

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**RUTHIE M. JOHNSON, Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Milwaukee, WI, Employer**

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**Docket No. 05-822  
Issued: September 7, 2005**

*Appearances:*  
*Ruthie M. Johnson, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 23, 2005 appellant filed a timely appeal of a January 7, 2005 decision of the Office of Workers' Compensation Programs, terminating her wage-loss compensation and medical benefits on the grounds that the residuals of an accepted emotional condition had ceased. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss and medical benefits on the grounds that an accepted temporary aggravation of depressive psychosis with paranoid trends had ceased without residuals.

**FACTUAL HISTORY**

The Office accepted that, on or before December 1, 1981, appellant, then a 34-year-old mail clerk, sustained a temporary aggravation of depressive psychosis with paranoid trends. She had intermittent work absences in 1982. Appellant stopped work in December 1982 and did not return. She received compensation on the daily and periodic rolls. Appellant received treatment

for severe depression, paranoia and chronic post-traumatic stress syndrome through August 2000. Her physicians, including attending Board-certified psychiatrists Dr. Gregory L. Schmidt and Dr. Patricia A. Santy, opined that appellant remained totally disabled for work due to several psychiatric conditions including the accepted condition.

On April 10, 2003 the Office referred appellant, a statement of accepted facts and the medical record to Dr. Debra L. Anderson, a licensed psychologist, to obtain a second opinion as to whether appellant had any residuals of the accepted condition. In a June 5, 2003 report, Dr. Anderson provided a history of injury and treatment and reviewed the medical record. She described appellant's meetings with Dr. David R. DuBord, a postdoctoral fellow practicing under her supervision, on April 28, May 21 and 28, 2003. Dr. Anderson related appellant's panic and decomposition when relating her experiences at the employing establishment. She diagnosed schizoaffective disorder of the depressive type with several thought disorders. The report was cosigned by Dr. DuBord.<sup>1</sup>

In a November 3, 2003 letter, the Office requested that Dr. Anderson clarify her opinion regarding whether the accepted condition had ceased. Dr. Anderson submitted a November 24, 2003 addendum, opining that the accepted aggravation ceased by December 1987 with a brief exacerbation in 1991. She stated that appellant had returned to her baseline, preinjury condition. Dr. Anderson noted that appellant had no work restrictions attributable to the accepted condition.

By decision dated November 22, 2004, the Office advised appellant that it proposed to terminate her wage-loss and medical compensation benefits on the grounds that all residuals of the accepted emotional condition had ceased. The Office found that Dr. Anderson represented the weight of the medical evidence, referring to her as a "Board-certified psychologist" and "an appropriate specialist for [appellant's] accepted condition."

In response, appellant submitted additional evidence from Dr. Edna Florentino Origenes, an attending psychiatrist. In notes from September 13, 2001 to October 22, 2003, she diagnosed severe depression and prescribed medication. In a June 11, 2003 note, Dr. Origenes mentioned a 1982 medical visit with an unidentified practitioner related to appellant's compensation claim. She noted that appellant could not provide a complete history of the origins of her claim.<sup>2</sup>

In a November 30, 2004 letter, appellant asserted that she did not meet with Dr. Anderson, only with Dr. DuBord, who frightened her as she expected to see Dr. Anderson, a female psychologist.

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<sup>1</sup> In a May 27, 2003 letter, appellant stated that, when she reported to the designated location for the second opinion examination with Dr. Anderson, she was met instead by Dr. DuBord. Appellant alleged that Dr. DuBord frightened her as she was expecting to meet with a female psychologist. She thus ran into the parking lot. Appellant also asserted that she never met with Dr. Anderson, only Dr. DuBord.

<sup>2</sup> Appellant also submitted notes dated from April 30 to October 16, 2002 signed by Elizabeth Irwin, a social worker. Social workers are not considered to be physicians under the Act. *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004). Therefore, as these notes were not signed or reviewed by a physician, they do not constitute probative medical evidence for the purposes of this case. *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

By decision dated January 7, 2005, the Office terminated appellant's wage-loss compensation and medical benefits on the grounds that any residuals of the accepted emotional condition had ceased. The Office found that the additional evidence appellant submitted was insufficient to overcome the weight accorded to the second opinion report of Dr. Anderson, a "Board-certified psychologist."

### **LEGAL PRECEDENT**

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>5</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>6</sup> The Office's burden of proof to terminate benefits includes the necessity of furnishing rationalized medical opinion evidence from a competent physician, based upon a proper factual and medical background.<sup>7</sup>

Section 8101(2) of the Act provides that the term "physician" includes "clinical psychologists" within the scope of their practice as defined by state law.<sup>8</sup> The Office's procedure manual<sup>9</sup> states that the Office has accepted the American Psychological Association's (APA) definition of a clinical psychologist. This definition provides that a clinical psychologist is an individual who:

"(1) Is licensed or certified as a psychologist at the independent practice level of psychology by the state in which he or she practices, and

"(2) Either possesses a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation or is listed in a national register of health service providers in psychology which the Secretary of the Department of Labor deems appropriate, and

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<sup>3</sup> *Bernadine P. Taylor*, 54 ECAB \_\_\_\_ (Docket No. 02-263, issued January 15, 2003).

<sup>4</sup> *Id.*

<sup>5</sup> *Roger G. Payne*, 55 ECAB \_\_\_\_ (Docket No. 03-1719, issued May 7, 2004); *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>6</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

<sup>7</sup> *Daniel F. O'Donnell, Jr.*, 54 ECAB \_\_\_\_ (Docket No. 02-1468, issued February 28, 2003).

<sup>8</sup> 5 U.S.C. § 8101(2).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Overview*, Chapter 3.100.3a (October 1990).

“(3) Possesses two years of supervised experience in health service, at least one year of which is post degree.”<sup>10</sup>

### ANALYSIS

The Office accepted that, on or before December 1, 1981, appellant sustained a temporary aggravation of depressive psychosis with paranoid trends. By decision dated November 7, 2005, the Office terminated appellant’s wage-loss and medical compensation benefits on the grounds that the accepted condition had ceased. The Office accorded the weight of the medical evidence to Dr. Anderson, a licensed psychologist and second opinion physician.<sup>11</sup> The Board finds, however, that there is insufficient evidence that Dr. Anderson qualifies as a physician under 5 U.S.C. § 8101(2).

According to the internet website maintained by the State of Wisconsin Department of Regulation and Licensing, Dr. Anderson is a licensed psychologist at the independent practice level.<sup>12</sup> Thus, Dr. Anderson meets the first of the three criteria for qualifying as a licensed clinical psychologist.

Regarding the second criterion, Dr. Anderson is not listed on the national register of health service providers in psychology.<sup>13</sup> As she does not appear in the registry, it must then be determined if she graduated from a qualifying accredited institution. To be a licensed psychologist in Wisconsin, the applicant must have graduated from a “regionally accredited institution.” It is not clear, however, if the regional accreditation accepted by Wisconsin is equivalent to “an educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation.” As neither the record nor the Wisconsin state site indicates where Dr. Anderson earned her doctoral degree, it cannot be determined if Dr. Anderson meets the second criterion.

The third criterion requires that a licensed clinical psychologist complete two years of supervised practice, with a minimum of one year post-doctoral practice. A Wisconsin psychology license requires the provider to have completed 3,000 hours of supervised experience with a minimum of 1,500 hours post degree. Assuming that 1,500 hours is equivalent to one year, it appears that Dr. Anderson completed the requisite number of hours under the APA’s definition. However, the record does not indicate what activities Dr. Anderson performed during those 3,000 hours and if that practice met the APA’s criteria. Thus, it is not ascertainable if Dr. Anderson meets the third criterion for licensed clinical psychologists.

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<sup>10</sup> *Id.*

<sup>11</sup> The Board notes that, in its November 22, 2004 notice and January 7, 2005 decision, Office described Dr. Anderson as a “Board-certified psychologist.” It is unclear as to which type of certification this refers or whether the designation was merely a clerical error.

<sup>12</sup> Wisconsin does not issue a certification entitled “clinical psychology.”

<sup>13</sup> The internet website for the National Register of Health Providers in Psychology may be found at [www.nationalregister.org](http://www.nationalregister.org).

The Board finds that there is insufficient evidence of record that Dr. Anderson meets the second and third criteria of the definition of “clinical psychologist” accepted by the Office.<sup>14</sup> Thus, the Board further finds that Dr. Anderson is not a “physician” as defined under the Act and competent to render a medical opinion in this case.<sup>15</sup> Therefore, the Office improperly accorded Dr. Anderson the weight of the medical evidence as she is not a physician under the Act. The Board therefore finds that the Office failed to meet its burden of proof in terminating appellant’s wage-loss and medical compensation benefits and that the January 7, 2005 decision must be reversed.

### **CONCLUSION**

The Board finds that the Office did not meet its burden of proof in terminating appellant’s wage-loss and medical compensation benefits as there is insufficient medical evidence that the accepted temporary aggravation of depressive psychosis with paranoid trends had ceased without residuals.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated January 7, 2005 is reversed and the case returned to the Office for payment of all compensation due and owing.

Issued: September 7, 2005  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees’ Compensation Appeals Board

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<sup>14</sup> *Jacqueline E. Brown*, 54 ECAB \_\_\_\_ (Docket No. 02-284, issued May 16, 2003).

<sup>15</sup> *Jaja K. Asaramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004).