

On May 7, 1995 appellant, then a 35-year-old clerk, filed an occupational disease claim alleging that she developed an emotional condition due to factors of her federal employment. The Office accepted her claim for depressive disorder and anxiety states.

Appellant's attending physician, Dr. Shayna P. Lee, a Board-certified psychiatrist, completed reports on December 16, 2003 and June 16, 2005. She continued to support appellant's total disability for work due to her work-related chronic depression and post-traumatic stress disorder. On February 21, 2006 she stated that appellant could return to the employing establishment on a trial basis beginning February 27, 2006 with restrictions on standing and lifting and exposure to supervision.

The employing establishment directed appellant to return to work on May 8, 2006. In a letter dated May 11, 2006, the Office informed her that the offered position was suitable and allowed 30 days for her to accept the position or offer her reasons for refusal. In a letter dated May 19, 2006, Dr. Lee stated that the offered position was not within appellant's physical restrictions or psychiatric restrictions. The Office informed appellant by letter dated June 19, 2006 that [her] reasons for refusing the position were not suitable and afforded her an additional 15 days to accept the position. By decision dated July 7, 2006, it terminated her compensation benefits on the grounds that she refused an offer of suitable work. Appellant requested a review of the written record on July 19, 2006. By decision dated March 13, 2007, the hearing representative set aside the Office's July 7, 2006 decision and remanded the claim for additional development of the medical evidence.

The Office reentered appellant on the periodic rolls on April 12, 2007. It referred her for a second opinion evaluation on May 4, 2007. Dr. Jorge A. Raichman, a Board-certified psychiatrist, examined appellant on July 22, 2007 and reviewed the medical evidence of record. He interviewed her and diagnosed mood disorder and malingering. Dr. Raichman stated that appellant's mood disorder was largely based on a personality trait of projecting blame and putting herself in a victim role. He opined that she could work if she wanted to and certainly within the restrictions provided by Dr. Lee. Dr. Raichman stated, "I do not think it is wise to put [appellant] in contact with the people that she claimed 'harassed her,' in the past."

In a letter dated August 10, 2007, the Office found a conflict of medical opinion requiring referral to an impartial medical specialist, Dr. Andrew Brylonski, a Board-certified psychiatrist. In a report dated August 30, 2007, Dr. Brylonski reviewed the statement of accepted facts and the medical evidence of record. He administered psychological testing and diagnosed malingering. Dr. Brylonski stated that with a reasonable medical probability there was no significant psychiatric illness. He found that appellant knew right from wrong and her emotional condition could not be determined because she was faking psychiatric deficits. Dr. Brylonski concluded that she was malingering and her condition not related to the work injury based on the statement of accepted facts. He opined that appellant could perform the offered modified clerk position without restrictions.

The Office proposed to terminate appellant's compensation benefits on September 27, 2007 on the grounds that her work-related condition had ceased based on Dr. Brylonski's report. It allowed appellant and her representative 30 days for a response. By decision dated October 29, 2007, the Office terminated appellant's compensation and medical benefits based on Dr. Brylowski's report.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.<sup>2</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>4</sup>

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.<sup>5</sup>

### **ANALYSIS**

Appellant's attending physician Dr. Lee, a Board-certified psychiatrist, opined that appellant was capable of returning to work with restrictions due to her ongoing conditions of depression and post-traumatic stress disorder and physical limitations. The Office's second opinion physician, Dr. Raichman, a Board-certified psychiatrist, found that appellant had no residuals of employment-related emotional condition and that she was malingering. The Office properly found a conflict of medical opinion evidence regarding appellant's current condition, the relationship to her employment and referred appellant to Dr. Brylonski, a Board-certified psychiatrist, to act as the impartial medical examiner to resolve the conflict.

In his August 30, 2007 report, Dr. Brylonski provided the results of his review of the statement of accepted facts and the medical reports of record, as well as his interview and testing of appellant. He found that appellant had no psychiatric illness and diagnosed malingering based on objectively scored psychological and neuropsychological testing. Dr. Brylonski's report was based on a proper history of injury and provided a well-rationalized basis for concluding that she no longer had residuals of her accepted employment-related emotional condition. He concluded that appellant knew right from wrong and was faking psychiatric deficits. As appellant has no residuals or disability due to her accepted employment injuries, the Office properly terminated her compensation benefits.

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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).

<sup>3</sup> *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

<sup>4</sup> *Mary A. Lowe*, *supra* note 2.

<sup>5</sup> *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits on the grounds that her employment-related emotional condition had ceased with no residuals or ongoing disability based on the detailed and well-reasoned report of Dr. Brylonski, the impartial medical examiner.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 29, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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