

On July 6, 1996 appellant filed another occupational disease claim alleging that she sustained an emotional condition due to harassment by management. The Office assigned the claim file number A13-1112496 and, in a decision dated January 9, 1997, denied the claim on the grounds that she did not establish an injury in the performance of duty. The Office found that she had not established any compensable employment factors.

Appellant requested a hearing, which was held on July 7, 1998.¹ In a decision dated September 14, 1998, the hearing representative affirmed the Office's June 12, 1996 and January 9, 1997 decisions. He found that appellant had established as compensable factors of employment the fact that on December 8, 1995 she was directed to park a long life postal vehicle (LLV) into a parking space without a spotter and that a coworker left a note with sarcastic comments on her letter case from December 27, 1995 to January 5, 1996. The hearing representative found, however, that appellant had not submitted sufficient medical evidence to establish that she sustained an emotional condition due to the accepted employment factors. In a letter accompanying the decision, the hearing representative instructed the Office to double her June 12, 1996 and January 9, 1997 claims.²

By letter dated August 3, 1999, appellant requested reconsideration.³ In a decision dated June 14, 2000, the Office denied modification of its September 14, 1998 decision. Appellant again requested reconsideration on May 9, 2001. On June 1, 2001 the Office denied modification of its September 14, 1998 and June 14, 2000 decisions after finding that appellant had not established any additional compensable employment factors.

On May 3, 2002 appellant requested reconsideration and, in support of her request, submitted a report dated April 11, 2002 from Dr. Gary Gibbs, an osteopath and Board-certified psychiatrist, who related that he had treated appellant from January 8 to June 6, 1996 for complaints of harassment at work. He described the factors to which appellant attributed her condition and diagnosed post-traumatic stress disorder (PTSD). Dr. Gibbs opined that appellant "meets the requirement of disability regarding work at the [employing establishment]. This is a permanent disability." He stated:

"In conclusion I would like to state it is my opinion that [appellant's] psychiatric problems were a direct result of repeated attempts by management to punish her for her work as a Shop Stewart on a case of alleged discrimination. Unfortunately for [appellant] management was successful, forcing her to quit her job *via* blatant ongoing harassment."

In a decision dated May 31, 2002, the Office denied modification of its June 1, 2001 decision. The Office found that appellant had not established any additional compensable

¹ Appellant informed the Office on October 28, 1997 that she was starting work with Sun Personnel Services on October 29, 1997.

² The Office combined the claims under file number A13-1112496.

³ On May 18, 1999 appellant informed the Office that she had begun new employment with Sambrailo Packaging on February 22, 1999.

employment factors and that the medical evidence attributed her condition to work conditions either not accepted as factual or not in the performance of duty.

In a report dated June 14, 2002, Dr. Gibbs noted that on December 8, 1995 appellant's supervisor, June Lota, ordered her to "back up her LLV without a spotter" although she had "medical documentation that she required a spotter." He also discussed the cards placed by a coworker from December 27, 1995 to January 5, 1996 containing sarcastic comments. He stated, "I do believe the incidents of the direct order and the sarcastic cards were directly causative of [appellant's] condition of [PTSD]." Dr. Gibbs found that appellant's "level of anxiety and outright fear rose to the extent she could no longer come to work."

The Office prepared a statement of accepted facts (SOAF) on July 5, 2002 and referred appellant to Dr. John R. Gillette, a Board-certified psychiatrist, for a second opinion examination. In a report dated September 15, 2002, Dr. Gillette found that appellant had no current psychiatric diagnosis but "clearly developed one as reported by Dr. Gibbs and confirmed by [appellant] in the current interview that was precipitated and caused by the factors of employment as described in the SOAF." Regarding aggravation, he stated:

"There was clearly aggravation present that persisted for some time and led Dr. Gibbs to recommend that she essentially never go back to the [employing establishment]. I cannot easily assert as to when the aggravation ceased other than when she stopped working. I gather there was a time before she was able to settle down and take classes in college. She then was able to reenter the work market and achieve employment. I therefore cannot put a specific date to the time when it actually ceased, but I would assume that it would be within a few months of her leaving work, particularly once new employment was secured."

Dr. Gillette opined that appellant had no further residuals of her condition. Regarding the period of total disability, he stated:

"I suspect that there was total disability during the two-week period in January 1996 but again I am uncertain as to the length of total disability following her leaving employment in June 1996. Again, I suspect that total disability may have occurred for one to two months at that point but that is a question best addressed by Dr. Gibbs."

By decision dated September 25, 2002, the Office vacated in part its May 31, 2002 decision and accepted appellant's claim for adjustment disorder with a period of total disability from January 8 to March 4, 1996. The Office found that appellant's condition resolved after she stopped work on June 4, 1996.

In a letter dated November 16, 2002, appellant requested that the Office reconsider the period of total disability. She noted that Dr. Gillette released her to return to work at the employing establishment in March 1996 but that she stopped work on June 4, 1996 because management did not "correct the same work factors that had originally caused me to stop working in January of 1996." Appellant further related that she did not work "for several years

following my employment with the [employing establishment]" and had been in contact with Dr. Gibbs "off and on during the intervening years."

In a report dated October 31, 2002, Dr. Gibbs related:

"[Appellant] last worked for the [employing establishment] on June 4, 1996. She became totally and permanently disabled from all work, in any capacity, for the [employing establishment] at that time. She can never return to the [employing establishment]. This disability was caused by the two compensable incidents which were previously mentioned."

By decision dated February 11, 2003, the Office denied modification of its September 25, 2002 decision. The Office found that Dr. Gibbs' October 31, 2002 report was insufficient to warrant modification of its finding that appellant was disabled from January 8 to March 4, 1996 due to her accepted employment injury.

On February 17, 2003 appellant appealed to the Board. The Board issued an order remanding case for reconstruction of the record on April 24, 2003.⁴ In response to appellant's inquiry, the Office noted that the missing evidence was not included in the master case file.

On June 7, 2004 the Office reissued its decision denying modification of the September 25, 2002 decision.

LEGAL PRECEDENT

The Office is not a disinterested arbiter but rather performs the role of adjudicator on the one hand and gatherer of the relevant facts and protector of the compensation fund on the other, a role that imposes an obligation on the Office to see that its administrative processes are impartially and fairly conducted.⁵ Although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ Once the Office starts to procure a medical opinion, it must do a complete job.⁷ The Office has the responsibility to obtain from its referral physician an evaluation that will resolve the issue involved in the case.⁸

⁴ Order Remanding Case, Docket No. 03-896 (issued April 24, 2003).

⁵ *Thomas M. Lee*, 10 ECAB 175 (1958).

⁶ *William J. Cantrell*, 34 ECAB 1233 (1983).

⁷ *William N. Saathoff*, 8 ECAB 769 (1956).

⁸ *Robert Kirby*, 51 ECAB 474 (2000); *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983); *Richard W. Kinder*, 32 ECAB 863, 866 (1981) (where the Board found that the report of the Office referral physician did not resolve the issue in the case).

ANALYSIS

The Office referred appellant to Dr. Gillette for the purpose of determining whether she sustained an emotional condition due to a compensable employment factor and, if so, the nature and extent of any disability arising therefrom. In a report dated September 15, 2002, Dr. Gillette found that appellant sustained an emotional condition arising from compensable factors of employment. He further found that her emotional condition caused disability for employment but that he could not “put a specific date to the time when it actually ceased.” Dr. Gillette stated that he was “uncertain as to the length of total disability following her leaving employment in June 1996” and that the issue of total disability was “a question best addressed by Dr. Gibbs.” Based on Dr. Gillette’s opinion, the Office accepted that appellant was disabled due to her accepted condition of adjustment disorder from January 8 to March 4, 1996 and that her condition resolved after she stopped work on June 4, 1996. Dr. Gillette, however, did not provide a specific finding regarding the period that appellant was disabled due to her employment injury. Rather, Dr. Gillette deferred to Dr. Gibbs to establish the periods of disability due to her employment injury. Dr. Gibbs, in a report dated October 31, 2002, opined that appellant was permanently disabled from working at the employing establishment beginning June 4, 1996; however, he provided no rationale for his opinion and thus it is of little probative value.⁹ The record, thus, contains no reasoned medical opinion on the extent of appellant’s employment-related disability.

The Office referred appellant to Dr. Gillette for an opinion on the extent of appellant’s employment-related disability and obtained an incomplete medical opinion. The Board has long held that, although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰ Once the Office starts to procure a medical opinion, it must do so in a fair manner.¹¹ As the Office sought the opinion of Dr. Gillette, it has the responsibility to obtain a report which resolves the issues presented in this case.¹² The Office did not fulfill its responsibility in the development of the medical evidence because it did not seek clarification regarding the nature and extent of appellant’s employment-related disability. On remand, the Office should secure a medical report containing a reasoned medical opinion on the relevant issue of whether appellant had any period or periods of disability other than January 8 to March 4, 1996 due to her accepted employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision as additional development of the medical evidence is warranted.

⁹ See *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹⁰ *William J. Cantrell*, *supra* note 6.

¹¹ *William N. Saathoff*, *supra* note 7.

¹² See *Robert Kirby*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 7, 2004 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 2, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member