U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON A. GREEN and U.S. POSTAL SERVICE,
INJURY COMPENSATION OFFICE, Pasadena, CA

*Docket No. 00-2355; Submitted on the Record;*
*Issued April 10, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective July 17, 1998.

On November 28, 1988 appellant, then a 49-year-old injury compensation specialist, filed a claim for an emotional condition sustained in the performance of duty. Appellant alleged that she developed high blood pressure and depression as a result of job stress. The claim was accepted for major depression. Appellant stopped work and was placed on the periodic rolls.

The Office authorized psychiatric care for appellant's emotional condition with Dr. M. Joel Scheinbaum, a Board-certified psychiatrist, who found that appellant was temporarily disabled due to depression for which he prescribed psychotherapy.

On August 15, 1993 the Office referred appellant for a second opinion evaluation with Dr. Shirley G. Geller, a licensed psychologist. In a May 1993 report, Dr. Geller diagnosed that appellant suffered from severe depression further complicated by a stroke. She recommended that appellant begin twice a week psychotherapy with her associate, Dr. Susan Rice, who was also a licensed psychologist. The Office authorized the treatment plan with Dr. Rice and appellant remained in disability status.

In a report dated August 1, 1995, Dr. Stewart Bell, a Board-certified psychiatrist, indicated that he had examined appellant at the request of Dr. Rice in order to increase her medication. Dr. Bell stated that it was possible that appellant's depressive symptoms could resolve within another 9 to 12 months of treatment with a combination of therapy and medications.

In a November 24, 1996 report, Dr. Bell noted that appellant had been seen for followup on new medication and seemed to be responding well with manageable side effects. He noted that appellant had previously received treatment with six other antidepressants with no benefit or

undesirable side effects. Dr. Bell stated, however, that appellant's "score on a psychological test to date, the Beck Depression Inventory, was still in the moderately depressed range."

In a report dated March 5, 1997, Dr Rice continued total disability from work and reported appellant's prognosis of a return to any employment to be poor.

On March 11, 1997 the Office referred the claimant for a second opinion examination with Dr. David Bedrin, a Board-certified psychiatrist and neurologist. In a report dated April 25, 1997, Dr. Bedrin noted that appellant's medical history revealed that she had outpatient mental health treatment, which began "three to four years ago." He described appellant as vague about the source of her mental problems, citing racism, sexual harassment and being unable to satisfy the work requirements of her supervisor. Dr. Bedrin noted that appellant suffered a second stroke in 1992 that caused loss of concentration and difficulty with her motor skills. He also noted that appellant complained of having economic problems. Dr. Bedrin diagnosed depressive disorder and the possibility of a personality disorder based on the results of the April 16, 1997 Minnesota Multiphasic Personality Inventory (MMPI) test.[1] He stated, however, that based on his examination appellant's mental state was entirely within normal limits. Dr. Bedrin concluded, "The patient's cognitive functioning is within normal limits. I do not believe there is any work-related disability that would prevent the claimant from returning to her position as an injury compensation specialist."

On December 15, 1997 the Office issued a notice of proposed termination of compensation, finding that the weight of the medical evidence established that appellant had no continuing disability as a result of work-related depression.

In a report dated January 9, 1998, Dr. Alexander Beebee, a Board-certified psychiatrist, advised that appellant had been under his care since April 16, 1997. Dr. Beebee discussed appellant's work history and course of medical problems including depression and unstable hypertension aggravated by work stress. He indicated that appellant's emotional state worsened following a stroke in 1994 and 1995, which left her with serious memory problems and cognitive impairments. Dr. Beebee stated:

> "[Appellant] recently had a medical evaluation with a psychiatrist related to her disability status. He claimed she was no longer depressed and was fit to return to work. On this basis her disability payments are now being stopped and she is instructed to return to work. This assessment was done with no psychological testing, which would show serious impairments in her cognitive and emotional functioning."

Dr. Beebee advised that appellant was depressed and opined that she could not be deemed functional in the absence of objective neuropsychological testing.

[1] MMPI testing was administered by Dr. Jiliann Daly on April 16, 1997 who rendered a report dated Apri1 22, 1997. Dr. Daly reports that the claimant was unable to complete the test. She felt the test was not valid because appellant omitted 233 of the 566 questions. However, evaluating the test scores in a qualitative manner, Dr. Daly believed that appellant exaggerated the intensity of her psychological distress, overemphasized and over-reported her physical difficulties. She stated that the patient's performance suggested the presence of a paranoid ideation.

In a report dated January 12, 1998, Dr. Rice responded to the second opinion report from Dr. Bedrin. Dr. Rice related that appellant could not complete all the answers because she was placed in a noisy room and had reservations about her confidentiality in that situation. She stated, "[t]he clinical claim that she is not depressed or impaired and capable of returning to work is appalling."

The Office determined that a conflict existed in the medical opinion evidence and referred appellant for an impartial medical evaluation with Dr. Jonathon P. Rosman, a Board-certified psychologist.

Appellant was refused by Dr. Rosman for psychological testing. A February 27, 1998 MMPI II test was administered on February 27, 1998 in conjunction with the examination. The results showed an extremely elevated F-score, but that appellant appeared to understand the item content which Dr. James N. Butcher, the test administrator, considered to be descriptive of her functioning symptoms. Dr. Butcher states, "she has claimed many more psychological symptoms than most patients do." This raised the issue of exaggerating her symptoms in order to win her case. The alternative was that her extreme responding "resulted from unusually severe psychological problems." He found that appellant was "quite depressed at this time and feels very inadequate and pessimistic." However, "her anger and resentment may result partly from her chronic tendency to misunderstand the motives of others." Dr. Butcher felt that any paranoid personality fractures "are likely to persist. She is somewhat angry at others, feeling that they have banned her and are partially responsible for her present depression. She is described as "mistrustful, shy and introverted." Also, "her very high score on the marital distress scale suggested her marital situation is quite problematic at this time." In his psychiatric diagnosis, significant were AXIS I: Mood disorder due to multiple cerebral infarctions, with major depressive-like episode. Also, AXIS IV: Severe stress of impaired memory and cognitive functioning; severe stress of unemployment; moderately severe stress of ongoing workers' compensation case.

In a March 15, 1998 report, Dr. Rosman reported having examined appellant on February 2 and March 4, 1998 for a total of 3 hours and 45 minutes. He opined with reasonable medical certainty that appellant suffered from a mood disorder as a result of the strokes that she had suffered. Dr. Rosman found that this major disorder had the features of a major depressive episode, in that she exhibited multiple symptoms consistent with the clinical features of a major depression. These include depressed mood, tearfulness, lack of energy and fatigue, loss of motivation and withdrawal, feelings of worthlessness and poor self-esteem and poor concentration. He was also of the opinion that she suffered from a major depressive episode around the time that she went on disability in 1988. Dr. Rosman noted that, while appellant had been diagnosed with post-traumatic stress disorder following a work incident where she was threatened by an individual, appellant appeared to have recovered from that condition as she continued to work and achieved top ratings for her job performance in the years following the incident. Dr. Rosman opined that appellant's original major depressive episode around 1988 was related to factors of employment, including an extremely stressful workload and disagreements and conflicts with persons at work. He opined that nonemployment factors also played a role in her depression. Dr. Rosman explained that, in most cases of essential hypertension, the etiology is unknown and not specifically related to any environmental factor such as stress. He reiterated the numerous other stressors affected her life during 1988; these included loss of a family

member, some difficulties with attention deficit disorder in her son requiring family counseling, the process of adoption of her third son, disciplinary actions regarding her husband and the job and how this affected her vis-a-vis her coworkers view of her and carpal tunnel symptoms during 1988. Additionally, she elected to place her son in a private school, which caused her to have scheduling difficulties.

Dr. Rosman stated:

> "I do not believe that her current [depression] episode results from work factors. My reasons are as follows--
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> > 'The claimant's major depression showed the ability to respond to treatment. The claimant herself states that during the time she was treated by Dr. Lloyd E. Northrup, appellant's attending psychologist, which would have been a year or two after going off on disability, she had felt well enough to be able to return to work. However, it was Dr. Northrup who felt that she was still too symptomatic and had to be deconditioned from the stressors before she could accept an alternative employment away from the people that she felt were harassing her. Whether or not she indeed was ready to return to work at that time, it indicated a willingness on her part and also significant improvement in her symptoms.'"

Dr. Rosman went on to explain the cumulative symptoms the claimant has undergone since her strokes, such as, impairment of her hand, sense of self-esteem and self-worth, memory problems and difficulties in performance, difficulties with visual spatial tasks (including reading), left her significantly crippled in her mental and physical capabilities. These factors resulted in her current depressive-like symptoms. Dr. Rosman noted that appellant acknowledged that, if it was not for the effects of the stroke, she would not be feeling nearly as bad and she related most of her current psychiatric symptoms to her inability to function on a physical level.

Dr. Rosman pointed out that the claimant's theory of causation was that the factors of employment caused her hypertension and hypertensive headaches, which led to her strokes, which led to her current disability. He found several flaws to this argument; noting that appellant's hypertension predated the main aspects of her work stress and was probably essential in nature and, therefore, unrelated to any environmental stresses. Appellant's computerized tomography (CT) scans suggested that her strokes were of the kind that are not usually associated with hypertensive cardiovascular disease and her second stroke in 1995 was not associated with hypertension.[2] Although a specific cause of her strokes has not been identified, there was no clear evidence that would suggest that her strokes were the result of her hypertension or that her hypertension was a result of environmental (including work) stresses.

[2] Dr. Rosman discussed the results of appellant's CT scans and opined that the nature of appellant's strokes was not consistent with mere hypertension. He noted that appellant's strokes appeared in multiple areas of the brain and were no just confined to a singe vessel, the most common finding for hypertensive strokes. Dr. Rosman suggested that appellant was at risk for strokes given her heavy smoking history.

He concluded that appellant continued to suffer from a depressive condition " which I believe is as a result of multiple strokes that have nothing to do with work-related factors of employment."

In a decision dated July 17, 1998, the Office terminated appellant's compensation.

By letter dated August 9, 1998, which was date stamped as received by the Office on August 24, 1998 appellant requested an oral hearing.

In a September 23, 1998 decision, the Office determined that appellant's hearing request was untimely and that the issue in the case could be equally addressed through the reconsideration process.

On July 16, 1999 appellant requested reconsideration, submitting a 19-page attorney statement and a medical report from Dr. Beebee dated July 15, 1999.

Dr. Beebee's July 15, 1999 report responded to the report of Dr. Rosman. Dr. Beebee discussed appellant's medical and past psychiatric history and reviewed the medical record and a statement of accepted facts. He reported that appellant suffered from a depressive condition since 1988 which had never resolved. Dr. Beebee agreed with Dr. Rosman's assessment that the biggest factor in appellant's disability and depression has been the sequalae of her strokes. Dr. Beebee opined, however, that the strokes were work related.

In a March 29, 2000 decision, the Office denied modification of the July 17, 1998 decision.

The Board finds that the Office properly terminated appellant's compensation effective July 17, 1998.

The Office properly found that a conflict existed in the medical record as to whether appellant had any continuing disability or residuals due to her work-related depression. Section 8103(a) of the FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[3] Where opposing medical reports of virtually equal weight and rationale exist and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently rationalized and based on a proper factual background, must be given special weight.[4]

The impartial medical examination was performed by Dr. Rosman who, in a report dated March 15, 1998, found that appellant's continuing depression was unrelated to work factors and that she had no residuals of her work-related emotional condition. Dr. Rosman's opinion is well reasoned and based on a proper factual and medical background. Accordingly, the Board finds that his opinion is entitled to special weight and is sufficient to carry the Office's burden of proof in terminating appellant's compensation.

[3] 5 U.S.C. § 8123(a); *see Kimper Lee*, 45 ECAB 565 (1994); *Larry B. Guillory*, 45 ECAB 522 (1994).

[4] *Brady L. Fowler*, 44 ECAB 343 (1992).

Although appellant submitted a supplemental report from Dr. Beebee that challenges the conclusions made by Dr. Rosman, the Board has held that an additional report from a claimant's treating physician who had been on one side of a conflict which was to be resolved by the impartial medical specialist is insufficient to overcome the weight accorded the impartial medical specialist's report or to create a new conflict.[5]

The March 29, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[5] *Virginia Davis-Banks*, 44 ECAB 389 (1993).