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<b>E.A., Appellant</b>	)	
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<b>and</b>	)	
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<b>DEPARTMENT OF HEALTH &amp; HUMAN</b>	)	<b>Docket No. 07-429</b>
<b>SERVICES, SOCIAL SECURITY</b>	)	<b>Issued: June 25, 2007</b>
<b>ADMINISTRATION, North Hollywood, CA,</b>	)	
<b>Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

On November 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 17, 2006 with respect to termination of compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether the Office met its burden of proof to terminate compensation for wage-loss and medical benefits effective April 25, 2006.

On September 21, 1987 appellant, then a 53-year-old claims representative, filed an occupational claim (Form CA-2) alleging that she sustained an emotional condition causally related to her federal employment. As part of the development of the claim, the Office prepared

a statement of accepted facts dated June 12, 1990. The accepted facts included that “management was unresponsive in resolving problems in a civilized manner. The claimant experienced racial discrimination as the clerical [sic] harassed the claimant without intervention on the part of claimant’s supervisor.” It was also accepted that appellant was “singled out for counseling,” excluded from unit meetings and training assignments, given assignments not similar to other claim representatives, reprimanded in a loud voice on May 28, 1987 and worked with a supervisor who had little knowledge of relevant regulations and offered little technical assistance.

The case was referred to an Office medical adviser. In a June 28, 1990 report, the medical adviser opined that adjustment disorder was causally related to the employment factors of racial discrimination, reprimands, being singled out for counseling, given atypical assignments and exclusion from unit meetings. The Office accepted the claim for adjustment disorder and appellant began receiving compensation for wage loss.

On June 20, 2005 the Office prepared a new statement of accepted facts. The Office reported as “factors of employment” that appellant’s clerk did not like her and would not perform assigned work, that the clerk shook her finger at appellant and appellant’s supervisor did not take action regarding problems with the clerk. The Office then listed a number of “factual events.” These included statements such as appellant “was not included in all meetings and training sessions” and she “was given different work assignments from other employees with the same job title. However, all of the work assigned was within her position description. There is no evidence that she was assigned more work than other employees.” The accepted facts then found as “unsubstantiated allegations” that appellant was discriminated against due to race, singled out for counseling, given erroneous performance appraisals and that management was insensitive to African American employees.

The Office referred appellant, along with the statement of accepted facts and medical records, to Dr. Robert Hepps, a psychiatrist, for evaluation. In a report dated August 11, 2005, Dr. Hepps opined that, although appellant was currently suffering from an adjustment disorder, it was not related to her work injury. He stated that symptoms of depression and anxiety were related to concerns about health issues and having to be reevaluated.

By letter dated March 10, 2006, the Office advised appellant that it proposed to terminate her compensation based on the medical evidence. In a decision dated April 25, 2006, the Office terminated compensation for wage-loss and medical benefits. Appellant requested a hearing, which was held on August 9, 2006. By decision dated November 17, 2006, the hearing representative affirmed the April 25, 2006 termination decision.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.<sup>2</sup> The right

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<sup>1</sup> *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

<sup>2</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>3</sup>

### **ANALYSIS**

The Office accepted the claim for adjustment disorder based on both the medical and factual evidence. With respect to the factual evidence, the Office accepted certain compensable work factors which were properly considered by physicians offering an opinion on causal relationship with employment. The June 12, 1990 statement of accepted facts specifically included as compensable work factors racial discrimination, being singled out for counseling, given atypical assignments, exclusion from meetings and reprimands. The June 20, 2005 statement of accepted facts, however, found “unsubstantiated” the allegations of racial discrimination and being singled out for counseling, without further explanation. In addition, the June 20, 2005 statement of accepted facts purports to accept as factors of employment incidents that were not discussed in the prior statement of accepted facts, and then lists a number of “factual events,” without clearly explaining which specific incidents or allegations were considered as compensable work factors. The June 20, 2005 statement of accepted facts did not provide an adequate background for development of the evidence.

If the Office rescinds acceptance of compensable work factors, it should follow the established procedures for rescission of an emotional condition. It should issue a decision with appeal rights that discusses the specific allegations, refers to the evidence of record and Board precedent, and makes a clear factual finding as to why the allegation does not constitute a substantiated compensable work factor.<sup>4</sup> In this way, the claimant will be provided with proper factual findings and an opportunity to pursue appeal rights.

The Board therefore finds that the Office failed to properly rescind acceptance of compensable work factors and failed to prepare a statement of accepted facts that provided an adequate background for further development of the evidence. It is the Office’s burden of proof to terminate compensation and the Board finds that the Office failed to meet its burden of proof in this case.

### **CONCLUSION**

The Office did not meet its burden of proof to terminate compensation as it improperly rescinded compensable work factors and failed to provide a proper factual background for development of the evidence.

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<sup>3</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>4</sup> *See L.C.*, 58 ECAB \_\_\_\_ (Docket No. 06-1263, issued May 3, 2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 17 and April 25, 2006 are reversed.

Issued: June 25, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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