

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA J. DiBERNARDO and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Los Angeles, CA

*Docket No. 01-845; Submitted on the Record;
Issued December 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective December 1, 1984.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective December 1, 1984.

This is the third appeal in the present case. In the first appeal, the Board issued a decision¹ on August 20, 1996 in which it set aside a June 4, 1993 Office decision and remanded the case to the Office for further proceedings.² The Board remanded the case for referral of appellant and the case record, including an updated statement of accepted facts, to an appropriate specialist for an opinion regarding whether she sustained an emotional condition due to the accepted employment factors. On remand from the Board, the Office referred appellant and the case record to Dr. Charles Seaman, a Board-certified psychiatrist, for an opinion regarding whether she sustained an emotional condition due to the accepted employment factors.³ By decision dated January 13, 1997, the Office denied appellant's claim that she sustained an employment-related emotional condition.

¹ Docket No. 94-1317.

² In 1991 appellant, then a 34-year-old air traffic controller, filed a claim alleging that she sustained an emotional condition due to incidents and conditions at work. In its August 20, 1996 decision, the Board determined that appellant established compensable employment factors with respect to her initial training as an air traffic controller, rotating shifts, overtime work and harassment including sexist jokes and comments, touching of a sexual nature and verbal sexual advances.

³ In a report dated January 2, 1997, Dr. Seaman diagnosed recurrent major depressive disorder and personality disorder. He indicated that appellant's emotional condition was not related to the accepted employment factors, but rather was due to her underlying personality disorder, family and relationship problems, drug abuse and feelings of inadequacy as a mother.

In the second appeal, the Board issued a decision⁴ on June 4, 1999 in which it set aside the January 13, 1997 Office decision and remanded the case to the Office for further proceedings. The Board determined that there was a conflict in the medical evidence between Dr. Seaman and appellant's physicians regarding whether appellant sustained an employment-related emotional condition.⁵ The Board directed the Office to refer appellant and the case record to an impartial medical specialist to resolve the conflict in the medical evidence regarding whether appellant sustained an employment-related emotional condition.⁶

On remand the Office referred appellant and the case record, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to Dr. Michael G. Meade, a Board-certified psychiatrist, for an impartial medical examination for an opinion regarding whether appellant sustained an employment-related emotional condition.⁷ By decision dated May 15, 2000, the Office accepted that appellant sustained an employment-related emotional condition which had resolved by December 1, 1984.⁸ The Office thereby terminated appellant's compensation effective December 1, 1984. By decision dated and finalized November 24, 2000, an Office hearing representative affirmed the Office's May 15, 2000 decision.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Meade, the impartial medical specialist selected to resolve the conflict in the medical opinion. The April 25, 2000 report of Dr. Meade establishes that appellant had no employment-related disability on or after December 1, 1984.

In his April 25, 2000 report, Dr. Meade diagnosed recurrent major depressive disorder, polysubstance abuse reported in remission, generalized anxiety disorder, panic disorder and personality disorder with narcissistic and borderline traits. Dr. Meade concluded that employment factors contributed to appellant's depression for a period beginning in late 1993 but that the employment-related aspect of her condition had ceased by December 1, 1994. Dr. Meade indicated that appellant warranted a diagnosis of personality disorder because she exhibited patterns of maladjustment which preceded her work for the employing establishment.

⁴ Docket No. 97-1868.

⁵ In reports dated in 1992, Drs. Ronald C. Diebel and Gregory C. Sazima, both attending Board-certified psychiatrists, determined that appellant sustained an employment-related emotional condition.

⁶ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ Section 8123(a) of the Act provides in pertinent part: "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." 5 U.S.C. § 8123(a).

⁸ The Office based its determination on the opinion of Dr. Meade.

⁹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

He noted that the medical records regarding appellant's emotional condition in 1984 mostly made note of her substance abuse, relationship and familial problems. Dr. Meade indicated that appellant's emotional problems in 1989 and 1991 occurred after she stopped working for the employing establishment and that the medical records from these periods mostly made note of her parenting and substance abuse problems. He indicated that appellant required medical treatment for her depression and anxiety symptoms but that these problems were related to her underlying condition, including her personality disorder, rather than any employment-related condition. Dr. Meade stated:

“In November 1984, the [appellant]’s treating physician, Dr. Fabric, pronounced the [appellant] fully recovered and released her to return to work without restriction.¹⁰ There is no indication that the [appellant] continued to suffer from depression or anxiety and in early 1985 she discontinued treatment with her psychotherapist. As to the [appellant]’s subsequent need for psychiatric treatment for depression and anxiety, again there is no link between factors identified as compensable in the statement of accepted facts and the documentation of stressors leading to treatment until after the [appellant] filed her workers’ compensation claim. Prior to this, [appellant]’s psychiatrist, Dr. Diebel, cited issues of appellant’s concern over her adequacy as a mother as etiologic to her psychiatric symptoms....

“Therefore, I find it medically probable that the factors identified as compensable in the statement of accepted facts are not at all related to her psychiatric symptoms and need for treatment beyond her first depression, which was pronounced cured in November 1984.”¹¹

The Board has carefully reviewed the opinion of Dr. Meade and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Meade’s opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Meade provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant’s condition, which comported with this analysis.¹² Dr. Meade provided medical rationale for his opinion by explaining that appellant had a long-standing nonwork-related personality disorder, which contributed to her emotional problems. He noted

¹⁰ In a report dated November 14, 1984, Dr. Bruce Fabric, an attending Board-certified psychiatrist, stated that appellant had fully recovered from substance abuse and was not depressed. Dr. Fabric stated: “I can recommend without reservation that she is qualified to return to full active job status of any classification.”

¹¹ The medical records from the periods of appellant’s treatment in 1984, 1989 and 1991 mostly make note of relationship, familial, parenting and substance abuse problems. Appellant submitted a March 26, 1997 report in which Dr. Sazima indicated that she continued to have employment-related disability. This report helped to create the conflict in the medical evidence, which necessitated the referral to Dr. Meade for an impartial medical examination; moreover, the report lacks medical rationale in support of its opinion on causal relationship.

¹² See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

that employment factors had contributed to appellant's problems for a period in 1983 and 1984 but that these factors had ceased to contribute to her condition by December 1, 1984. Dr. Meade explained that appellant's emotional condition after that point was solely due to nonwork factors, including her personality disorder and parenting and substance abuse problems.

The November 24 and May 15, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
December 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member