing on her paranoid personality disorder.

On March 27, 2002 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Welch's reports established no continuing disability as a result of the 1986 employment injury. By decision dated April 29, 2002, the Office terminated appellant's

compensation benefits effective April 30, 2002 on the grounds that the weight of the medical evidence established that the work-related injury had resolved.

The Board finds that the Office did not meet its burden of proof to terminate benefits effective April 30, 2002.

Once the Office accepts a claim it has the burden of proof to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵

The Office accepted appellant's claim for a post-traumatic stress disorder and paid appropriate compensation. The Office referred appellant to Dr. Welch for a second opinion evaluation by a specialist in psychiatry.⁶ The Board has carefully reviewed the reports of Dr. Welch and his opinion appears to be well reasoned. His reports explained why he disagreed with the diagnosed accepted condition of post-traumatic stress disorder. Dr. Welch diagnosed a panic disorder and major depressive disorder which he indicated were permanently aggravated by factors of appellant's federal employment. In his reports dated January 4, February 7 and March 11, 2002, Dr. Welch diagnosed major depressive disorder, recurrent, moderate; panic disorder with agoraphobia; and paranoid personality disorder, which were characterized by moderate symptoms of depression and anxiety. He noted that appellant had psychiatric conditions predating the employment incident, and that her paranoid personality disorder had existed since early adulthood. He stated that the incidents described in the statement of accepted facts permanently aggravated her preexisting panic disorder and major depressive disorder. Although the Office modified the statement of accepted facts on February 21, 2002 and requested clarification, Dr. Welch opined in his March 11, 2002 report that the reclassification of appellant's work incident of October 14, 1986 would not change his opinion and that this incident caused a permanent aggravation of appellant's preexisting panic disorder and major depressive disorder but had no bearing on her paranoid personality disorder. The Board finds

⁴ *Eddie Franklin*, 51 ECAB 223 (1999); *Jeff M. Burns*, 52 ECAB 241 (1999).

⁵ *Id.*

⁶ In the December 10, 2001 statement of accepted facts, the Office accepted the following incidents as established and within the performance of duty: that on October 14, 1986 the volume of mail was extremely high due to the Columbus Day Holiday; that appellant's request for assistance of the route was not granted; that on October 14, 1986 Mr. Milburn, appellant's supervisor, became upset with appellant during a meeting after appellant informed him that she was unable to deliver all the mail after the Columbus Day Holiday, the supervisor raised his hands and threw his pad of paper down in a threatening manner; that on October 23, 1986 appellant requested she be paid for time loss associated with her altercation with Mr. Milburn; and that on October 24, 1986 appellant was notified that she would be provided with administrative leave for her time loss; and that appellant was frustrated at not being able to perform her regular duties adequately. On February 21, 2002 the Office revised that statement of accepted facts to indicate that the following incidents were established and within the performance of duty: that on October 14, 1986 the volume of mail was extremely high due to the Columbus Day Holiday; that appellant's request for assistance of the route was not granted; that on October 23, 1986 appellant requested she be paid for time loss associated with her altercation with Mr. Milburn; and that on October 24, 1986 appellant was notified that she would be provided with administrative leave for her time loss; and that appellant was frustrated at not being able to perform her regular duties adequately.

that Dr. Welch's report does not support the termination of compensation benefits. Rather, Dr. Welch found that appellant's employment permanently aggravated her preexisting condition. The Office improperly terminated compensation benefits on the grounds that residuals of the accepted conditions had resolved. While Dr. Welch's opinion tends to support that appellant does not have post-traumatic stress disorder, it clearly supports that appellant's employment permanently aggravated her preexisting condition for which she currently has residuals. The Board finds that this report is insufficient to meet the Office's burden of proof to terminate appellant's compensation benefits.⁷

The decisions of the Office of Workers' Compensation Programs dated April 29 and March 27, 2002 are hereby reversed.

Dated, Washington, DC
March 29, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁷ The Board notes that the Office did not explain why it issued an amended statement of accepted facts which indicated that one of the work factors occurring on October 14, 1986 which contributed to appellant's post-traumatic stress disorder was no longer considered as arising in the performance of duty. In the notice of proposed termination issued on March 27, 2002, the Office merely indicated that it was relying on a recent Board decision, [Judy L. Kahn, Docket No. 00-457, issued on 02/01/2002] and did not provide a specific explanation based on the facts of the instant case as to why the factor was no longer considered to having occurred in the performance of duty.