

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LORRAINE H. LAWRENCE and DEPARTMENT OF AGRICULTURE,  
SAN BERNADINO NATIONAL FOREST, San Bernadino, Calif.

*Docket No. 97-2283; Submitted on the Record;  
Issued April 22, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established that she sustained an emotional condition in the performance of duty on or before February 7, 1996 as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing on the grounds that it was not timely filed.

On May 30, 1996 appellant, then a 56-year-old public affairs officer, filed a notice of occupational disease alleging that she sustained depression, agoraphobia, and stress, causing an immune reaction resulting in chronic sinusitis, due to factors of her federal employment on or before February 7, 1996. Appellant stopped work on April 26, 1996 and retired from federal employment in July 1996. In accompanying statements, appellant attributed her condition to overwork, excessive overtime, under staffing, an "overwhelming" and increasing work load although no additional staff or equipment was provided, that she was excluded from meetings with elected officials because of her objections to certain employing establishment policies and that she often worked 12 hours a day 6 days a week to complete assigned duties. Appellant noted that she began her position at the employing establishment in 1992.<sup>1</sup>

In a May 28, 1996 report, Dr. Robert Hebard, an attending otolaryngologist, diagnosed chronic sinusitis with obstruction, allergic post-nasal drip and sinus headaches. Dr. Hebard opined that "in some instances, stress plays a part in an acute infection not resolving and becoming a chronic infection."<sup>2</sup>

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<sup>1</sup> Appellant also provided a detailed description of her accomplishments in 1994 and 1995 as public affairs officer.

<sup>2</sup> Dr. Hebard and his associates submitted periodic chart notes from November 9, 1995 to July 30, 1996 noting continuing treatment for chronic sinusitis and headaches and holding appellant off work intermittently. An April 11, 1996 computerized tomography scan of appellant's sinuses revealed "[a]cute and chronic sinusitis in the maxillary sinuses bilaterally, more on the left side," with normal frontal, ethmoid and sphenoid sinuses.

In August 26, 1996 letters, the Office requested that appellant and the employing establishment provide additional medical and factual information regarding appellant's claim, including a rationalized medical statement from appellant's attending physician explaining how and why the alleged employment factors would cause the claimed condition.

In an October 7, 1996 report, Dr. Joseph Yakira, an attending Board-certified psychiatrist, and Saundra Wallace, a social worker, related appellant's account of "an excessive amount of work, and her response to pressure from her supervisor was to increase her working hours.... [She] had no ancillary staff and relied on volunteers to help her perform her assigned duties." Dr. Yakira diagnosed depressive disorder, panic disorder and agoraphobia. He opined that "increasing hours and pressure exacerbated the development of the depressive disorder and brought back the panic disorder with agoraphobia."<sup>3</sup>

In an October 30, 1996 letter, the employing establishment generally controverted appellant's claim. In an attached, undated statement, Mr. Gene Zimmerman, appellant's second line supervisor, stated that appellant had a normal work load but had difficulty managing her time, apparently exacerbated by a September 1994 traffic accident.<sup>4</sup> He asserted that there were no staff shortages, that appellant had the opportunity to make formal requests for additional staff and budget but did not do so, but did recruit staff for specific projects. Mr. Zimmerman confirmed that appellant worked "long days, and claim[ed] compensatory time," often in excess of eight hours per week. He noted that other forests employed between two and four persons in their public affairs departments, although appellant's duties were assumed by one employee as a collateral duty, albeit with diminished work quality.

In a November 5, 1996 statement, Mr. John P. Weeden, appellant's immediate supervisor, acknowledged that there were "personnel reductions at all levels of the [employing establishment] ... in response to ... budget reductions," and that budget and staff had been reduced by 30 percent since 1990." He noted encouraging appellant to present a proposal explaining her need for additional staff, but that she never did. Mr. Weeden noted that appellant often worked at home above and beyond her 40 hour a week schedule, using software provided by the employing establishment.

In a November 5, 1996 statement, Ms. Janet M. Cawthon, an employing establishment labor and employee relations officer, noted that authorizations for overtime and compensatory time were given for 1993, March 1 to October 1, 1994, and in May, July, September through December 1995. Appellant earned 315.5 hours overtime in 1993, 221.75 hours in 1994, 319 hours in 1995, and 62.75 hours from January to April 1996.

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<sup>3</sup> Dr. Yakira submitted form reports holding appellant off work from April 26 to May 8 and May 20 to July 2, 1996.

<sup>4</sup> Appellant submitted chart notes regarding treatment for a September 14, 1994 motor vehicle accident in which she was rear ended, sustaining injuries to the left side of her face, jaw pain, right hip pain, tinnitus and neck pain. The record does not indicate and appellant does not allege that this accident was in any way related to appellant's federal employment.

In a December 23, 1996 statement of accepted facts, the Office accepted as factual that appellant “regularly worked overtime while performing her duties both at home and at her office,” for which she was compensated with overtime pay or compensatory time. Based on figures from the employing establishment appellant worked an average of 9.18 hours overtime per week in 1993, 6.56 hours per week in 1994, 7.78 hours per week in 1995 and 4.92 hours per week from January to April 1996.<sup>5</sup>

In a January 20, 1997 report, Dr. Reynaldo Abujela, a Board-certified psychiatrist, neurologist and second opinion physician related appellant’s account of feeling depressed, with agoraphobia and panic attacks, which she attributed to “excessive work,” personnel shortages, communication and administrative problems at work. Dr. Abujela noted that appellant began psychiatric treatment in April 1996, with no current medications. Dr. Abujela also noted that appellant had a history of alcoholism in 1976, but that she had since been “clean and sober,” and that her mother’s declining health was very stressful for her. On examination, Dr. Abujela found appellant mildly dysphoric and apprehensive ....” He diagnosed an “adjustment disorder with mixed emotional features of anxiety and depression,” alcoholism in remission and psychosocial stressors of a divorce and her mother’s poor health. Dr. Abujela noted that the Office had accepted appellant’s frequent overtime work, but opined appellant’s “current psychiatric condition [was] due to personal problems at home,” without “psychiatric residual symptoms of the condition caused by factors of employment described in the Statement of Accepted Facts. ... Her condition is nonindustrial in causation.” He stated that appellant’s functioning was unimpaired and she “should be able to do work under deadline.”

By decision dated January 31, 1997, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office found that the weight of the medical evidence rested with Dr. Abujela.

In a March 2, 1997 letter postmarked March 4, 1997, appellant, through her attorney representative, requested an oral hearing. Appellant’s request was denied by decision dated and finalized April 4, 1997, on the grounds that it was not timely filed within 30 days after issuance of the January 31, 1997 decision. The Office noted conducting a limited review of the evidence, and further denied appellant’s request for a hearing on the grounds that the issue in the case could be addressed equally well through submission of new evidence establishing causal relationship, submitted with a request for reconsideration.

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<sup>5</sup> The Office found the following factors not within the performance of duty: appellant worked hours for which she did not claim overtime, and was told by Mr. Zimmerman not to exceed 8 hours overtime per week; appellant was not advised of preplanning for a meeting with a Congressman; appellant requested the assistance of an employee assigned to another unit, and management advised that the employee would provide assistance as “Fire Information Officer during periods when large wildland fires occurred if [appellant] has a specific project to assign the employee and the employee’s time was scheduled in advance;” after she stopped work, appellant’s functions were assumed “by one employee as a collateral duty ... with some diminution of quality and timeliness.” The Office did not accept the following as factual: Mr. Zimmerman told appellant she would have a staff of five; appellant was not provided information necessary for her to perform her job; appellant lacked support from Mr. Zimmerman and her first line supervisor Mr. John Weeden; appellant had inadequate training; appellant had an insufficient budget for assigned tasks; appellant worked 12 hours per day, six days per week; Mr. Zimmerman and his subordinates encouraged appellant to quit her job; management denied appellant’s requests for assistance.

Regarding the first issue, the Board finds that the case is not in posture for a decision due to a conflict in medical opinion evidence.

The critical issue in this case is whether or not appellant's claimed emotional conditions are related to the accepted compensable factors of her federal employment. In denying appellant's claim, the Office, in its January 31, 1997 decision, relied on the January 20, 1997 opinion of Dr. Abujela, a Board-certified psychiatrist and second opinion physician, who generally negated causal relationship. However, there are deficiencies in Dr. Abujela's opinion such that it cannot represent the weight of the medical evidence over the opinion of Dr. Joseph Yakira, appellant's attending Board-certified psychiatrist.

In a January 20, 1997 report, Dr. Abujela, acknowledged appellant's account of depression, agoraphobia and panic attacks which she related to "excessive work" and personnel shortages, noting that the Office had accepted as compensable that appellant frequently worked overtime. He diagnosed an "adjustment disorder with mixed emotional features of anxiety and depression. He attributed these conditions to "personal problems" without "psychiatric residual symptoms of the condition caused by factors of employment described in the Statement of Accepted Facts." Thus, Dr. Abujela explicitly attributed the diagnosed emotional conditions, in part, to a "condition caused by factors of employment." However, Dr. Abujela then changed his opinion, stating that appellant's condition was "nonindustrial in causation." Dr. Abujela did not provide medical rationale explaining this conclusion, thus diminishing the probative value of his opinion<sup>6</sup>. Also, as Dr. Abujela both acknowledged a work-related condition and negated causal relationship, his opinion is thus too speculative and unclear to represent the weight of the medical evidence.<sup>7</sup>

In his October 7, 1996 report, Dr. Yakira also related appellant's account of "an excessive amount of work" and frequent overtime work. Dr. Yakira diagnosed depressive disorder, panic disorder and agoraphobia, conditions quite similar to those found by Dr. Abujela. However, unlike Dr. Abujela, who seems to negate causal relationship, Dr. Yakira opined that appellant's long work hours caused the claimed psychiatric conditions by "exacerbat[ing] the development of the depressive disorder and [brining] back the panic disorder with agoraphobia. Thus, there is a clear conflict of medical opinion between Dr. Abujela, for the government and Dr. Yakira, for appellant.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is 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."

Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for an examination and a rationalized medical opinion to resolve the medical conflict

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<sup>6</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

<sup>7</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

regarding whether appellant's psychiatric conditions on and after February 7, 1996 were caused or aggravated by the accepted employment factors. Following this and other such development the Office deems necessary, the Office shall issue an appropriate decision in the case.

As the case must be remanded to the Office for further development, the second issue is rendered moot.

The decisions of the Office of Workers' Compensation Programs dated April 4 and January 31, 1997 are hereby set aside, and the case remanded to the Office for further development consistent with this decision and order.

Dated, Washington, D.C.  
April 22, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member