

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSE M. SINGH and U.S. POSTAL SERVICE,  
POST OFFICE, Coppell, Tex.

*Docket No. 96-2594; Submitted on the Record;  
Issued October 14, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

On April 13, 1992 appellant, then a 35-year-old letter sorting machine clerk, filed a claim alleging that she developed an emotional condition as a result of her employment duties. Based on the opinions of appellant's treating physician, Dr. Robert C. Schwartz, Jr. and Office second opinion physician, Dr. William T. Moore, on October 26, 1992 the Office accepted appellant's claim for major depressive disorder. The Office found that in addition to several other accepted employment factors, appellant's inability to cope with the fast paced letter sorting machines had contributed to her condition. In November 1992, appellant was reassigned to a modified position where she did not operate the fast machines. Appellant continued weekly psychotherapy sessions with Dr. Schwartz, who submitted periodic reports to the Office. The Office paid appellant appropriate compensation benefits for intermittent periods of missed work.

On February 20, 1996 appellant was examined by Dr. Keith H. Johansen, a Board-certified psychiatrist, at the request of the Office, in order to obtain an update on appellant's condition. In his report dated February 21, 1996, Dr. Johansen diagnosed "probable paranoia schizophrenia" requiring medication and stated that while he did not feel that long-term psychotherapy was of much use in the treatment of this condition, he believed that appellant's relationship with Dr. Schwartz was very important and could be maintained through periodic medication checks. In his follow-up report dated April 4, 1996, Dr. Johansen clarified that appellant was not suffering from depression at the time of his examination, but she did have a major permanent psychiatric disorder, which was paranoid in nature and necessitated that she remain in her modified employment position, or in a similar position. Dr. Johansen concluded that appellant's condition was not work related but would have occurred under any circumstances.

On April 10, 1996 the Office issued a notice of proposed termination of appellant's compensation benefits, effective April 4, 1996, finding that the weight of medical evidence, as represented by Dr. Johansen's report, established that appellant no longer suffers from her accepted condition of major depressive disorder, but rather has a paranoid condition that is not employment related.

In response to the Office's proposed notice of termination, appellant submitted a narrative report dated April 16, 1996 from her treating physician, Dr. Schwartz. In his report, Dr. Schwartz stated that he agreed in part with Dr. Johansen that appellant's psychiatric disorder includes qualities of paranoid anxiety, but felt that some of her problems were probably caused by her employment. Dr. Schwartz stressed that while appellant could continue to work, it was extremely important that she be permitted to continue to work in a protected environment comprised of low stress duties, low levels of interpersonal stress and not a lot of fast paced machine work. The physician added that appellant's condition had been triggered by the stress of the workplace and that appellant had not recovered but required continued psychiatric help, including medication and psychotherapy, in order to ensure that she did not decompensate further.

The Office found a conflict in medical opinion between Dr. Schwartz and Dr. Johansen and referred appellant to Dr. Manoochehr Khatami, a Board-certified psychiatrist, for an impartial medical examination. In a July 1, 1996 report Dr. Khatami reviewed appellant's history and medical treatment. He reported his findings on examination, noting that there was some evidence of thought disorder, but no delusions, no hallucinations and no Schneiderian criteria for schizophrenia. He added that appellant did exhibit paranoia with regard to people with whom she works but that no signs or symptoms of depression were present. Dr. Khatami diagnosed major depressive disorder with paranoia disorder in remission and recommended that she increase her medication. In a more detailed report of the same date, Dr. Khatami attempted to address the questions posed by the Office in its letter of referral. With respect to whether appellant's accepted major depressive disorder was continuing, Dr. Khatami stated:

"At this time the patient's depression is in remission this patient is not depressed. She has a Beck Depression Inventory score of one which indicates no depression. Currently there is no factor causing or continuing her depression."

In response to the Office's inquiry regarding appellant's ability to work, Dr. Khatami stated:

"The answer is that currently continuing work does not create depression -- patient is able to work eight hours, five days a week in a modified position. It is stated that if the patient has lesser tension at work and is not engaged in fast paced machine work she's able to function. Also she does not have the ability to interact with others because of paranoia, suspiciousness and anxiety. Therefore, in a modified position in which she does not have as much contact with other people, she does function better for eight hours a day, five days a week."

Dr. Khatami concluded:

“Patient reports that she has not been under any aggravation for the past month and has been able to function in her modified position. In terms of future treatment, currently patient is on Risperdal 0.5 mg at bedtime. I think the Risperdal will be able to help her with her paranoid disorder, the dosage nevertheless should be increased if the patient can tolerate it up to [two to three milligrams] a day. I don’t believe that this patient will benefit any further from individual psychotherapy, nevertheless, her relationship with Dr. Schwartz is very important and she should continue basically on a medication management basis.”

By decision dated July 30, 1996, the Office terminated appellant’s continuing compensation and medical benefits.

The Board finds that the Office met its burden of proof to terminate appellant’s wage-loss compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>1</sup> In the present case, the Office accepted that appellant developed a major depressive disorder as a result of her federal employment duties.

The Office properly found that a conflict in medical opinion was created between Dr. Schwartz, appellant’s attending psychiatrist who stated that appellant continued to suffer from this condition, although she had additionally developed other psychiatric conditions and Dr. Johansen, a second opinion referral psychiatrist who opined that appellant suffered from paranoid schizophrenia and no longer had depression.<sup>2</sup> In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial medical specialist to resolve the conflict in medical opinion, the opinion of the impartial specialist, if based upon a proper factual background and sufficiently well rationalized, must be given special weight.<sup>3</sup>

In his July 1, 1996 report, Dr. Khatami provided a thorough history of appellant’s psychiatric condition and medical treatment obtained from Dr. Schwartz. He related his findings on examination of appellant and entered a diagnosis of major depressive disorder with paranoia disorder in remission and stated that appellant could work on an eight-hour a day, five-day a week basis as long as she remained in her modified position. The Board finds that Dr. Khatami’s medical opinion is well rationalized and supports that appellant is capable of performing her modified work on a full-time basis. Therefore, the Office met its burden to terminate appellant’s wage-loss compensation.

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<sup>1</sup> *Henry P. Eanes*, 43 ECAB 510 (1992).

<sup>2</sup> *See* 5 U.S.C. § 8123(a).

<sup>3</sup> *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

The right to medical benefits for an accepted condition, however, is not limited to the period of entitlement to compensation for wage loss.<sup>4</sup> 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>5</sup>

The Office found that the weight of the medical evidence rests with Dr. Khatami, as the impartial medical specialist. Based on Dr. Khatami's July 1, 1996 report, the Office found that appellant's accepted condition had resolved as of that date and that appellant required no further medical treatment. Consequently, the Office denied appellant continuing medical benefits. The Board finds, however, that Dr. Khatami did not state that appellant's condition had entirely resolved, but rather stated that it was currently in remission and recommended that appellant continue taking her current medication and continue to see Dr. Schwartz for medication management. The Board will, therefore, affirm the Office's July 30, 1996 decision on the issue of compensation for wage loss, but reverse on the issue of continuing medical benefits.

The July 30, 1996 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Dated, Washington, D.C.  
October 14, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

<sup>5</sup> *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).