United States Department of Labor
Employees' Compensation Appeals Board

LINDA L. BROWN, Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Glenwood Springs, CO, Employer**	))))))))	**Docket No. 06-498** **Issued: June 15, 2006**

Appearances:
Linda L. Brown, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 30, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 3, 2005 merit decision terminating her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective October 2, 2005, on the grounds that she no longer had residuals of her accepted employment injury after that date.

FACTUAL HISTORY

On December 13, 2000 appellant, then a 38-year-old clerk, filed an occupational disease claim alleging that she sustained an emotional condition due to various incidents and conditions at work.

In statements dated December 13, 2000 and March 3, 2001, appellant described the stressors at work, which she believed caused her emotional condition. Appellant alleged that

beginning on October 12, 1999 the employees at her work unit were working 12-hour days and there were not enough employees to handle the mail. During this period, she volunteered to serve as an acting supervisor for about two weeks while the regular supervisor, Dave Cook, was on vacation. Appellant claimed that there were outbursts and fights among the coworkers and that during one shift Vicky Derby, a coworker she was temporarily supervising, got "out of control" and started screaming about people not working. When Ms. Derby went on her break, appellant spoke to her in order to address her concerns. Appellant claimed that later on the same workday, Ms. Derby accused her of hitting her and that other employees told appellant that Ms. Derby told them that appellant grabbed her by the throat and tried to choke her. She claimed that Ms. Derby threatened to file a lawsuit but no suit was ever filed. Appellant asserted that she had to work with Ms. Derby in the same facility until June 2000. The incident with Ms. Derby reminded her of the time in 1993 when her exhusband severely assaulted her.

Appellant further claimed that her workplace was generally understaffed and that employees were required to work 50 to 60 hours per week when the workplace was below the full staffing level. She claimed that the employing establishment received new machines and the first several months of implementation were difficult until the employees learned how to operate them. Appellant alleged that she was the only employee who had prior experience with these machines and the supervisor relied on her to train employees in their operation. The workplace had no technical support personnel or electrical technicians and that she had to "sort plans" but was not a systems analyst. Appellant also claimed that management forced her to skip breaks and lunches, threatened her with loss of her job if the mail did not get out on time and that the work facility was poorly managed. She was hospitalized in May 2000 due to her work-related emotional condition.

Appellant submitted statements of several coworkers, including Hank Gray, Anne Cyphers, Amy Carver, Ronald Reed and Patricia Cline. These statements lent support to appellant's claims regarding her alleged work stressors, including her service as a temporary supervisor, the actions of Ms. Derby, the fighting in the workplace, the problems of understaffing and the difficulties with the new machines. In a statement dated April 17, 2001, the employing establishment acknowledged that appellant served as a temporary supervisor and had difficulties with Ms. Derby.

Appellant also submitted a December 15, 2000 report in which Dr. Robert Mimmack, an attending Board-certified psychologist, indicated that appellant reported various work stressors, including those related to the actions of Ms. Derby and the chaotic atmosphere in the workplace. Dr. Mimmack indicated that he had been treating appellant since May 2000 for a major depressive disorder and general anxiety disorder and stated that appellant's work situation contributed to these conditions.

The Office referred appellant to Dr. Gerd C. Leopoldt, a Board-certified psychiatrist, for a second opinion evaluation. In a report dated June 26, 2001, Dr. Leopoldt posited that Ms. Derby's accusations contributed to and aggravated appellant's preexisting post-traumatic stress disorder.

In June 2001, the Office accepted that appellant sustained an employment-related aggravation of a preexisting post-traumatic stress disorder. Regarding the work factors which had been accepted as compensable, the Office stated:

> "For a two-week period in October 1999, the claimant volunteered to serve as an acting supervisor while the actual supervisor was on vacation. The employees were working 12-hour days and were understaffed to handle the volume of mail coming in. There were outbursts and fights among the coworkers. On one particular shift, one [co]worker got particularly upset and the claimant went to her break and spoke to her. Later that shift, the [co]worker accused the claimant of hitting her. Other employees told the claimant that the [co]worker was telling them that the claimant grabbed her by the throat and tried to choke her. There were indications that the [co]worker later threatened to file a lawsuit but never actually did file. The claimant had to continue to work in the same facility with this coworker until June 2000.
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> "The [employing establishment] was generally understaffed due to turnover and employees were required to work 50 [to] 60 hours per week when below its full staffing level.
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> "The [p]ost [o]ffice got new machines and the first several months of implementation were difficult until the employees got a working knowledge of them and got the bugs out. The claimant was the only one who had had the prior experience with these machines and the supervisor relied on her to train others and run the machines. The office had no technical support or an electrical technician. The claimant had to sort plans but was not a systems analyst."[1]

Appellant received appropriate compensation for various periods of partial and total disability. She continued to be treated by Dr. Mimmack for post-traumatic stress disorder.[2] Appellant performed in several limited-duty positions at the employing establishment and Dr. Mimmack periodically adjusted the number of hours she could work according to the state of her emotional condition.

Appellant also received treatment from Dr. Roger Miller, a clinical psychologist and Dr. Paul Mascovich, a Board-certified psychiatrist. These physicians produced numerous reports detailing her emotional condition, including her continuing post-traumatic stress disorder. In a report dated February 15, 2004, Dr. Kenneth D. Krause, an attending Board-certified psychiatrist, who served as a second opinion physician, indicated that appellant's post-traumatic stress disorder continued to be aggravated by compensable work factors accepted by the Office.

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[1] The Office did not accept several claimed work factors, including appellant's claims that management forced her to skip breaks and lunches, that management threatened her with loss of her job if the mail did not get out on time and that the work facility was poorly managed. The Office also noted prior nonwork stressors such as when her exhusband severely assaulted her in 1993 and kidnapped their four-year-old daughter and difficulties she experienced with her 17-year-old daughter regarding illegal activities, truancy and substance abuse.

[2] Dr. Mimmack and other physicians also diagnosed major depressive disorder, but they predominately diagnosed post-traumatic stress disorder.

In May 2005, the Office referred appellant to Dr. Bert Furmansky, a Board-certified psychiatrist, for a second opinion regarding whether she continued to have residuals of her accepted emotional condition.

In a report dated July 27, 2005, Dr. Furmansky extensively discussed appellant's factual and medical history and performed a thorough review of the medical reports of record. He detailed the findings of his psychiatric evaluation of appellant. Dr. Furmansky diagnosed recurrent major depressive disorder, without psychosis and currently in remission on medication, history of alcohol abuse and history of post-traumatic stress disorder. He indicated that appellant denied any current symptoms of post-traumatic stress disorder in that she denied intrusive thoughts, nightmares, feelings of numbness or preoccupation regarding "her past traumas as well as her incidents at work" and that she currently did not fit the diagnostic parameters for post-traumatic stress disorder. Dr. Furmansky concluded that appellant no longer had an employment-related aggravation of her preexisting post-traumatic stress disorder.

Dr. Furmansky explained that the employment-related aggravation of her preexisting post-traumatic stress disorder was temporary rather than permanent. He indicated that appellant's preexisting post-traumatic stress disorder was caused by traumas in her personal life, including violent abuse from her mother and the father of her oldest child and an incident when her exhusband tried to kill her. Dr. Furmansky stated that the stresses from the work situation were minor in comparison and posited that appellant had returned to her baseline psychiatric condition. He indicated that appellant could perform the duties of her clerk position but recommended that she not work with Ms. Derby.

In a report dated August 11, 2005, Dr. Lowell Stratton, an attending Board-certified psychiatrist, stated that he concurred with the opinion of Dr. Furmansky.

By notice dated August 26, 2005, the Office advised appellant that it proposed to terminate appellant's compensation. The Office provided appellant with an opportunity to present evidence and argument showing that her employment-related condition had not ceased.

In a letter dated September 13, 2005, appellant argued that she continued to have an employment-related aggravation of post-traumatic stress disorder.

By decision dated October 3, 2005, the Office terminated appellant's compensation effective October 2, 2005 on the grounds that she no longer had residuals of her accepted employment injury after that date.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[3] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[4] The Office may not terminate compensation without establishing that the disability ceased or that it was no

[3] 5 U.S.C. §§ 8101-8193.

[4] *Charles E. Minniss,* 40 ECAB 708, 716 (1989); *Vivien L. Minor,* 37 ECAB 541, 546 (1986).

longer related to the employment.[5] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

ANALYSIS

In June 2001, the Office accepted that appellant sustained an employment-related aggravation of preexisting post-traumatic stress disorder. The Office paid compensation for periods of partial and total disability. By decision dated October 3, 2005, the Office terminated appellant's compensation effective October 2, 2005 based on the opinion of Dr. Furmansky, a Board-certified psychiatrist, who provided a second opinion.

The Board notes that the Office properly considered appellant's claims regarding work factors and correctly accepted that appellant established compensable work factors with regard to such matters as temporarily serving as a supervisor; being accused by Ms. Derby, a temporary supervisee, of assault; working in a chaotic environment with numerous fights; dealing with the problems of understaffing; and having the bear the brunt of working with new machines. Appellant submitted numerous statements of coworkers, which supported her claims in this regard. The record also contains medical evidence from Dr. Mimmack, an attending Board-certified psychologist and Dr. Leopoldt, a Board-certified psychiatrist, who provided a second opinion, which shows that appellant's emotional condition was related to accepted employment factors.[7]

The Board finds that the Office presented sufficient medical evidence to support the termination of appellant's compensation effective October 2, 2005 on the grounds that she had no residuals of her accepted employment injury after that date.

The Board has carefully reviewed the July 27, 2005 report of Dr. Furmansky and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Furmansky's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of

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[5] *Id.*

[6] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[7] Where disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors. This burden includes the submission of a detailed description of the employment factors or conditions, which the employee believes caused or adversely affected the condition or conditions for which compensation is claimed. When an employee establishes a compensable factor of employment, she must present medical evidence establishing that she sustained an emotional condition related to a compensable employment factor. *See Effie O. Morris*, 44 ECAB 470, 473-74 (1993); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[8]

Dr. Furmansky diagnosed recurrent major depressive disorder, without psychosis and currently in remission on medication, history of alcohol abuse and history of post-traumatic stress disorder. He indicated that appellant denied any current symptoms of post-traumatic stress disorder in that she denied intrusive thoughts, nightmares, feelings of numbness or preoccupation regarding "her past traumas as well as her incidents at work" and that she currently did not fit the diagnostic parameters for post-traumatic stress disorder. Dr. Furmansky concluded that appellant no longer had an employment-related aggravation of her preexisting post-traumatic stress disorder.

Dr. Furmansky provided medical rationale for his opinion by explaining that the employment-related aggravation of her preexisting post-traumatic stress disorder was temporary rather than permanent. He indicated that appellant's preexisting post-traumatic stress disorder was caused by violent traumas in her personal life and posited that appellant's stresses from the work situation, including the actions of Ms. Derby, were minor in comparison. Dr. Furmansky indicated that appellant could perform the duties of her clerk position and, although he recommended that she not work with Ms. Derby, he did not provide any indication that this recommendation was due to a continuing employment-related emotional condition.[9]

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective October 3, 2005 on the grounds that she no longer had residuals of her accepted employment injury after that date.

[8] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

[9] The Board notes that Dr. Furmansky's opinion is further supported by an August 11, 2005 report in which Dr. Stratton, an attending Board-certified psychiatrist, stated that he concurred with the opinion of Dr. Furmansky. There are no medical reports from around the time of the termination of appellant's compensation which indicate that she continued to have residuals of her employment-related emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 3, 2005 decision is affirmed.

Issued: June 15, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board