

VERMONT DEPARTMENT OF LABOR AND INDUSTRY

NANCY LUTHER	)	File # B-27022
	)	
	)	By: J. Stephen Monahan
v.	)	Hearing Officer
	)	
	)	For: Barbara G. Ripley
GENERAL ELECTRIC	)	Commissioner
	)	
	)	Opinion #9-93WC-recon.

DECISION AFTER RECONSIDERATION

**APPEARANCES**

Richard A. Pearson for the claimant  
Craig Weatherly for the defendant

**FINDING**

1. A decision was issued in this matter on July 29, 1993. Claimant through her attorney requested reconsideration of that decision on August 19, 1993. The request for reconsideration was subsequently granted, and the Commissioner directed the parties to submit additional information concerning the advisability of treating the claimant's depression with medication.

2. The parties agreed to have the claimant evaluated by Marianne Marsh, M.D., a psychiatrist, and asked Dr. Marsh to address the following issues:

a. Is the claimant's depression treatable using drug therapy?

b. If drug therapy is not a medically recommended treatment, why is that and does claimant's phobia regarding the taking of psychotropic drugs play any role?

c. Are there any non-drug treatment modalities which have a reasonable chance of success in treating claimant's depression?

3. On November 30, 1993, Dr. Marsh submitted her report to the Department. Dr. Marsh found the claimant as experiencing a

prolonged depression which she diagnosed as Chronic Dysthymia. This condition is often treated with anti-depressants with good results if administered early. Its efficacy in Ms. Luther's case is somewhat doubtful however because of the length and chronic nature of her depressive symptoms, her phobia concerning medication and the "negative" and "adversarial atmosphere" surrounding her claim against G.E., which she believes is trying to deprive her of compensation owed her and "turn her into a drug addict". Dr. Marsh recommended that the claimant continue her cognitive behavioral psychotherapy with Dr. Ahles. She did not believe that a trial of anti-depressant medication would be successful at the present time, at least not until progress had been made on other issues in her life including comprehensive treatment for her pain.

4. In reviewing the July 29, 1993, decision it became apparent that only Dr. Ahles had actually recommended treatment with anti-depressant medication, and as a psychologist rather than a medical doctor, he could not actually prescribe such medications. Dr. Ahles subsequently withdrew his recommendation in response to the claimant's negative reaction to it. No licensed medical doctor had actually prescribed the claimant medication, thus she actually can not be said to have refused treatment.

5. Based on Dr. Marsh's report and recommendations, it is also apparent that a prescription for anti-depressant medication, while perhaps appropriate at some future date is not appropriate at this time.

6. Since there is no prescribed treatment which claimant is currently refusing, and since a prescription for anti-depressant medication is not currently indicated, the basis for suspending claimant's temporary total disability compensation no longer exists. She is entitled to ongoing medical, psychological treatment and to temporary total disability compensation until such time as she reaches a medical end result.

7. Claimant has prevailed on her claim and an award of attorney fees in accord with Workers' Compensation Rule 10 is appropriate.

#### ORDER

Therefore, based on the foregoing findings, the order dated July 29, 1993 is withdrawn. Defendant is ORDERED to commence claimant's temporary total disability compensation retroactive to July 31, 1992 and continue such payments until claimant has reached a medical end result with regard to her psychological injury. The defendant may credit any amounts advanced to the claimant since

July 31, 1992, towards the temporary total disability compensation owed. It is further ORDERED that claimant, having prevailed, is awarded attorney fees in the amount of 20% of the temporary total disability compensation awarded, but not to exceed \$3000.00.

Dated at Montpelier, Vermont, this 22<sup>nd</sup> day of February, 1994.

Barbara G. Ripley  
Barbara G. Ripley, Commissioner

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