

**United States Department of Labor
Employees' Compensation Appeals Board**

BARBARA J. HALE, Appellant)	
)	
and)	Docket No. 05-547
)	Issued: June 14, 2005
DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, El Segundo, CA, Employer)	

Appearances:
Thomas Martin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 29, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated November 18, 2004, denying modification of a July 1, 2002 decision, which terminated her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the November 18, 2004 decision.

ISSUE

The issue is whether the Office met its burden of proof in terminating appellant's compensation and medical benefits effective July 1, 2002.

FACTUAL HISTORY

On January 30, 1989 appellant, then a 47-year-old voucher examiner/expediter filed an occupational disease claim alleging that on November 29, 1988 she developed an emotional

condition causally related to factors of her employment.¹ On January 27, 1990 the Office accepted her claim for neurotic depression caused by overwork, dealing with demanding contractors seeking timely payment for services, handling congressional inquiries, having to telephone irate customers back after supervisors hung up on them, receiving abusive telephone calls, not receiving training while she was assigned to the customer relations desk, training new employees and sustaining a fractured foot when a file cabinet fell on it. Appellant's federal employment ended in November 1988. The Office paid compensation for temporary total disability commencing on March 22, 1989.

From April 17, 1991 to August 20, 1993, appellant was treated by Dr. M. Joel Scheinbaum, a psychiatrist, who opined that she was totally disabled due to her depression.

In a report dated August 11, 1998, Dr. H. William Winter, Ph.D., a clinical psychologist, stated that appellant was significantly depressed. He noted that she had been assaulted by a man in January 1998, during a domestic dispute. Dr. Winter stated that he was unable to reach a conclusion on the causation of appellant's psychiatric symptoms because "[she] lacked stamina to complete work today." He recommended psychiatric medications.

By letters dated February 18, 2000 and April 9, 2001, the Office requested an updated report from Dr. Winter. In a January 15, 2002 letter, he advised that he could not schedule a follow-up evaluation of appellant.

In a report dated March 13, 2002, Dr. Michael P. Brousseau, appellant's attending Board-certified internist, indicated that she was unable to return to work due to her depression caused by her work environment.

By letter dated March 26, 2002, the Office asked appellant to provide an updated medical report regarding her work-related neurotic depression. A telephone memorandum dated April 25, 2002 indicates that an employee from appellant's health care provider called the Office and advised that she had requested an updated medical report in response to the Office's March 26, 2002 letter. The Office advised the health care provider that appellant was authorized to be evaluated at that facility.

In a report dated May 15, 2002, Dr. David Fox, Ph.D, a clinical psychologist employed by appellant's health care provider, provided a history of her condition, course of treatment, results of diagnostic testing and a mental status evaluation. Appellant advised him that she had continuing physical and psychological problems caused by a stroke in November 1988, which was due to stress from overwork.² The medical records he reviewed consisted of a 1998 report

¹ Although appellant's Form CA-2, notice of occupational disease, indicates "January 29, 1988" as the date of injury, her CA-7 claim for compensation indicates that her disability began November 29, 1988. The Office accepted November 29, 1988 as the date of injury.

² The Office has not accepted appellant's stroke as work related.

from Dr. Ralph Bloch,³ Dr. Winter's August 11, 1998 report, Dr. Brousseau's March 13, 2002 report and an April 19, 2002 report from a Dr. Debbie McTaggart.⁴ Dr. Fox indicated that appellant gave a confusing and often illogical version of events regarding her treatment. She told him that her treatment for depression began in 2000 with Dr. McTaggart, to whom she was referred by a victim witness program. Dr. Fox diagnosed major depression, post-traumatic stress disorder (PTSD) and anxiety, symptom exaggeration, rule out malingering, probable somatoform disorder. He stated:

“[Appellant] indicated that she saw Dr. McTaggart on a weekly basis for a while.... She last saw her about three weeks ago. [Appellant] also has seen a variety of doctors but gave contradictory statements as to which ones are her current doctors and which ones were her former doctors.... [She] apparently sees a psychiatrist who prescribes medication, Celexa.

“When it was pointed out ... that Dr. McTaggart seems to have been treating the after-effects of the assault, she was asked about when she first [sought] treatment for symptoms related to her employment. [Appellant] indicates in a very vague and often contradictory fashion that she did see some doctors beginning in about 1989 or late 1988. She does not know who they were exactly or how long she saw them.”

* * *

“It was difficult to obtain an accurate or even coherent history from [appellant].”

* * *

“[Regarding] questions that related to the nature of her claim ... [appellant] gave a disjointed and incomplete history....

“Although there is some evidence that [appellant] is depressed based on her tearfulness, etc., during the evaluation, there is also reason to believe that she has exaggerated her symptoms to a significant extent. The diagnosis of depression and post[-]traumatic stress disorder ... seems to be related to the assault she suffered in 1998.⁵ [Appellant's] multiple physical complaints, their persistence and lack of response to medical intervention and her general interpersonal style strongly suggest a severe somatization disorder.”

* * *

³ In a June 22, 1998 report, Dr. Bloch, an orthopedic surgeon, indicated that he did not know why appellant was off work. He stated that a case worker would contact the Office to ascertain the nature of her disability so that she could be referred to an appropriate medical specialist.

⁴ There are no reports of record from Dr. McTaggart.

⁵ Dr. Fox indicated that appellant was attacked by a man in reaction to a comment she made to his girlfriend.

“[Appellant] is a 60-year-old woman who 13.5 years ago claims to have suffered a stroke caused by overwork on the job. She is claiming that as a result of the stroke she felt disabled and consequently developed depression. Subsequently, in 1998 or 1999, she was assaulted and as a consequence seems to have developed a variety of symptoms, including depression and possibly post traumatic stress disorder. It is difficult to reach firm conclusions regarding [appellant’s] condition because of her symptom exaggeration and general misrepresentation of her condition. It does appear that she has fully engaged in the ‘invalid role’ in which there is a wide variety of medical and psychological problems that are unresponsive to intervention.

“CAUSATION:

There is some reason to believe that [appellant] developed depression and post[-]traumatic stress disorder from the assault that occurred in 1998 and that appears to account for whatever legitimate symptoms are still present. Although it would be understandable to develop some dysphoria secondary to a stroke the persistence of that symptom is unlikely considering the actual effects of the stroke are fairly restricted. Consequently, there is no reason to believe that she currently suffers a psychological condition related to her [federal employment]. What symptoms she currently has were caused by the assault. There was also a significant degree of symptoms magnification present.

“FACTORS OF DISABILITY:

With regard to her [federal employment], she is not suffering any current psychological disability and is not in need of treatment.”

By letter dated May 29, 2002, the Office advised appellant that it proposed to terminate her compensation and medical benefits because the weight of the medical evidence, represented by the May 15, 2002 report of Dr. Fox, established that she had no residual disability or medical condition causally related to her 1988 work-related, neurotic depression.

On July 1, 2002 the Office finalized its decision to terminate appellant’s compensation and medical benefits.

Appellant requested a hearing. She was advised of the scheduled hearing but did not appear. The Office hearing representative advised that she would perform a review of the written record.

By decision dated May 27, 2003, an Office hearing representative affirmed the Office’s July 1, 2002 decision.

Appellant requested reconsideration and submitted additional evidence.

In a May 24, 2004 report, Dr. Richard A. Greenberg, a psychiatrist, diagnosed a recurrent major depressive disorder and stated:

“Although [appellant] may have been vulnerable to the development of emotional difficulties if stressed or injured, I have no evidence that she would be in her present state of emotional distress and disability had she not been subjected to the industrial events in the workplace. Although she was assaulted in 1998, while at the residence of a friend, that assault was minor in nature, did not result in unconsciousness and she subsequently received treatment at a [crime victims’ program] for about six months.”

* * *

“It is my opinion that the present significant, but not severe emotional disability from which [appellant] suffers is the result of and was precipitated by the events she experienced while working for the [employing establishment].”

By decision dated November 18, 2004, the Office denied modification of its prior decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁶ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁷ The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁹

ANALYSIS

The Office accepted appellant’s claim for neurotic depression caused by several factors of her federal employment, including overwork, dealing with demanding contractors, handling congressional inquiries talking to irate customers, receiving abusive telephone calls, not receiving training for the customer relations desk, training new employees and sustaining a fractured foot when a file cabinet fell on it. On July 1, 2002 the Office terminated her

⁶ *Barry Neutuch*, 54 ECAB ____ (Docket No. 01-1532, issued January 6, 2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

⁷ *Id.*

⁸ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁹ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

compensation and medical benefits on the grounds that the accepted condition had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.¹⁰

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits on July 1, 2002 based on the May 15, 2002 report of Dr. Fox.

Dr. Fox did not provide a complete and accurate factual background for his opinion that appellant's continuing psychological problems were not related to her 1988 employment injury. In his report, he stated that appellant's continuing physical and psychological problems were caused by a stroke in November 1988, which was due to stress from overwork. However, as noted above, the Office accepted several factors of employment as a cause of appellant's work-related depression in 1988, not just overwork.

Additionally, Dr. Fox did not base his report on a complete and accurate medical background. The only medical reports that he reviewed consisted of Dr. Bloch's 1998 report, Dr. Winter's 1998 report, Dr. Brousseau's 2002 report and a 2002 report from Dr. McTaggart that is not of record. Dr. Fox did not review the reports of Dr. Scheinbaum, who treated appellant following her 1988 employment-related depression.

It is noteworthy that Dr. Fox indicated several times in his report, that the accuracy of the history given by appellant was unreliable. He stated that appellant gave a "confusing and often illogical version" of events regarding her treatment for depression and told him that her treatment began in 2000 with Dr. McTaggart, who seemed to have been treating her for symptoms related to the 1998 assault. Dr. Fox stated that appellant had seen a number of physicians but gave "contradictory statements" as to which ones were her current physicians and which ones were former treating physicians. He stated that she gave a "very vague and often contradictory" account of her treatment for her 1988 employment injury and "It was difficult to obtain an accurate or even coherent history" from appellant regarding the nature of her claim. He stated that she gave a "disjointed and incomplete history."

Medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of little probative value.¹¹ The opinion of Dr. Fox that appellant had no continuing disability or medical condition causally related to her 1988 accepted neurotic depression was not based on a complete and accurate factual and medical background. Consequently his opinion is of little probative value and is not sufficient to justify termination of appellant's compensation and medical benefits.

The record does not contain a reasoned medical opinion, based on a complete and accurate factual and medical background establishing that appellant's employment-related disability had ceased as of July 1, 2002. Accordingly, the Board finds that the Office did not meet its burden of proof in this case.

¹⁰ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

¹¹ *Douglas M. McQuaid*, 52 ECAB 382 (2001); *Patricia M. Mitchell*, 48 ECAB 371 (1997).

CONCLUSION

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits effective July 1, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 18, 2004 is reversed.

Issued: June 14, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member