

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KARIMA ABDUL-HAQQ and DEPARTMENT OF VETERANS AFFAIRS,
LYONS VETERANS HOSPITAL, Lyons, NY

*Docket No. 99-1213; Submitted on the Record;
Issued October 6, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability causally related to her February 18, 1994 employment injury; and (2) whether appellant met her burden of proof to establish that she sustained an emotional condition causally related to her February 18, 1994 employment injury.

On February 18, 1994 appellant, then a 36-year-old food service worker, was exiting an elevator when it struck her in the head. The Office of Workers' Compensation Programs accepted the conditions of cervical and dorsal strains and a cerebral concussion as compensable. Appellant stopped work that day and remained totally disabled through May 24, 1994, at which time she returned to light-duty work for four hours a day with an eventual increase to a six-hour day. On December 8, 1994 appellant filed a recurrence claim, stating that she sustained a recurrence of disability in September 1994 causally related to the February 18, 1994 employment injury. Appellant stated that she returned to work on a four-hour day in May 1994 and that she became increasingly more distressed and disabled while attempting to resume working. She finally had to stop working as she was too disabled by pain and emotional decompensation which got progressively more severe while working. Appellant stopped work completely on September 4, 1994. Following further development, by decision dated April 2, 1997, the Office denied that appellant sustained a recurrence of disability or an emotional condition causally related to the February 19, 1994 employment injury. The Office further denied appellant's ongoing entitlement to medical benefits. Appellant timely requested a hearing which was held on June 25, 1998. In a November 16, 1998 decision, an Office hearing representative affirmed the Office's denial of appellant's recurrence claim and that appellant's emotional condition was not causally related to the February 19, 1994 employment injury. The hearing representative, however, modified the Office's decision to reflect appellant's ongoing entitlement to medical benefits as the Office had failed to follow its procedures and advise appellant of its intent to terminate medical benefits. The instant appeal follows.

Initially, the Board finds that appellant failed to establish that she sustained a recurrence of total disability on September 1994.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

Causal relationship is a medical issue² and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

Before addressing the medical evidence, the Board notes that appellant, in filing her original claim of February 18, 1994 referred to two other incidents at work, a Spring 1992 incident concerning a stop and search by a security guard and an October 7, 1993 incident whereby appellant slipped and fell spraining her ankle. In a March 8, 1995 letter, the Office advised appellant that the current claim was only for the injury of February 18, 1994 and that appellant could file a separate claim for the other incidents. The current claim deals with the accepted conditions of cervical strain, dorsal strain, and cerebral concussion.

The medical evidence around the time of the claimed recurrence consists of several medical reports. In a February 28, 1995 medical report, Dr. Leona F. Bard, a psychologist, stated that appellant first presented on September 1, 1994 with symptoms of post traumatic stress disorder, which had deteriorated into a major depression, single episode. She noted that appellant provided a history concerning the Spring 1992 incident concerning the security policeman and that she still felt emotionally battered because of the treatment she received and the taunts and comments subsequently made by the people of work. Appellant also related that she sustained a serious ankle sprain from slipping on a rotten orange peel at work and that she was taunted at work and received no sympathy despite the fact that someone failed to do their job. Appellant also recounted the elevator incident of the instant claim. Appellant presented significantly decompensated emotionally from all of these work-related events and stated that the changes in her personality had begun with the Security Police incident and they had been

¹ *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

consolidated when the elevator caused so much pain and still she was treated badly by those in charge. Dr. Bard related that appellant was placed in a treatment program and was on medication. She stated that the treatment rendered was related not only to the traumas appellant experienced at her workplace, but also to the fact that those she believed who would assist her with her problems either turned a deaf ear to her needs or accused her of not being truthful. While appellant felt their stance was designed to keep her at work and discourage her from pursuing remedies, she still felt abandoned and lost because she had nowhere else to turn. Dr. Bard reasoned that this is what eventually propelled appellant's post-traumatic stress disorder into a major depression.

By letter dated June 1, 1995, the Office referred appellant to Dr. Nazar Haidri, a Board-certified neurologist, to clarify the cause and extent of her injury-related impairment. In a letter dated June 16, 1995, the history of the February 18, 1994 elevator accident and the October 1993 slip and fall. A neurological examination was performed and Dr. Haidri provided impressions of post-traumatic headaches and neurosis, chronic cervical sprain, and symptoms consistent with right cervical radiculopathy. Dr. Haidri noted that appellant's main problem was post-traumatic headaches and neurosis, which included depression, crying spells and being unable to stay "focused." He opined that appellant needed continued neurological and psychiatric care and that her symptoms were causally related to the injury. Dr. Haidri stated that her symptoms were permanent in nature as they had persisted for an extended period of time. He further opined that appellant was unable to return to her normal duties at work due to the symptoms.

The Office referred appellant to Dr. Frank Riccioli, a Board-certified psychiatrist, to perform a neuropsychiatric evaluation of the injuries appellant sustained at work on February 18, 1994. In a July 25, 1995 report, he noted the history of the February 19, 1994 elevator accident and that appellant has had other work-related incidents at work which contributes to her present emotional state. Appellant was diagnosed with adjustment reaction with anxiety and depression and paranoid personality traits, which were causally related to the injuries sustained at work on February 18, 1994. Dr. Riccioli stated that anger was appellant's predominate symptom and that, in her present emotional state, she was unable to work at her usual occupation. He noted that the element which appellant found most disturbing and which keeps her symptoms alive was the fact that the employee health physician commented to her about the many accidents she has had at work. Dr. Riccioli stated that this fact coupled with another incident in which she has been accused of stealing items from work have served to increase and intensify her anger.

In an August 15, 1995 letter, Dr. Riccioli clarified his opinion for the Office. He stated that the core of appellant's complaints were intense angry feelings towards her place of employment and her coworkers. Dr. Riccioli noted that, the magnetic resonance imaging of the brain and of the cervical spine were negative and that the physical impact of the head trauma was diminished through the efforts of a coworker. He noted that the IPAT anxiety scale described appellant as "tense, worried, high strung and emotionally labile. She may report restlessness, concern about her somatic integrity and insecurity in general. Phobic reactivity and suspicion of the motives of others may also be observed." Dr. Riccioli opined that post-traumatic stress disorder was an incorrect diagnosis and that adjustment reaction with anxiety and depression was more accurate. He stated that paranoid personality traits are part of appellant's basic personality

and that this is what decompensated when she went to the employees health clinic and responded angrily to the comments she attributed to the doctor at the clinic in which he noted her frequent injuries. In addition to this, appellant was harboring angry feelings because of an unjustified accusation that she was stealing from her employer. Her angry response to these incidents are directed towards her employers and coworkers and the psychological overlay has intensified her subjective complaints of headaches and neck pains, which continued 18 months after a head injury that was not of such an intensity to last this long. Dr. Riccioli further stated that appellant's angry mood was the basis for her inability to work. There was nothing to support a physical basis for her present disability. "The angry mood is an ongoing problem, which reflects her personality characteristics and, if it had not been for the minor head trauma and alleged remark by the clinic doctor, the anger festering from the unjustified accusation might have subsided. Instead, it was the proverbial straw that broke the camel's back and all appellant's festering angry feelings came to the surface, increased her sensitivity to pain and expressed itself with her tirade towards her place of employment and her coworkers."

In an October 19, 1995 medical report, Dr. Bard stated that appellant became severely depressed after the freight elevator door closed on her. She opined that this incident served as the culmination of all the problems appellant had been experiencing since she had been inappropriately stopped and searched, and essentially been accused of stealing by a security guard at work on March 27, 1992. Dr. Bard stated that although the employing establishment attempted to correct the offensive nature of this event, appellant continued to struggle with it, despite her efforts to put it behind her and get on with her life. When she was struck by the elevator, it was just simply more than she could tolerate. It represented the "final straw" to her. Appellant's emotional difficulties escalated to the point where she decompensated into the state of depression she had been battling with since she had been so devaluated in the earlier incident. Dr. Bard stated that it was subsequent to the elevator incident that appellant felt simply unable to "fight" any longer and she began to experience the vegetative signs of a major depression. Accordingly, Dr. Bard stated that the injury from the elevator must include a psychiatric component because it served to precipitate the emotional decompensation, which led to the major depression. Dr. Bard noted that subsequent to the elevator injury, appellant became so emotionally debilitated that she was no longer able to function without the assistance of anti-depressant medication and psychotherapy and, even then, she was no longer able to work.

In a January 28, 1997 report, Dr. E. Hernandez, a Board-certified neurologist and an Office referral physician, provided a neurologic evaluation. He related the history of the February 18, 1993 incident and provided his examination findings. Dr. Hernandez diagnosed head trauma with post-traumatic headaches and a cervical sprain. He stated that he saw no evidence of permanent neurologic injury and no specific reason why appellant has continued to experience such severe pain. Review of appellant's medical records revealed evidence of nonemployment-related difficulties and noted that it was possible that anxiety from this problem may be contributing to appellant's persistent pain and difficulty with movement of her cervical spine. From a neurological perspective, Dr. Hernandez stated that, there were no limitations in allowing appellant to return to work on a full-time basis.

In a February 4, 1997 report, Dr. Stanley R. Kern, a Board-certified psychiatrist and an Office referral physician, provided a forensic psychiatric evaluation. He opined that appellant

suffers from a major depression, single episode and a paranoid personality disorder. He further opined that this disorder was the result of a real or imagined discrimination against her at work. Dr. Kern noted that appellant has focused upon being struck on the head, but the blow was not severe by her own statement that she “did n[o]t fall out or nothing,” though she did have some soft tissue injury. He noted that appellant has improved slightly, but still was not capable of functioning on her job because of her intense anger and resentment toward the employing establishment and her coworkers.

In an August 31, 1998 medical report, Dr. Bard again reiterated her opinion that appellant’s severe depression was a direct result of her failure to recover from the incident with the security police in 1992. It was this work-related injury in 1992, which eventually lead to appellant’s total decompensation in September 1994. She further related that appellant appeared on September 13, 1995 without an appointment and that it was clear that she was too deteriorated to continue working, even on a part-time basis. Dr. Bard indicated that appellant was “furious” at her perceived harassment at work. She hated everyone, especially her supervisor, who was in a position to protect her and instead made demands of her that she felt were impossible to meet. Dr. Bard indicated that appellant was so upset that she feared she would lose control and become “physical.” She indicated that the confrontation at work in which she felt she would lose control indicated that her condition had deteriorated to the point where she was now too disabled to work.

The medical evidence in this case does not support that appellant sustained a recurrence of disability causally related to the accepted conditions. Appellant’s work stoppage and claimed recurrence of disability occurred in September 1995. There is no medical evidence of record, however, which causally relates appellant’s work stoppage around that time or thereafter, to the 1994 work injury. Although there is an indication that appellant was suffering from an emotional condition which decompensated around the time of the alleged recurrence, the Board notes that the Office did not accept a psychiatric component. As appellant failed to submit rationalized medical evidence that causally related her work stoppage to the accepted conditions, she failed to discharge her burden of proof and the Board finds that she failed to establish a recurrence of disability.

The Board further finds that appellant has not met her burden of proof to establish that she sustained an emotional condition causally related to her February 18, 1994 employment injury.

It is an accepted principle of workers’ compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.⁴ As is noted by Professor Larson in his treatise: “[O]nce the work-connected character of any injury, has been

⁴ Larson, *The Law of Workers’ Compensation* § 13.00; see also *Stuart K. Stanton*, 40 ECAB 859 (1989); *Charles J. Jenkins*, 40 ECAB 362 (1988).

established the subsequent progression of the condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.”⁵

Applying the principles noted above regarding a consequential injury, the Board finds that the medical evidence in this case relevant to appellant’s emotional condition is insufficient to provide support that appellant’s emotional decompensation is causally related to the February 18, 1994 employment injury.⁶ The Board notes that on a purely neurological perspective, Dr. Hernandez found appellant able to work without any limitations as there was no evidence of permanent neurologic injury and no specific reason why appellant has continued to experience such severe pain. Although Dr. Bard, in her reports of February 28, October 19 and August 31, 1995, states that, appellant’s emotional condition is related to federal employment duties, she does not provide medical rationale for her opinion nor exhibit any knowledge of appellant’s work duties to provide a basis for her opinion that appellant is unable to perform her employment duties. Moreover, Dr. Bard relates appellant’s emotional condition as a direct result of her failure to recover from the incident with the security police in 1992. Although Dr. Bard accounts for a situation at work in which appellant threw a fit in September 1994 in her report of August 31, 1998, this is not related to the 1994 injury where appellant was struck in the head by an elevator door.

Although the Office referral physicians Drs. Haidri, Riccioli and Kern opined that appellant has a psychological component, their opinions are insufficient to meet appellant’s burden. Dr. Haidri noted that appellant’s main problem was post-traumatic headaches and neurosis, which included depression, crying spells, and being unable to stay “focused,” and opined that her symptoms were causally related to the injury. However, Dr. Haidri failed to supply any medical rationale as to why or how those symptoms would arise from being struck in the head by an elevator door. Dr. Riccioli opined that appellant’s angry mood was the basis for her inability to work and that her angry response stemmed from her basic personality of paranoid personality. Dr. Riccioli reasoned that appellant’s psychological overlay intensified her subjective complaints of headaches and neck pains which continued after a head injury, which was not of such an intensity to last that long. Dr. Riccioli, however, attributed appellant’s decompensation and resultant angry mood response to an alleged remark by a clinic doctor who made comments concerning her frequent injuries and the unjustified accusation that she was stealing from her employer, which refers to the 1992 incident. These incidents do not relate to the 1994 incident and are not compensable factors of employment as they do not fall within the scope of employment. Likewise, although Dr. Kern diagnosed a major depression, single episode and a paranoid personality disorder, he related appellant’s disability to real or imagined discrimination at work and failed to mention the February 18, 1994 incident as being the source or contributing to such condition.

Inasmuch as appellant failed to provide rationalized medical evidence attributing her emotional condition to the February 18, 1994 incident, she has failed to discharge her burden of

⁵ *Id.* at § 13.11(a).

⁶ The Board notes that appellant had filed a claim for the 1992 security officer incident (claim number A2-701058) which was denied by the Office on September 11, 1995.

proof. Accordingly, the Board finds that appellant has not established an emotional condition causally related to the February 18, 1994 incident.

The decision of the Office of Workers' Compensation Programs dated November 16, 1998 is affirmed.

Dated, Washington, DC
October 6, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member