

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

M.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 06-1237
Issued: February 26, 2007**

Appearances:
Appellant, pro se
Thomas Giblin, Esq., for the Director

Oral Argument January 23, 2007

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 1, 2006 appellant filed a timely appeal from the April 20, 2006 merit decision of the Office of Workers' Compensation Programs, which denied modification of its decision to terminate compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation for the accepted condition of anxiety reaction; and if so, (2) whether appellant has met her burden to establish that residuals of the accepted employment injury continued after September 5, 2004.

FACTUAL HISTORY

On the prior appeal of this case,¹ the Board found that the Office had improperly rescinded its acceptance of appellant's claim. Appellant, a 41-year-old distribution clerk, filed a

¹ Docket No. 95-429 (issued December 6, 1995).

claim for an emotional condition. She alleged harassment by management. The Office accepted that appellant sustained an anxiety reaction in the performance of duty based on a recommended bench decision in her Equal Employment Opportunity case, which found that she was subjected to discrimination on the basis of race and reprisal when she was denied certain training and issued two letters of warning. When the employing establishment later rejected the recommended findings of discrimination, the Office attempted to rescind its acceptance. The Board reversed, finding that the Office did not meet its burden of proof to establish how the original acceptance of the claim was erroneous. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

From June 1999 to February 2002 the Office asked appellant to submit an updated narrative report from her attending physician providing, among other things, the physician's rationalized opinion on whether the diagnosed condition was causally related to the accepted employment injury. On April 3, 2002 Dr. Christopher J. Hasseltine, appellant's psychiatrist, completed a work capacity evaluation form. He indicated that appellant could not work at the employing establishment: "Patient sued the [employing establishment] for harassment issues, won her case, but the stress of the situation continues. [Appellant] feels anxious, panicky, numb and wishes to avoid contact with the [employing establishment]." Dr. Hasseltine noted post-traumatic stress disorder, major depressive disorder and trauma related to working at the employing establishment.

On August 20, 2002 the Office asked Dr. Hasseltine for a comprehensive narrative medical report fully addressing, among other things, the residuals of the accepted anxiety disorder. The Office asked him to explain, if residuals existed, how appellant continued to demonstrate findings of the diagnosis as a result of her employment even though she had not worked at the employing establishment since 1993. Having received no response, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Susan Myers, a psychiatrist, for an opinion on whether the accepted anxiety reaction had resolved.

On April 21, 2004 Dr. Myers reported that appellant had no diagnosable psychiatric condition. She reviewed the medical records that the Office provided, as well as a statement of accepted facts. Dr. Myers related appellant's history, current complaints and mood. She described her findings on mental status examination and made the following assessment:

"At this point, the patient does not appear to have symptoms that would meet the criteria for a major depressive disorder, and she currently is denying any anxiety. She would meet the criteria for an adjustment disorder; however, given the excessive amount of time that has passed, she does not meet the time frame for that. At this point, I cannot identify an Axis I problem."

Addressing questions posed by the Office, Dr. Myers again explained that, although appellant experienced a great deal of anger because she felt that the Office unfairly compensated her for her work injury, she did not currently meet the criteria for any Axis I psychiatric disorder. She noted that appellant was not complaining of any anxiety symptoms and had no symptoms of panic attack, post-traumatic stress disorder or generalized anxiety disorder. As appellant was not

evidencing symptoms of anxiety, Dr. Myers concluded that the accepted anxiety reaction was most likely resolved.

On August 26, 2004 after proper notice, the Office terminated appellant's compensation for the accepted condition of anxiety reaction effective September 5, 2004. The Office found that Dr. Myers' report represented the weight of the medical evidence.

Appellant requested reconsideration and submitted additional medical evidence. On January 5, 2005 Dr. Al B. Harley, Jr., a psychiatrist, described his evaluation of appellant. He noted that he had seen her before in the early 1990s, when he diagnosed her with atypical paranoid disorder. This remained his current diagnosis. Dr. Harley reported that appellant had major impairment in terms of her social and vocational functioning, her thinking, her judgment and her mood.

On April 18, 2005 the Office reviewed the merits of appellant's claim and denied modification of its August 26, 2004 decision to terminate compensation. The Office found that Dr. Haley's report was of diminished probative value in support of appellant's claim for continuing compensation benefits.

Appellant again requested reconsideration. She submitted the October 26, 2005 report of Dr. Janet D. Woolery, a Board-certified psychiatrist:

“[Appellant] was seen by me for an initial evaluation on July 20, 2005. At this time her working diagnoses are [d]epressive [d]isorder NOS [not otherwise specified] and [d]elusional [d]isorder, [p]aranoid [t]ype. [Appellant] has been treated since 1993 for this job[-]related disorder and she continues to experience symptoms and has difficulty functioning. [She] is unable to work in any capacity at this time.

“[Appellant] is compliant with all treatment recommendations and continues to take [medication]. At this time, [she] will need medication monitoring every two [to] three months and has agreed to continue to see me for her treatment for her job-related disorder.”

On April 20, 2006 the Office reviewed the merits of appellant's case and again denied modification of its prior decision to terminate compensation for anxiety reaction. The Office found that, although appellant continued to receive psychiatric treatment for other psychiatric conditions, Dr. Myers' report established that the accepted condition of anxiety reaction had resolved by 2004.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² Once the Office accepts a claim, it has the burden of proof to justify termination or modification of

² 5 U.S.C. § 8102(a).

compensation benefits.³ After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

ANALYSIS -- ISSUE 1

When the Office terminated compensation for the accepted condition of anxiety reaction, Dr. Myers, the Office referral psychiatrist, had provided the only contemporaneous medical evaluation and opinion on residuals of the accepted injury. The Office provided her with appellant's medical records and a statement of accepted facts so she could base her opinion on a proper medical and factual background. On April 21, 2004 Dr. Myers concluded that appellant had no diagnosable psychiatric condition. Appellant's opinion is well reasoned. Dr. Myers explained that appellant denied any anxiety symptoms; she had no symptoms of panic attack, post-traumatic stress disorder or generalized anxiety disorder. As appellant did not exhibit symptoms of anxiety, Dr. Myers found that the accepted anxiety reaction was most likely resolved.

The Board finds that Dr. Myers' opinion represents the weight of the medical evidence and justified the Office's decision to terminate compensation for the accepted condition of anxiety reaction. The Office last heard from Dr. Hasseltine, appellant's psychiatrist, on April 3, 2002, when he completed a work capacity evaluation form indicating that she could not return to work at the employing establishment. He did not respond to the Office's August 20, 2002 request for a comprehensive narrative report fully addressing the issue of residuals of the accepted anxiety disorder. Given the passage of time, the Board finds no conflict in medical opinion between Dr. Hasseltine and Dr. Myers.⁵ A 2002 report suggesting continuing employment-related disability is not necessarily inconsistent with the reported resolution of symptoms two years later.⁶ The Board finds that the Office met its burden of proof to justify the termination of compensation for the accepted condition of anxiety reaction.⁷

LEGAL PRECEDENT -- ISSUE 2

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ The Act provides for referral to an impartial medical specialist if there is disagreement between the physician making the examination for the United States and the physician of the employee. 5 U.S.C. § 8123(a).

⁶ Appellant indicated to the Board that the employing establishment continued to harass her after she left work. Any such harassment, occurring when she was no longer a federal employee, is not compensable under the Act.

⁷ Appellant alleged that in July 2004 she responded to the Office's requests for updated medical information, or at least had her physician respond. The Board has reviewed the record carefully and can find no indication that the Office received additional medical evidence from appellant or her physician at any time contemporaneous to the Office's August 26, 2004 decision to terminate compensation.

related to the accepted employment injury.⁸ The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁹

ANALYSIS -- ISSUE 2

The Office, having met its burden of proof to justify the termination of appellant's compensation for the condition of anxiety reaction, shifts the burden to appellant to establish that residuals of anxiety reaction continued after September 5, 2004, the effective date of the termination. Appellant submitted two narrative medical reports, but this evidence has little probative value.

On its face, the January 5, 2005 report of Dr. Harley, a psychiatrist, does not support that appellant continues to suffer residuals of the accepted anxiety reaction. Dr. Harley did not diagnose anxiety reaction. He diagnosed atypical paranoid disorder. Dr. Harley did not relate this diagnosis to appellant's federal employment, much less to the specific incidents of harassment that formed the basis of the acceptance of her claim. His failure to address the accepted anxiety reaction or to support that residuals of anxiety reaction continued beyond September 5, 2004, the effective date of termination, greatly diminishes the probative value of his report.

The October 26, 2005 report of Dr. Woolery, a Board-certified psychiatrist, does not support appellant's claim for continuing compensation. Dr. Woolery made no mention of the accepted condition and gave no indication that residuals of anxiety reaction continued after September 5, 2004. She diagnosed instead depressive disorder NOS and delusional disorder, paranoid type. Although Dr. Woolery described appellant's disorder as "job related," she attempted no psychiatric explanation. She did not address the denial of certain training or the two letters of warning, which the Office accepted as compensable factors of employment. Medical conclusions based on inaccurate or incomplete histories are of little probative value.¹⁰ Medical conclusions unsupported by rationale are also of little probative value.¹¹ The Board finds that appellant has not met her burden of proof to establish that she continues to suffer residuals of the accepted employment injury.

⁸ *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

⁹ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

¹⁰ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete).

¹¹ See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation. The weight of the contemporaneous medical evidence established that she no longer suffered residuals of the accepted anxiety reaction. Medical evidence submitted after the Office's termination of compensation indicated that appellant suffered from other psychiatric conditions but did not demonstrate that residuals of the accepted anxiety reaction continued beyond September 5, 2004. Appellant did not meet her burden of proof.

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board