

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

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**M.A., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Francisco, CA, Employer**

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**Docket No. 10-25  
Issued: August 4, 2010**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 1, 2009 appellant filed a timely appeal from an August 20, 2009 decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss compensation effective August 30, 2009.

**FACTUAL HISTORY**

The Office accepted that appellant, then a 41-year-old acting supervisor, sustained a post-traumatic stress disorder in May 2004 when a coworker physically threatened her.<sup>1</sup> She stopped

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<sup>1</sup> The Office accepted that appellant's coworker, made physical threats, pointed his hand at her like a gun and stated "I will make sure you pay." The employer acknowledged that appellant was assigned to the attendance control office when the coworker threatened appellant

work on October 24, 2004 and did not return. Appellant received wage-loss compensation for total disability.

Appellant was treated by Dr. Robert A. Kaplan, a licensed clinical psychologist, from December 2, 2004 to September 6, 2005. He reviewed the history of the incident at work and diagnosed post-traumatic stress disorder, high blood pressure and occupational problems. Dr. Kaplan advised that appellant sustained a significant psychological injury when she was threatened with bodily injury by her coworker.

In an October 22, 2005 report, Dr. Robert A. Kimmich, a Board-certified psychiatrist and Office referral physician, diagnosed post-traumatic stress disorder and found that appellant had not recovered from her anxiety. He recommended that she be allowed to return to work at a different location, preferably New Orleans, Louisiana, where she had family.

Dr. Kaplan advised that she could return to work in January 2006 at a different location. He stated that New Orleans would be ideal because appellant had family there. On March 13, 2006 appellant requested that a transfer to New Orleans and indicated that she would like to return to work.

On May 18, 2006 the Office noted that appellant was released to work as a clerk in any New Orleans location. Both Dr. Kaplan and Dr. Kimmich had recommended transfer to New Orleans because appellant had a support structure.

Upon relocation to New Orleans, appellant was treated by Dr. Louis Cenac, Jr., a Board-certified psychiatrist, from January 29 to August 21, 2007. He noted that appellant was interested in reemployment at the employing establishment. Dr. Cenac noted that she exhibited objective signs of post-traumatic stress disorder including difficulty sleeping, exaggerated startle response and weight gain. He found that appellant had residuals of her work injury that were still disabling.

Appellant came under the treatment of Dr. Jennifer Gilkes, a Board-certified psychiatrist and associate of Dr. Cernac, she reviewed a history of appellant's condition and diagnosed acute stress disorder which evolved into post-traumatic stress disorder from a work-related injury in October 2004. On December 19, 2007 she noted that appellant's condition was improving. On January 11, 2008 Dr. Gilkes diagnosed post-traumatic stress disorder, obesity, hypothyroidism, hypertension and occupational and financial stress. She noted that appellant exhibited symptoms of continued generalized anxiety, insomnia and fearfulness and her condition was directly related to work issues. Appellant was able to return to work in a protected work environment as a window clerk or performing office work with supportive supervisors subject to a lifting restriction of 10 pounds. In February 1 to March 18, 2008 reports, Dr. Gilkes noted improvement in appellant's condition. On April 8, 2008 she stated that appellant remained at risk for a relapse and would be sensitive to stressors. Dr. Gilkes recommended that appellant look for nonstressful opportunities to return to work at the employing establishment. In a June 16, 2008 work-capacity evaluation, she advised that appellant was able to work full time in a job isolated from the public with little contact with other employees. Dr. Gilkes recommended that appellant return to work with restrictions, including working indoors, day shift with weekends off with supportive supervisors.

On October 20, 2008 the Office referred appellant for vocational rehabilitation after the employer advised that it had no positions within her restrictions.

On April 1, 2009 Dr. Gilkes advised that appellant could return to work eight hours per day and was able to perform her usual job with no restrictions. She found that appellant had no other medical factors affecting her ability to work.

On July 17, 2009 the Office proposed to terminate appellant's wage-loss compensation on the grounds that Dr. Gilkes found she had no continuing disability resulting from her accepted emotional condition.

In treatment records dated October 30, 2008 to March 5, 2009, Dr. Gilkes noted that appellant was cooperating with vocational rehabilitation and was interested in returning to work at the employing establishment. She noted that appellant required a safe working environment. On April 1, 2009 Dr. Gilkes stated that appellant presented in casual attire, was well groomed and coherent, mood and affect were appropriate and she was articulate. She reiterated that appellant could return to her previous job without restrictions. In June 4 and July 15, 2009 reports, Dr. Gilkes noted that appellant presented well groomed, her speech was articulate and clear, her mood improved, her affect was appropriate and she was fully coherent. She diagnosed post-traumatic stress disorder and associated depressive mood related to work. Dr. Gilkes noted that appellant contacted the employing establishment to advise that her work restrictions had been lifted. She recommended that appellant return to the employing establishment to work and was awaiting job availability.

In an August 20, 2009 decision, the Office terminated appellant's wage-loss compensation effective August 30, 2009. It found that the weight of the medical evidence established that appellant had no continuing disability due to her accepted condition. The Office noted that appellant remained entitled to medical benefits.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> After the Office has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup>

### **ANALYSIS**

In this case, the Office accepted appellant's claim for post-traumatic stress disorder and paid appropriate compensation. It determined her disability due to her accepted condition resolved based on the reports of Dr. Gilkes, appellant's treating physician.

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<sup>2</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>3</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

In reports dated November 30 to December 19, 2007, Dr. Gilkes diagnosed acute stress disorder, which evolved into post-traumatic stress disorder from a work-related psychological injury in October 2004. She noted that appellant's condition was improving. On January 11, 2008 Dr. Gilkes noted that appellant exhibited symptoms of continued generalized anxiety, insomnia and fearfulness and opined that her injury was directly related to the work injury. She diagnosed post-traumatic stress disorder, obesity, hypothyroidism, hypertension and occupational and financial stress and opined that appellant was able to return to work with restrictions. In reports dated February 1 to March 18, 2008, Dr. Gilkes recommended that appellant return to work at the employing establishment in a nonstressful appropriate position. In a June 16, 2008 work-capacity evaluation, she advised that appellant was able to work full time subject to restrictions. On April 1, 2009 Dr. Gilkes reiterated that appellant could return to her usual job and work full time without restrictions. Appellant had no other medical factors affecting her ability to work.

After issuance of the pretermination notice, appellant submitted additional treatment records from Dr. Gilkes who advised that her condition had improved and that her work restrictions had been lifted. She recommended work at the employing establishment without any limitations. Dr. Gilkes examined appellant, reviewed the relevant history and medical records and found she was not disabled due to her accepted post-traumatic stress disorder.

As appellant's attending physician, Dr. Gilkes had knowledge of the relevant facts and had numerous opportunities to examine appellant and to evaluate the course of her condition. At the time wage-loss benefits were terminated she had clearly opined that appellant's post-traumatic stress syndrome was no longer disabling and that she was able to return to full-time work without restrictions. The Board finds that Dr. Gilkes' opinion is probative on the issue of appellant's ability to work.<sup>4</sup> As the record contains no medical evidence to the contrary, the Board finds that Dr. Gilkes' opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of wage-loss benefits.

For these reasons, the Office met its burden of proof in terminating appellant's wage-loss benefits.<sup>5</sup>

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate wage-loss benefits effective August 30, 2009.

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<sup>4</sup> See also *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

<sup>5</sup> Appellant remains entitled to appropriate medical benefits for her accepted condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 20, 2009 is affirmed.

Issued: August 4, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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