

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA M. HUDDLESTON and U.S. POSTAL SERVICE,  
POST OFFICE, Santa Ana, Calif.

*Docket No. 95-2666; Submitted on the Record;  
Issued March 18, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant had any disability after November 13, 1994, the date the Office of Workers' Compensation Programs terminated her compensation benefits, causally related to her accepted employment condition of major depression.

Appellant had a preexisting history of emotional illness and had been hospitalized twice in 1980 for acute schizophreniform disorder with paranoid ideation. Appellant began carrying a mail route in June 1986 and she claimed that her federal employment duties began causing her stress beginning in January 1987. She stopped work and was hospitalized in March 1987, diagnosed as having major depression and mixed personality traits marked by passive-dependent features and was thereafter hospitalized from April through June 1987 for diagnosed schizophreniform disorder in a mute state with autistic thinking. Appellant did not return to work. On August 26, 1987 the employing establishment removed appellant from employment for falsification of information on her preemployment physical form, to which, she checked "no" to the question of whether she had ever been treated for a mental condition or illness of any sort. The employing establishment noted that appellant had been previously hospitalized twice in 1980 for acute schizophreniform reaction and psychotic episodes of extreme paranoia. A settlement was reached where the removal would be reduced to a suspension and she would be allowed to return as a clerk at some point. Appellant remained off work and "retired on disability" in 1989.

On February 3, 1989 the Office accepted that appellant developed major depression in the performance of her duties, causally related to factors of her federal employment.

Appellant began being treated in late 1987 by Dr. M. Joel Scheinbaum, a Board-certified psychiatrist, who treated her with psychotherapy and opined that she remained totally disabled.

The Office sought a second opinion and referred the case record to Dr. Stephen F. Morin, a psychologist, with specific questions to be addressed. By report dated December 22, 1988,

Dr. Morin reviewed appellant's factual and treatment history and opined that, although the diagnosis of major depression was given for appellant's hospitalization from March 17 through April 10, 1987, when rehospitized on April 30, 1987 a "more appropriate diagnosis appears to have been a schizophreniform disorder." Dr. Morin stated that although Dr. Scheinbaum diagnosed major depression, he failed to establish the signs and symptoms that would fully establish such a diagnosis. Dr. Morin noted that appellant had a predisposition to significant mental illness, that her 1980 hospitalizations suggested her predisposition to develop psychotic reactions to stressful life events, and that her hospitalizations in 1987 suggested a major mental illness beyond what would be easily attributable to an emotional reaction to specific factors of her work environment. Dr. Morin noted that Dr. Scheinbaum accepted appellant's statements as factual, and that his medical opinion regarding causal relationship was not formulated within the context of the statement of accepted facts.

The Office subsequently referred appellant to Dr. Burnell G. Forgey, a Board-certified psychiatrist. By report dated April 10, 1990, Dr. Forgey noted that he interviewed appellant on four occasions, reported that she was very angry that "they were trying to cut [her] allowance," and stated that she wanted to tape record the sessions and had brought a Geraldo Rivera tape of a program on postal problems. He reported appellant's allegations of employing establishment "stress" and "verbal abuse" in 1987, noted that she had dropped out of Cal[ifornia] State Fullerton after two years because of "high stress," and noted that presently her marriage was not as vibrant or vigorous as it had been because appellant's husband resented her illness and said that he did not like what she was doing. Dr. Forgey noted that appellant went on disability status in 1989, that after she was released from the hospital she was a preschool teacher where she was "considerably abused" and had trouble with the staff, and that at the examination she presented a packet of grievances as she perceived them. He noted that appellant's insight was diminished, that she felt the employing establishment was responsible for her problems, and that she had her first emotional break at age 20 in 1980. Dr. Forgey noted that while employed, some paranoid ideation and suspicion remained as evidence by her inability to do well, to do her job as recommended, and to get along with her colleagues. He opined that appellant had been:

"Schizophrenic, paranoid type since approximately from the age of 20. To the present time, she can superficially maintain and handle low stress situations, but a busy, high powered, high demand position is damaging to her. I feel the [employing establishment] is only slightly, moderately responsible for her acute relapse. The illness was preexisting, but the complexities of the ... job seemed to precipitate a decompensation of her schizophrenia."

Appellant notified the Office that she wished to change treating physicians and by report dated May 21, 1992, Dr. Samuel H. Albert, a Board-certified psychiatrist, reported appellant's version of the facts including alleged harassment, intimidation, verbal abuse, overtime denial, and extra work assigned with concomitant time allowance reductions, discussed her symptoms, and inaccurately stated that her diagnosis for two 1987 hospitalizations was "major depression." He opined that she was still suffering from major depression, that she appeared confused, angry hurt and depressed, and that she experienced recurrent anxiety symptoms with painful memories of being negatively evaluated and chastised. Dr. Albert opined that appellant had major depression and noted that it was 100 percent due to her work-related injury. He stated that she

would not have her current symptoms had not she suffered on-the-job injuries, and that she was totally disabled. Dr. Albert did not discuss appellant's multiple hospitalizations for schizophreniform disorder with paranoid ideation or indicate that he was aware of appellant's past psychiatric history. He did, however, submit multiple subsequent "periodic medical reports" restating the contents of his initial report. In none of the reports, though, did Dr. Albert discuss how or why appellant remained totally disabled due to employment-related major depression over six years after her removal from the alleged employment stressors.

By report dated June 27, 1994, Dr. John Hochman, a Board-certified psychiatrist and Office referral physician, described appellant's subjective symptoms of sadness and depression and noted that she complained of being yelled at and verbally abused, being reprimanded for not working fast enough, not being allowed to work overtime, being accused of lying, being watched, having lies told about her, being hung up on, being denied forms, being denied union representation, being forced to leave her carrier position, being criticized and being denied her civil rights. Dr. Hochman noted that on psychological testing appellant's efforts were inconsistent, with indications that she did not try very hard and with evidence of defensiveness on the MMPI. He opined that there was little evidence that appellant was currently depressed, but rather that she had low self-esteem, had unmet dependency needs, used somatic symptoms as a way of obtaining psychological support from those around her, was much more angry that she was willing to admit, was prone to act in a passive-aggressive way, was oversensitive to criticism and tended to blame others for her problems. Dr. Hochman diagnosed episodic schizophrenia with interepisode residual symptoms, and noted that appellant's diagnosis of major depression was presented by two physicians, Drs. Albert and Scheinbaum, who had not reviewed her medical records. He opined that appellant's giving up her goal to become a certified public accountant and get a bachelor's degree and entering the employing establishment service was indicative of a permanent decline in functioning that was typically seen in schizophrenic illness. Dr. Hochman noted that upon psychiatric hospitalization in March 1987 her diagnosis was major depression which was revised to schizophreniform disorder and that she was discharged on antipsychotic medication which Dr. Albert did not continue. He noted that upon examination appellant's affect was flat, her eye contact was poor and she had a paranoid view of her work. Dr. Hochman opined that review of the hospital records did not support a diagnosis of major depression but rather supported that appellant had a psychotic illness in the realm of a schizophrenic disorder and explained that a person with major depression would not show the progressive decline of functioning over years that appellant did. He opined that in 1987 appellant was losing her ability to function at work due to an exacerbation of her schizophreniform disorder, that this was unclear to her supervisors since she had failed to inform them of her prior psychotic illness and that she was therefore perceived as being an inadequate employee, as opposed to a disabled employee. Dr. Hochman opined that supervisory criticism would have caused appellant some acute anxiety and depression which would have not changed her long-term functioning in any way and from which she would have recovered long ago. He concluded that appellant did not have major depression but that depressive symptoms were part of her development of an acute psychotic reaction that was initially misdiagnosed as major depression.

On August 9, 1994 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical evidence indicated that she was no longer

disabled or no longer needed medical care as a result of her 1987 work stressors. The Office noted that Dr. Albert's reports supporting continuing disability due to major depression were of diminished probative value as he failed to give a medical basis for appellant's continued condition, failed to support his opinion with psychiatric findings and focused on events that took place many years earlier without explaining how these old events influenced appellant's present condition. The Office found that Dr. Hochman's report was based upon a review of appellant's complete medical record and an accurate statement of accepted facts, such that it constituted the weight of the medical opinion evidence.

By decision dated October 18, 1994, the Office terminated appellant's compensation benefits effective November 13, 1994 finding that the weight of the medical evidence supported that appellant was no longer disabled as a result of her accepted employment condition.

Appellant requested reconsideration by letter dated October 30, 1994.

By decision dated November 14, 1994, the Office denied appellant's application for review finding that it was *prima facie* insufficient to warrant review as it included no new evidence or argument.

On December 6, 1994 the Office received a September 13, 1994 report from Dr. Albert. Dr. Albert disagreed with Dr. Hochman's findings and conclusions, claimed that Dr. Hochman obtained an inaccurate history and confused historical events, argued that Dr. Hochman's diagnosis of schizophrenia with interepisode residual symptoms was incorrect and unsupported, argued that at the time of Dr. Hochman's examination of appellant she demonstrated no signs of schizophrenia or schizophreniform disorder and argued that Dr. Hochman confused schizophrenia and schizophreniform disorder. Dr. Albert restated that appellant's diagnosis was that of major depression. He did not address the causation or disposition of appellant's schizophreniform disorder that had been diagnosed on three prior hospitalizations by psychiatrists other than Dr. Hochman, other than to state that it had resolved. Dr. Albert stated that appellant's disabling illness fit the description of aggravation of a preexisting condition and opined that appellant continued to be totally disabled due to major depression.

By letter dated December 12, 1994, appellant requested reconsideration of the prior decision. Appellant, through her representative, objected to the Office's use of Dr. Hochman's opinion.

The Office determined that a conflict existed in medical opinion evidence between Dr. Hochman and Dr. Albert and on February 21, 1995 it referred appellant, together with a statement of accepted facts and the complete case record, to Dr. Jan Pick, a Board-certified psychiatrist, for resolution of the conflict.

By report dated April 10, 1995, Dr. Pick noted that appellant refused to cooperate with his office form completion request, required considerable coaxing and reassurance to come in for the interview and was incommunicative on any rational basis. He reviewed appellant's history, noted her preoccupation with 1986 and 1987 events, and noted that she was obsessed with the idea that she was being persecuted, ridiculed and denied her rights. Dr. Pick noted that appellant alleged that she was being followed and watched at home by the employing establishment, that

some employees may have turned on her to get favors from superiors, and that she feared physical harm would come to her. He noted that appellant was being treated weekly with psychotherapy only and with no medications, that she was unable to elaborate as to why she was being treated or as to what her problems were and that she blamed all her problems on the events of 1987. Dr. Pick noted that following appellant's discharge with medications from her hospitalizations for schizophreniform disorder, she promptly discontinued the prescribed medications and failed to follow through with outpatient treatment. During her hospitalizations she did admit to experiencing auditory hallucinations and delusions of persecution, and noted that she was fearful of any psychoactive medications. He stated that appellant's mood was not particularly depressed, that she was preoccupied with religious thoughts and frequently referred to the Bible, that her affect was flat and her abstract thought impaired and that her insight into her problems was totally lacking. Dr. Pick diagnosed delusional disorder, persecutory type, rule out paranoid schizophrenia and rule out passive-aggressive personality disorder. He opined that there was no evidence to substantiate the diagnosis of major depression, that instead she evidenced fixed ideas of a persecutory nature and that she was obviously preoccupied with her determination to receive compensation for her mental problems. Dr. Pick noted that appellant could not explain her need for treatment with Dr. Albert nor how this helped her function better, and that she did not want psychiatric medications due to unwanted side effects but could not explain what these could be. He noted that depression was definitely not appellant's preoccupation and that there was evidence of declining ability to function since her first psychotic break in 1980. Dr. Pick concluded that these findings were consistent with the diagnosis of probable paranoid schizophrenia, possibly in partial remission and a firm diagnosis of delusional disorder. He opined that psychotherapy alone was of no value, as substantiated by her lack of recovery, that appellant needed neuroleptic antipsychotic medication and counseling, and that Dr. Albert's treatment was ineffective and only seemed to solidify her illness and dependency needs. Dr. Pick opined that he did not see how appellant's delusional paranoid problems could be related to events taking place in 1986 and 1987, that her increasing problems at the employing establishment would not be unexpected in a patient suffering from a major mental illness consistent with a schizophrenic diagnosis, and that the coexistence of some depressive symptoms was to be expected with this type of psychosis. He opined that appellant could be expected to decompensate in almost any type of employment in which even minimal stress would exist. Dr. Pick opined that appellant's evidence of progressive deterioration of her ability to perform her work, and, when challenged by her supervisor, her anger and feelings of persecution, were consistent with her passive-aggressive personality and a decompensation psychotic illness. He disagreed with Dr. Albert's diagnosis of major depression and opined that the 1980 diagnosis of schizophreniform disorder was correct and was in agreement with his own findings.

By decision dated April 26, 1995, the Office affirmed the October 18, 1994 decision finding that the weight of the medical evidence lay with Dr. Pick and determined that appellant suffered no residuals of her accepted employment condition on or after November 13, 1994.

The Board finds that appellant had no disability after April 10, 1995, the date of Dr. Pick's medical report.

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

In the instant case, the Office properly determined that a conflict in medical opinion evidence existed and followed the accepted procedures in referring appellant to Dr. Pick for a impartial medical examination.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>1</sup>

In this case, Dr. Pick provided an extensive report, noting appellant's reluctance to cooperate, reviewing her complete medical and factual history and presenting her current symptomatology. He noted that appellant was obsessed with the idea that she was being persecuted, ridiculed and denied her rights, noted that she was preoccupied with the events of 1986 through 1987, noted her noncompliance with prescribed medications and follow-up visits and noted that she was delusional and preoccupied with religious thoughts. Dr. Pick diagnosed delusional disorder, persecutory type, rule out paranoid schizophrenia, rule out passive-aggressive personality disorder and he opined that there was no evidence to substantiate the diagnosis of major depression and that appellant was certainly not preoccupied with depression. He further noted as rationale that appellant had declining ability to function since her first psychotic break in 1980 and opined that this was consistent with the diagnosis of delusional disorder and probable paranoid schizophrenia, for which he opined she needed antipsychotic medication. Dr. Pick's extensive report is based upon a complete factual and medical background and very well rationalized, such that it is entitled to special weight. According the report the special weight it is due, the Board finds Dr. Pick's report constitutes the weight of the medical evidence and supports that appellant had no continuing residuals of her accepted employment condition after April 10, 1995, the date of his medical report.

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<sup>1</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

Consequently, the decision of the Office of Workers' Compensation Programs dated April 26, 1995 is hereby affirmed, as modified, to find that disability ceased as of April 10, 1995.

Dated, Washington, D.C.  
March 18, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member