

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

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**ELIZABETH JOHN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
East Orange, NJ, Employer**

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**Docket No. 04-421  
Issued: July 6, 2004**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On December 2, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated October 22, 2003, which affirmed the termination of her compensation benefits effective November 30, 2002. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits, effective November 30, 2002, on the grounds that she had no further disability for work or residuals that required further medical treatment.

**FACTUAL HISTORY**

On January 5, 2001 appellant, then a 42-year-old distribution machine clerk, filed an occupational disease claim alleging that she developed an emotional condition as a result of an October 23, 2000 work incident in which her supervisor threatened to shoot her.

On November 13, 2000 Dr. David Corwin, an attending Board-certified psychiatrist, stated that appellant described being threatened by a supervisor at work who said he would shoot her. Dr. Corwin noted that this was particularly threatening because appellant's brother had been shot and killed while answering the door. He diagnosed a post-traumatic stress disorder and indicated that appellant was unable to work. The Office accepted that appellant sustained a post-traumatic stress disorder.

On November 27, 2000 Dr. Corwin stated as follows:

“[Appellant was] very depressed and anxious and [was] unable to work since October 23, [2000]. As noted in my report she is suffering from a post-traumatic stress disorder as a result of an incident at work. She is less depressed and anxious in general but still has residual avoidance symptoms related to her work-related illness. Because of this she is able to return to work as of Monday, December 4, [2000] with the restriction that she not work with the supervisor that was part of the work-related incident.”

On December 13, 2000 Dr. Corwin stated that appellant “remains ill and unable to work at her current job location due to a phobic response resulting from a work-related trauma. She can work at another [employing establishment] location.”

On January 24, 2001 Dr. Corwin noted that appellant “is able to work, but cannot work at the same location where her supervisor threatened her due to her post-traumatic stress disorder.”

In a report dated February 21, 2001, the employing establishment investigative service noted that, upon investigation of the October 23, 2000 incident, it learned that appellant had been arrested on May 6, 1985 by the Essex County Police Department and charged with aggravated assault on a police officer, intimidation and resisting arrest. Appellant was found guilty of simple assault and was fined. It noted that she omitted mention of this arrest on her employment application by stating “No” to the question about having ever been convicted of an offense against the law.

In an April 4, 2001 Form-CA-20 attending physician's report, Dr. Corwin noted that appellant had been discharged from treatment that date and could return to regular work without restrictions.

Appellant claimed compensation from October 23, 2000 through April 4, 2001.

On May 14, 2001 Dr. Corwin indicated that appellant was totally disabled and could not return to work.

On May 29, 2001 the Office placed appellant on the periodic rolls.

By report dated July 11, 2001, Dr. Corwin noted that appellant was depressed and being treated for a major depressive disorder and a panic disorder.

On August 23, 2001 the Office determined that a second opinion medical evaluation was appropriate and referred appellant, together with a statement of accepted facts and questions to be addressed, to Dr. Solomon Miskin, a Board-certified psychiatrist, for examination.

By report dated November 6, 2001, Dr. Miskin reviewed appellant's factual and medical history and indicated that she complained of anergia, anhedonia, apathy, amotivation, depression, dysthymia, dejection and dysphoria. He noted that she was being treated weekly by Dr. Corwin and was on multiple oral medications several times a day and that Dr. Corwin had found that she could return to work under a different supervisor without other restrictions. Dr. Miskin noted that appellant claimed that Dr. Corwin indicated that she could return to work as of December 4, 2001. Dr. Miskin evaluated appellant's mental status, noted that she presented with signs of anxiety, apprehension and dysphoria and he diagnosed an adjustment disorder with mixed emotional features, chronic moderate to severe, and rule out post-traumatic stress disorder, chronic, mild to moderate severity. He opined that, with evidence of a mild, partial psychiatric disability, appellant could resume work under a different supervisor, but that she should not be placed in a safety sensitive position in light of the potential sedating effects from her psychotropic medications. Dr. Miskin opined that appellant would benefit from continued outpatient psychiatric therapy following a treatment regimen of sessions held once every other week for three to four months.

On a form report dated November 22, 2001, Dr. Miskin indicated that appellant could perform her usual job duties under a different supervisor, but noted that she was on potentially sedating medication and would not be a candidate for safety-sensitive work.

By notice dated February 5, 2002, the employing establishment indicated that on May 15, 2001 appellant had been issued a notice of removal for falsification of her employment application to be effective as of August 22, 2001. The employing establishment noted that a grievance was filed and an arbitration was scheduled for January 23, 2002, but that appellant did not attend.

In a report dated July 22, 2002, Dr. Corwin noted that appellant had been treated with antidepressive and mood stabilizing medications and had recovered her mental health. He noted that she was still not able to work with her former supervisor but, as the supervisor had been transferred,<sup>1</sup> she was able to return to work without restrictions. On a July 22, 2002 form report, Dr. Corwin indicated that appellant could perform her usual job full time.

On August 29, 2002 the Office issued a proposed notice of termination of compensation on the grounds that the medical evidence of record established that she had no further disability for work. On November 6, 2001 Dr. Miskin stated that she could return to work under a different supervisor and, on July 22, 2002, Dr. Corwin released her to return to work without restrictions. Appellant was given 30 days within which to respond to the proposed notice and to submit further evidence of disability.

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<sup>1</sup> Appellant's supervisor had been transferred effective December 29, 2001.

Appellant responded on September 12, 2002, claiming that the only reason she continued to be on compensation was because the employing establishment refused to let her return.

In a November 30, 2002 decision, the Office terminated appellant's compensation benefits.

By letter dated December 17, 2002, appellant requested an oral hearing before an Office hearing representative. A hearing was held on July 30, 2003 at which she testified that she had been released from medical care and was not taking medication for her stress condition. The employing establishment noted that appellant's grievance of her termination from employment was dismissed as she failed to appear.

On October 1, 2003 the Office determined that appellant had continued to receive compensation benefits on the periodic rolls after her entitlement had been terminated effective November 30, 2002. The Office letter requested that she refund \$24,402.24 to the Office to avoid an overpayment being declared.<sup>2</sup>

By decision dated October 22, 2003, the hearing representative affirmed the termination of appellant's benefits, finding that the weight of the medical evidence of record established that she had no disabling residuals of her October 23, 2000 work injury.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> After it has determined that an employee has disability causally related to his or her federal 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>4</sup> Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.<sup>5</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>6</sup>

### **ANALYSIS**

In the present case, appellant's treating psychiatrist, Dr. Corwin, indicated as early as November 27, 2000 that she was able to return to work if not placed with her former supervisor.

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<sup>2</sup> As this request is not a formal final decision, the issue of overpayment is not now before the Board on this appeal. See 20 C.F.R. § 501.2(c).

<sup>3</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>4</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>5</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

<sup>6</sup> See *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986).

He reiterated this opinion on December 13, 2000 and January 24, 2001. Dr. Corwin noted on April 4, 2001 that appellant had been discharged from treatment that date and could return to her regular work without any restrictions. These opinions by appellant's treating psychiatrist establish that she has no further disability for work.

On November 6, 2001 the second opinion physician, Dr. Miskin, provided a complete and thorough examination of appellant and noted that Dr. Corwin had released her to return to duty on December 4, 2001. He opined that she could, at that time, return to work under a different supervisor. In a July 22, 2002 report, Dr. Corwin noted that appellant had been treated with antidepressant and mood stabilizing medications and had recovered her mental health, but was not able to work with her former supervisor. He noted that, as the supervisor had been transferred on December 29, 2001, appellant could perform her usual job full time. No residuals from appellant accepted employment-related emotional condition were identified at that time, and no need for further medical treatment was recommended.

The Office determined that Dr. Miskin's second opinion evaluation constituted the weight of the medical opinion evidence, as it was based upon a proper factual and medical background, and established that appellant's continuing medical complaints were not injury related and that she had no medical residuals of her accepted emotional condition. He opined that she could resume work under a different supervisor, which he reiterated by report dated November 22, 2001. These reports clearly support that appellant recovered from her accepted employment-related emotional condition and required no further therapy or medication.

On July 22, 2002 Dr. Corwin reiterated that appellant had recovered her mental health. He noted that, since the supervisor had been transferred on December 29, 2001, appellant could perform her usual job full time without problems. This report, therefore, establishes that appellant was released to return to work without further residuals requiring medical treatment.

Based upon the medical evidence of record, the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that she had no further disability for her regular work. The reports of Dr. Corwin and Dr. Miskin found that she could return to work without restrictions after her former supervisor was transferred. The Office met its burden of proof to terminate medical benefits as the medical reports of Dr. Miskin and Dr. Corwin establish that appellant has no residuals of her accepted condition which required medical treatment.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. The weight of the medical evidence of record establishes that she was released to return to work without restrictions or limitations.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 22, 2003 be and hereby is affirmed.

Issued: July 6, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member