

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLYN M. WARNER and U.S. POSTAL SERVICE,
POST OFFICE, Van Nuys, CA

*Docket No. 98-2183; Submitted on the Record;
Issued July 23, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation, effective August 17, 1997.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof.

This is the second appeal before the Board in this case. By decision dated September 10, 1993, the Board reversed a prior Office decision terminating appellant's compensation on the grounds that the second opinion evaluation of Dr. George Wurster, a Board-certified psychiatrist, was not based on probative medical evidence.¹ The law and facts as set forth in the previous decision and order is incorporated herein by reference.

Subsequent to the September 10, 1993 Board decision, on August 26, 1994, the Office referred appellant to Dr. Russell Vandenberg, a Board-certified psychiatrist, for a second opinion evaluation and, finding that a conflict in the medical evidence existed between the opinions of her treating Board-certified psychiatrist, Dr. J. Alan Cook, and Dr. Vandenberg, on January 10, 1995 the Office referred appellant, along with the medical record, a statement of accepted facts and a set of questions, to Dr. Robert I. Fink, a Board-certified psychiatrist, for an impartial medical evaluation. In a January 30, 1995 report, Dr. Fink advised that appellant had no residual employment-related disability. By notice dated July 7, 1997, the Office proposed to terminate appellant's benefits, based on Dr. Fink's referee examination. In response appellant submitted a July 29, 1997 report from Dr. Cook. By decision dated August 8, 1997, the Office terminated appellant's compensation, effective August 17, 1997, based upon the opinion of Dr. Fink. Appellant requested a review of the written record and submitted a report from Dr. Cook dated August 18, 1997. In an April 8, 1998 decision, an Office hearing representative affirmed the prior decision. The instant appeal follows.

¹ Docket No. 92-1610. The Board notes that the Office accepted that appellant sustained employment-related temporary aggravation of a bipolar disorder.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.²

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³ In this case, finding that a conflict of medical opinion existed, the Office referred appellant to Dr. Fink, a Board-certified psychiatrist, to provide an impartial evaluation. In a comprehensive report dated January 30, 1995, Dr. Fink advised that appellant had no residual employment-related disability. While appellant submitted additional reports from Dr. Cook, he merely reiterated his opinion that appellant continued to be disabled due to employment factors. As Dr. Cook had been on one side of the conflict in the medical opinion that Dr. Fink, the impartial medical examiner, resolved, Dr. Cook's reports are insufficient to overcome the special weight accorded Dr. Fink.⁴ The Board, therefore, finds that appellant had no employment-related disability on or after August 17, 1997, and the Office met its burden of proof to terminate her compensation benefits on that date.

The decisions of the Office of Workers' Compensation Programs dated April 8, 1998 and August 8, 1997 are hereby affirmed.

Dated, Washington, D.C.
July 23, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Pedro Beltran*, 44 ECAB 222 (1992).

³ *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁴ *See Harrison Combs, Jr.*, 45 ECAB 716 (1994).