

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

SEDI L. GRAHAM, Appellant

and

**DEPARTMENT OF THE ARMY, PENTAGON,
Arlington, VA, Employer**

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**Docket No. 06-135
Issued: March 15, 2006**

Appearances:
Sedi L. Graham, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 24, 2005 appellant filed a timely appeal from the October 7, 2005 merit decision of the Office of Workers' Compensation Programs, which denied her claim that she sustained an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the denial of her claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on or after September 11, 2001.

FACTUAL HISTORY

On or about October 17, 2002 appellant, then a 48-year-old program analyst, filed a claim for compensation alleging that her depression, anxiety, sinus problems and asthma were the result of the September 11, 2001 attack on the Pentagon. She noted:

“On September 11, 2001 terrorists flew a plane into the Pentagon resulting in an explosion and fire and smoke. My workstation is 30 yards from the end of the impact area. On evacuation from building, immediate discomfort due to smoke.”

Appellant’s supervisor indicated that his knowledge of the facts agreed with appellant’s statement. He indicated that she was in the performance of duty.¹

In an attending physician’s form report dated October 25, 2002, Dr. Richard L. Roth, a psychiatrist, related the history of injury: “Events at Pentagon on September 11, 2001. Patient was a volunteer health care worker at Pentagon on September 11, 2001.” He noted that appellant had preexisting depression and post-traumatic stress disorder dating back to childhood. He diagnosed recurrent major depression, post-traumatic stress disorder and panic disorder. With an affirmative mark Dr. Roth indicated that appellant’s condition was caused or aggravated by an employment activity. He noted that appellant was totally disabled beginning October 16, 2002 and that her injury required hospitalization from October 18 to 25, 2002.

Additional form reports from other physicians provided similar information.

On November 25, 2002 the Office asked appellant to submit additional information, including details of her exposure. The Office also asked for additional medical evidence:

“Provide a comprehensive medical report from your treating psychologist/psychiatrist (board certified) which describes your symptoms; results of examinations and tests; diagnosis; the treatment provided; the effect of treatment; and the doctor’s opinion, with medical reasons, on the cause of your condition. Specifically, if your doctor feels that exposure or incidents in your [f]ederal employment contributed to your condition, an explanation of how such exposure contributed should be provided.

“Your physician must explain how exposure, which you claimed occurred over a year ago, aggravated your preexisting emotional [condition] but did not require immediate medical treatment. He/she must explain if the alleged work[-]related condition has resolved. If not he must explain how your current treatment varies from the treatment you received prior to the alleged work injury.”²

¹ On or about October 28, 2002 appellant filed a claim for an occupational disease or illness stemming from the same event.

² The Office sent a separate request for a comprehensive medical report on the claimed sinus and asthma conditions.

Appellant submitted a timeline of her symptoms. She also submitted reports from social workers.

On December 2, 2002 Dr. Roth stated that appellant's major depression and post-traumatic stress disorder were secondary to her experiences at the Pentagon on September 11, 2001. On December 24, 2002 Dr. Barry C. Gorman, a Board-certified psychiatrist, reported that appellant currently experienced clinical depression, post-traumatic stress and a severe panic disorder "precipitated and exacerbated by the trauma she experienced on September 11, 2001."

On February 19, 2003 Dr. Olimpia Rosario, a Board-certified psychiatrist, reported as follows:

"[Appellant] was first seen here on January 21, 2002, reporting low energy level, depressed mood, nightmares and decreased motivation after the loss of [two] coworkers in the terrorist attack at the Pentagon on 9-11. She stated within the [five] weeks prior to her appointment these symptoms were progressively getting worse with increasing anxiety, flashbacks of the event; and being easily startled. She is diagnosed with [p]ost[-]traumatic [s]tress [d]isorder and [m]ajor [d]epressive [d]isorder. Her medications at the time (Paxil) provided no relief since it was prescribed September 2002. [sic] It was therefore discontinued and Effexor given at 112mg/day, controlling her symptoms fairly well for [three] months. She then began to decompensate, her anxiety worsened with panic like episodes. Though these symptoms improved on Klonopin her mood deteriorated reporting vague suicidal thoughts, social withdrawal and missing work. Effexor was titrated to 225mg/day and Wellbutrin was added as augmentation. During our last visit on July 23, 2002 minimal improvement was reported. She then decided to seek treatment elsewhere. Her prognosis given her response to treatment (though other pharmacological strategies and interventions were not implemented) is guarded."

In a decision dated February 25, 2003, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that the conditions for which she claimed compensation were causally related to "the employment factor." The Office noted that Dr. Gorman failed to provide a detailed evaluation or history of appellant's conditions. The Office noted that Dr. Roth failed to provide a detailed account of appellant's evaluation and treatment and that hospital records were not provided. The Office further noted the lack of medical records for appellant's preexisting emotional conditions.

Appellant requested reconsideration. She submitted many medical records from before and after September 11, 2001. In February, March and April 2003, Dr. John W. Wires, a clinical and neuropsychologist, conducted a neuropsychological assessment. He related appellant's

history of trauma since childhood and recounted her experiences on and after September 11, 2001. After making behavioral observations and reporting the results of testing, Dr. Wires offered the following summary:

“[Appellant] is a 49[-]year[-]old Caucasian female with a history of trauma, dysfunctional personality traits, mood disorder and past history of addiction. Her current cognitive weaknesses cannot be attributed primarily to her most recent trauma. It is likely that her current difficulties represent a combination of premorbid trauma and personality disorder combined with the effects of her most recent trauma. Immediately, after her most recent trauma, she describes herself as having functioned at a highly productive manner. However, her readjustment to the routine aspects of work was not successful. Therefore, it is likely that pretrauma adjustment difficulties are influencing her current difficulties. In addition, the manner in which she reported exaggerated symptoms and her extreme lateness for two of the three sessions, suggests a lack of control over her cognitive and behavioral processes.”

In a report dated February 23, 2004, Dr. Gorman addressed appellant’s claim for compensation:

“During the period since October 2002, [appellant] has been either unable to work or has worked at a reduced schedule as a result of post-traumatic stress from the aftereffects of being present at the Pentagon on September 11, 2001. Those aftereffects included the daily workplace reminders of the attack for the following [13] months, including the recurrent exposure to the airplane gasoline fumes, soot falling on all surfaces, devastation to the building itself, remembrance of friends and colleagues she lost and her inability to overcome the [a]cute [s]tress one would normally experience after a traumatic event. Her ability to perform her job adequately began to gradually decline until it abruptly ended on October 21, 2002.

“I began seeing [appellant] on November 11, 2002 and have seen her at varying intervals since then, monitoring her progress, assessing and determining the appropriate medication for her and working with her psychotherapist and other health care professionals in assessing [her] progress and status regarding her medical condition and capability of returning to work.”

Dr. Gorman related appellant’s work history prior to September 11, 2001, from September 11, 2001 to October 21, 2002 and from October 2002 until her partial return to work in October 2003, including her current work status. He reviewed appellant’s long-term medical history from childhood and early adulthood until September 11, 2001, as well as her medical history after September 11, 2001. Dr. Gorman described appellant’s course of treatment and discussed in some detail the nature of post-traumatic stress disorder. He then offered the following medical conclusions:

“The trauma from witnessing the scene at the Pentagon on September 11, 2001, assisting colleagues who were physically injured on that day and from returning to the same work site for [13] months after September 11, 2001, crumbled

[appellant's] ability to cope with events in present time. As this ability to cope disintegrated so did her ability to compartmentalize any stressful experience. Of special significance here is her acute awareness that she was increasingly unable to do her job and her fear of telling her boss she could n[ot] 'measure up.' Her well-defended anxiety began to overwhelm her and she began to have increasingly unmanageable bouts of panic and feelings of helplessness, which led to depressive symptomatology. After the anniversary of September 11, 2001 passed her deterioration accelerated and led to the final collapse and her complete inability to function at work.

“[Appellant's] previous emotional difficulties had not interfered with her work performance, even when she was being medicated for depression and anxiety. One can see that from 1988-1994 [she] received promotions from GS-9 to GS-13 and had exceptional fitness reports.

“Given the fact that [appellant] had been living a well-adjusted life for 13 years prior to the September 11[, 2001] attack, it is not a coincidence of timing that her symptoms emerged after experiencing this tragedy. Rather, it is the very fact that she witnessed this tragedy at work and that she faced the reminder of the tragedy every day she continued to work in the months thereafter that caused her symptoms and her emotional difficulties to finally lead to collapse.

“It is common for the type of emotional stress that ultimately caused [appellant] to be unable to work to not fully manifest itself to the point where it prevents the individual from working until many months after the main traumatic event; that is why her condition is called post-traumatic stress disorder. Most people, with support and an entrenched feeling of renewed safety, can move on from a stressful experience without developing post-traumatic symptomatology. The fact that [appellant] could continue to work at all after September 11[, 2001] shows evidence of her ability to cope effectively; parenthetically speaking, her ability to defend against her increasing anxiety may have become a liability instead of a strength, as people would ask 'why now?; why is she saying this problem is related to September 11[, 2001]; after all, that was 13 months ago.'

“In summary, it is my opinion that it is a reasonable medical certainty that [appellant's] inability to work did not just coincidentally emerge during a random time period while working at the Pentagon. Rather, the symptoms themselves were a direct result of experiencing and in some ways daily reexperiencing the tragic events of September 11[, 2001]. No one disputes that she was vulnerable to [post-traumatic stress disorder]; any person who undergoes any traumatic experience is weakened in some way, but the extraordinary events of September 11[, 2001] and the following [13] months caused [appellant] to completely lose all coping ability.” (Emphasis in the original.)

On December 4, 2002 Dr. Frank P. Ciampi, appellant's family practitioner, also supported a causal relationship, stating:

"I am writing in reference to [appellant's] severe anxiety and post[-]traumatic stress disorder after her experiences at the Pentagon on Sept[ember] 11, 2001. I first saw [her] on Sept[ember] 17, 2001 for reevaluation of her left foot contusion/sprain from Sept[ember] 11, 2001. Her baseline anxiety disorder was exacerbated by the events and emotional trauma. Over the succeeding months she required additional psychiatric medications and more intensive therapy. She is still having frequent panic attacks requiring close monitoring by her therapist and psychiatrist. As her primary care physician I feel [appellant] is suffering from 'post[-]traumatic stress disorder' with labile panic attacks. She is not fit for work at this time, but will hopefully improve with intensive psychiatric intervention. If you have any questions do not hesitate to contact me."

In a decision dated May 6, 2004, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office acknowledged but did not review Dr. Gorman's February 23, 2004 report. The Office stated that it was significant that the new medical evidence did not include copies of appellant's medical records for her preexisting emotional condition or copies of the hospital records covering her stay as an inpatient at Dominion Hospital from October 22 to 27, 2002. The Office noted that appellant filed her claim as a result of the September 11, 2001 attack on the Pentagon, but Dr. Gorman reported that she experienced a severe panic attack at work on October 21, 2002 when her supervisor told her that he was dissatisfied with her work and was going to write her up. The Office found that the hospital records were crucial to establishing appellant's claim and that given her preexisting emotional conditions, the records were needed "in order to further establish the work factors were causally related to your emotional condition." The Office further found that the evidence of record did not support that appellant sustained an asthma or sinus condition causally related to her employment.

Appellant submitted the Dominion Hospital records to which the Office referred. A psychosocial assessment described the precipitant or stressor: "Suicidal tendencies, unable to function. Panic attacks causing blackouts, suffered severe trauma in childhood, childhood trauma reactivated by trauma induced by the Pentagon events of September 11[, 2001]. Lost two friends in the attack and assisted in the care of the wounded."

In a decision dated August 23, 2004, the Office reviewed the merits of appellant's case and denied modification of its prior decision. Although the Office found that the hospitalization records supported that appellant had post-traumatic stress disorder due to multiple traumatic incidents, the Office stated that these records did not support that the September 11, 2001 incident caused appellant's emotional problem. The Office placed some significance on her reaction to a man across the hall from her, whom she feared from the way he looked at her. The Office also placed some significance on appellant's reaction to seeing a Middle Eastern or Asian man upon her November 5, 2002 hospitalization.

Appellant requested reconsideration. She submitted a May 17, 2005 report from Dr. Gorman, who described her current medical and work status.

In a decision dated October 7, 2005, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that Dr. Gorman's May 17, 2005 report lacked any opinion on causality. In addition, the Office stated that his report noted no preexisting or contemporaneous history, indicating a lack of complete and accurate history of the claimed incident or injury. The Office found, upon full review of the record, no causal connection evidence. The Office also found that the excessive delay in reporting the injury and filing the claim diminished both the validity of current medical reports and the validity of her claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.⁴

Causal relationship is a medical issue,⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

ANALYSIS

The Office does not dispute appellant's account of events on September 11, 2001 and the employing establishment did not controvert her claim. Her supervisor reported that his knowledge of the facts agreed with appellant's statement. The Board finds that the first

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

component of fact of injury is resolved in appellant's favor as supportable on the record.⁹ The question for determination is whether the events of September 11, 2001 and the subsequent reminders appellant encountered at work caused or contributed to the physical or emotional conditions for which she now seeks compensation.

Appellant alleged that her sinus problems and asthma were the result of the September 11, 2001 attack on the Pentagon. She alleged that on evacuation from the building she had immediate discomfort due to smoke. But there is no medical opinion in the record attributing any diagnosed respiratory condition to her occupational exposure to smoke, soot or fumes. On December 4, 2002 appellant's family practitioner, Dr. Ciampi, reported that he first saw her on September 17, 2001 for a reevaluation of her left foot contusion and sprain from September 11, 2001. He stated that her baseline anxiety disorder was exacerbated by the events and emotional trauma and that she was suffering from post-traumatic stress disorder with labile panic attacks, but he made no mention of sinus problems or asthma. Because the record contains no medical opinion explaining how specific events or exposures at work caused or aggravated a diagnosed sinus or asthma condition, the Board finds that appellant has not met her burden of proof to establish that she sustained a respiratory injury in the performance of duty. The Board will affirm the Office's October 7, 2005 decision with respect to the claimed sinus and asthma conditions.

The record does contain a reasoned medical opinion explaining how specific events or exposures at work caused or aggravated appellant's post-traumatic stress disorder, the central injury on which her claim is based.¹⁰ In a February 23, 2004 report, Dr. Gorman, a Board-certified psychiatrist, explained how witnessing the tragedy at work, assisting colleagues who were physically injured on that day and facing reminders of the tragedy everyday she continued to work in the months thereafter -- including her recurrent exposure to the fumes of airplane fuel, soot falling on all surfaces, devastation to the building itself, remembrance of friends and colleagues she lost -- caused an inability to overcome the acute stress one would normally experience after a traumatic event. He explained how this led to a gradual decline in appellant's ability to perform her job and of her ability to cope, including her ability to compartmentalize any stressful experience. He reported that appellant's well-defended anxiety began to overwhelm her; she began to have increasingly unmanageable bouts of panic and feelings of helplessness, which led to depressive symptomatology. He stated that her deterioration accelerated after the anniversary of September 11, 2001 and eventually led to a collapse in October 2002.

⁹ *Arietta K. Cooper*, 5 ECAB 11 (1952) (failure of the Bureau to make a finding upon operative facts may allow the Board, on review, to find the operative facts implicitly resolved in claimant's favor when such operative facts are precedent or preliminary facts to the finding upon which the rejection is based and such conclusion is supportable on the record); see *Caroline Thomas*, 51 ECAB 451 (2000) (an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence).

¹⁰ Medical form reports and narrative statements merely asserting causal relationship cannot discharge appellant's burden of proof. When a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship. *E.g.*, *Lillian M. Jones*, 34 ECAB 379 (1982). Further, the reports of a social worker do not constitute competent medical evidence, as a social worker is not a "physician" as defined by section 8101(2) of the Act. *Ernest St. Pierre*, 51 ECAB 623 (2000).

Dr. Gorman's opinion is well reasoned. He noted that appellant's previous emotional difficulties had not interfered with her work performance, even when she was being medicated for depression and anxiety. It was not a coincidence of timing, he explained, that her symptoms emerged after experiencing the events of September 11, 2001. Dr. Gorman discussed at some length the nature of post-traumatic stress disorder and how the particular facts in appellant's case supported the diagnosis. He pointed out that appellant was vulnerable to post-traumatic stress disorder. He explained that any person who undergoes any traumatic experience is weakened in some way, but the events of September 11, 2001 and the following 13 months were extraordinary, causing appellant to lose all ability to cope.

Dr. Gorman based his opinion on an accurate factual and medical background. He offered a comprehensive review of appellant's history, including her work history both before and after September 11, 2001. He described a long-term medical history significant for prior trauma and he detailed appellant's medical care after September 11, 2001.

This is a substantial and probative medical opinion, one that establishes the essential element of causal relationship. Dr. Gorman based his opinion on a complete factual and medical background, expressed his opinion with reasonable medical certainty and supported his opinion with medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment. Dr. Gorman demonstrated that his conclusion is rational, sound and logical. Further, there is no medical opinion to the contrary. The Board finds that the clear weight of the medical evidence establishes that appellant sustained post-traumatic stress disorder in the performance of duty and will reverse this part of the Office's October 7, 2005 decision.

The Office denied appellant's claim in part because she failed to submit the records of her preexisting emotional condition. Dr. Gorman reported, however, that appellant was under no psychiatric care or psychiatric medications for at least 13 years prior to September 11, 2001. The Office has not made the case that such distant records -- never mind the practical difficulties of retrieving them -- are necessary for a probative opinion on causal relationship. Dr. Gorman directly related appellant's post-traumatic stress disorder to the fact that she witnessed the tragedy at work and faced the reminder of that tragedy every day she continued to work in the months thereafter. The absence of prior medical records that might document her vulnerability to the disorder in no way suggests that the events and aftermath of September 11, 2001 were not themselves competent producing factors of appellant's diagnosis. The Board finds that appellant's failure to produce these records is insubstantial and constitutes no basis for denying her claim for compensation.

The Office raised a late objection that appellant excessively delayed in reporting the injury and filing her claim. The Board finds no excessive delay or inconsistency casting serious doubt on the validity of her claim.¹¹ The incident, of course, occurred as alleged. Appellant's statements are consistent with the surrounding facts and her subsequent course of action. Dr. Rosario's February 19, 2003 report shows that when appellant's symptoms began to worsen in December 2001, she sought rather prompt psychiatric care for low energy, depressed mood,

¹¹ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). See also *George W. Glavis*, 5 ECAB 363 (1953).

nightmares and decreased motivation after the loss of two coworkers on September 11, 2001. When appellant last saw Dr. Rosario on July 23, 2002, she reported minimal improvement. But as Dr. Gorman explained, it is common for this type of emotional stress not to manifest itself fully until many months after the main traumatic event. Appellant's ability to cope began to deteriorate, he reported, especially after the anniversary of September 11, 2001, until she finally collapsed and was hospitalized in October 2002. That appellant filed her claim for compensation contemporaneous with her collapse is reasonable under the circumstances and is no basis for discounting either the validity of her claim or the probative value of the supporting medical opinion evidence.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a sinus or asthma condition in the performance of duty on or after September 11, 2001. The Board further finds that the weight of the medical evidence establishes that appellant sustained a post-traumatic stress disorder in the performance of duty. The Board will reverse the Office's decision in this regard and remand the case for a determination of appellant's entitlement to compensation for wage loss and medical expenses.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2005 decision of the Office of Workers' Compensation Programs is affirmed with respect to the claimed sinus and asthma conditions and is reversed with respect to the claimed post-traumatic stress disorder. The case is remanded for further action consistent with this opinion.

Issued: March 15, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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