

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

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**W.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Summerfield, FL, Employer**

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**Docket No. 06-2056  
Issued: April 11, 2007**

*Appearances:*

*Capp P. Taylor, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 6, 2006 appellant, through counsel, filed a timely appeal of a May 30, 2006 merit decision of an Office of Workers' Compensation Programs' hearing representative denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on or after June 13, 2002 causally related to her accepted employment-related emotional condition.

**FACTUAL HISTORY**

On September 27, 2001 appellant, then a 54-year-old distribution window clerk, filed an occupational disease claim. She alleged that on July 6, 2001 she first became aware of her aggravation of major depression with recurrent moderately severe symptoms. Appellant further alleged that on August 20, 2001 she first realized that her condition was caused by her federal employment. In a statement of accepted facts, the Office found that a comment made by Cindy

Glaze, appellant's coworker, that appellant was greedy in demanding 40 hours per week when a part-time flexible distribution clerk was only guaranteed 2 hours per day which appellant knew when she accepted the position, constituted a compensable factor of employment. By letter dated June 7, 2002, the Office accepted appellant's claim for a single episode of aggravation of major depressive disorder which was in complete remission based on the April 24 and May 9, 2002 medical reports of Dr. Bala Rao, a Board-certified psychiatrist and Office referral physician, who opined that the accepted employment factor contributed to appellant's emotional condition.

On July 24, 2002 appellant filed a claim (Form CA-7), for wage-loss compensation during the period July 21 through September 29, 2001 to "ongoing." On the claim form the employing establishment stated that she was currently temporarily totally disabled. A leave analysis report indicated that appellant worked 16.12 hours during the week June 8 through 14, 2002 and received leave pay thereafter, through August 16, 2002. A June 13, 2002 medical report of Dr. Walter E. Afield, an attending Board-certified psychiatrist, stated that appellant was unable to work minimally for 60 days and may never be able to return to work.

By letter dated October 15, 2002, the Office issued a notice of proposed termination of appellant's compensation based on Dr. Rao's April 24 and September 19, 2002 reports. The medical evidence established that her accepted employment-related emotional condition had ceased as of April 24, 2002. The Office provided 30 days in which appellant could respond to this notice.

By decision dated December 9, 2002, the Office terminated appellant's compensation benefits on the grounds that she no longer had any employment-related residuals or disability. The Office found that Dr. Rao's April 24 and September 19, 2002 reports constituted the weight of the medical opinion evidence in establishing that appellant's employment-related residuals or disability ceased no later than April 24, 2002. In a letter dated December 13, 2002, appellant, through counsel, requested an oral hearing before an Office hearing representative.

In a decision issued May 2, 2003, a hearing representative set aside the December 9, 2002 decision and remanded the case to the Office. He found that Dr. Rao's reports were insufficient to establish that appellant's employment-related emotional condition had ceased as he did not address whether her disability beginning on June 13, 2002 was caused by the accepted employment factor. The hearing representative, however, found that Dr. Afield's September 16 and 30 and December 2, 2002 and January 20 and March 7, 2003 reports, which found that appellant continued to be disabled due to her employment-related emotional condition, were insufficient to establish her claim, but sufficient to require the Office to further develop the medical evidence. On remand the hearing representative instructed the Office to prepare a new statement of accepted facts and refer appellant to another Board-certified psychiatrist for a second opinion medical examination.

By letter dated August 6, 2003, the Office referred appellant, together with a new statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Harish Kher, a Board-certified psychiatrist, for a second opinion medical examination.

In an August 21, 2003 report, Dr. Kher described appellant's history of injury, medical treatment and family and social background. He reported normal findings on clinical and mental examination which included her good attention and concentration and ability to do Serial 7's up to 30 without any difficulty. Dr. Kher noted that appellant was somewhat melodramatic and overemphasized her "psychiatric illness." Appellant seemed rather preoccupied with the incident in question. Dr. Kher diagnosed major depressive disorder that was under remission. He opined that appellant's current emotional condition was not causally related to the accepted employment-related factor. Dr. Kher stated that clinical depression had a multifactorial etiology and biological and psychosocial stressors. He indicated that it was very unlikely that one negative statement by a coworker would bring on clinical depression. Dr. Kher related that, as human beings, we interact with different kinds of people, noting some are accepting and some are not so accepting of others. He found it hard to believe that one negative statement by an individual would overwhelm appellant to a point where she would have a clinical psychiatric condition, *i.e.*, depression. Dr. Kher opined that, from a psychiatric standpoint, appellant was not disabled from work. He stated that she could return to any type of work including her regular work duties.

By decision dated September 9, 2003, the Office found that appellant did not sustain a recurrence of disability on or after June 13, 2002 causally related to her accepted employment-related emotional condition. It found that Dr. Kher's August 21, 2003 report constituted the weight of the medical opinion evidence. In a September 15, 2003 letter, appellant, through her attorney, requested an oral hearing.

By decision dated November 9, 2004, a hearing representative set aside the September 9, 2003 decision and remanded the case to the Office. The hearing representative found that Dr. Kher's August 21, 2003 report failed to address whether appellant sustained a recurrence of disability on or after June 13, 2002 causally related to her employment-related emotional condition. On remand the hearing representative instructed the Office to obtain a supplemental report from Dr. Kher, addressing whether appellant's claimed recurrence of disability was due to her accepted employment injury.

In a January 17, 2005 report, Dr. Kher stated:

"In my opinion, within a reasonable degree of medical certainty, [appellant] has not experienced a recurrence of "[m]ajor [d]epressive [d]isorder." In my opinion her symptoms have remained under remission. Based on my previous evaluation and the current evaluation, my impression remains that [appellant] tends to overemphasize her "psychiatric illness." During my previous evaluation she was rather vague and evasive in somewhat of a self-serving manner. [Appellant] indicated that she had not been on any psychotropic medications. She specifically denied being on any antidepressant. As [appellant] indicated, she had not felt any difference whether she was on an antidepressant or not. As she put it, "it does not make any difference whether I'm on or off of the medicines." There were no objective findings confirming her subjective symptoms. For example, [appellant] complained of low energy level, however, during this evaluation she did not exhibit any psychomotor retardation. She did not exhibit any change in her concentration as evidenced by her ability to do Serial 7's well without any

difficulty. From what [appellant] described, she has been able to function well at home, *i.e.*, is able to engage in pleasurable activities as evidenced by her reported statement of going out to eat with her husband frequently and her interest in reading and working on puzzles, both of which require concentration. Again, I would like to emphasize that her subjective symptoms of “depression” are not supported by objective findings.”

By decision dated March 8, 2005, the Office found that appellant did not have any residuals or disability on or after June 13, 2002 causally related to her employment-related emotional condition. Dr. Kher’s opinion constituted the weight of the medical opinion evidence. On March 15, 2005 appellant, through her attorney, requested an oral hearing.

By decision dated May 30, 2006, a hearing representative found that appellant did not sustain a recurrence of disability beginning June 13, 2002 causally related to her employment-related emotional condition. The hearing representative accorded determinative weight to Dr. Kher’s medical opinion.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>1</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.<sup>2</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.<sup>3</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.<sup>4</sup> Moreover, the physician’s conclusion must be supported by sound medical reasoning.<sup>5</sup>

### **ANALYSIS**

In a report dated August 21, 2003, Dr. Kher, an Office referral physician, reviewed the evidence of record to determine whether appellant sustained a recurrence of disability on or after

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<sup>1</sup> 20 C.F.R. § 10.5(x).

<sup>2</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>3</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>4</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>5</sup> *Alfredo Rodriquez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

June 13, 2002 causally related to her accepted employment-related aggravation of major depressive disorder. He reported normal findings on clinical and mental examination, which included appellant's good attention and concentration and ability to do Serial 7's up to 30 without any difficulty. Dr. Kher stated that appellant was somewhat melodramatic and overemphasized her "psychiatric illness." He further stated that she seemed rather preoccupied with the incident in question. Dr. Kher diagnosed major depressive disorder that was under remission. He opined that appellant's current emotional condition was not causally related to the accepted employment-related factor. Dr. Kher explained that clinical depression had a multifactorial etiology and biological and psychosocial stressors. He indicated that it was very unlikely that one negative statement by a coworker would bring on clinical depression. Dr. Kher related that, as human beings, we interact with different kinds of people, indicating that some are accepting and some are not so accepting of others. He found it hard to believe that one negative statement by an individual would overwhelm appellant to a point where she would have sustained clinical depression. Dr. Kher opined that, from a psychiatric standpoint, appellant was not disabled from work. He stated that she could return to any type of work including her regular work duties.

In a supplemental report dated January 17, 2005, Dr. Kher opined that appellant had not experienced a recurrence of her employment-related major depressive disorder. He further opined that her symptoms were in remission. Dr. Kher stated that, based on his previous and current evaluations, his impression that appellant overemphasized her psychiatric illness remained the same. He found no objective findings confirming appellant's subjective symptoms. Dr. Kher indicated that she complained of a low energy level but did not exhibit any psychomotor retardation during his evaluation. In addition, he indicated that appellant did not exhibit any change in her concentration as she was able to do Serial 7's well without any difficulty. Dr. Kher noted that she was able to function well at home by engaging in pleasurable activities such as, eating out with her husband frequently and reading and working on puzzles which required concentration. He concluded that appellant's subjective symptoms of depression were not supported by objective findings.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>6</sup> Dr. Kher fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any continuing employment-related residuals or disability and, thus, she did not sustain a recurrence of total disability due to her accepted employment-related condition. The Board, therefore, finds that Dr. Kher's opinion is detailed, well rationalized and based upon a complete and accurate history. His opinion represents the weight of the medical evidence in finding that appellant did not sustain a recurrence of disability on or after June 13, 2002 causally related to her employment-related aggravation of major depressive disorder.

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<sup>6</sup> See *Ann C. Leanza*, 48 ECAB 115 (1996).

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on or after June 13, 2002 causally related to her accepted employment-related emotional condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board