

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON STANZIOLE and U.S. POSTAL SERVICE,
PALOS VERDES POST OFFICE, Palos Verdes, CA

*Docket No. 97-2265; Submitted on the Record;
Issued August 2, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 27, 1996.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation effective February 27, 1996.

On December 22, 1988 appellant, then a letter carrier, filed a claim for an occupational disease (Form CA-2) alleging that on October 19, 1988 she first realized that her stress condition was caused or aggravated by her employment. Appellant stopped work on October 19, 1988. She has not returned to work.

The Office accepted appellant's claim for adjustment disorder with mixed emotional features and psychological factors affecting physical condition.

By letter dated June 14, 1995, the Office referred appellant, along with a statement of accepted facts, medical records and a list of specific questions, to Dr. Irwin Savodnik, a Board-certified psychiatrist, for a second opinion examination to determine whether appellant had any continuing disability causally related to her accepted emotional conditions.

Dr. Savodnik submitted an August 4, 1995 medical report stating his conclusion that appellant was not psychiatrically disabled as of the date of his examination on an industrial basis and that appellant did not require psychiatric treatment on an industrial basis.

In a notice of proposed termination of compensation dated September 8, 1995, the Office advised appellant that it proposed to terminate her compensation based on Dr. Savodnik's opinion. The Office also advised appellant to submit additional medical evidence supportive of her continued disability within 30 days.

In response, appellant submitted a September 29, 1995 medical report of Dr. Samuel H. Albert, a Board-certified psychiatrist and appellant's treating physician, who stated that she continued to be disabled due to residuals of her accepted compensable employment factors.¹

The Office found a conflict in the medical opinion evidence between Drs. Savodnik and Albert and referred appellant to Dr. Richard Ness, a Board-certified psychiatrist, for an impartial medical examination by letter dated October 18, 1995. By letter of the same date, the Office advised Dr. Ness of the referral.

Dr. Ness submitted a January 30, 1996 medical report indicating that appellant no longer suffered from any residuals from the accepted compensable employment factors.

By decision dated February 27, 1996, the Office terminated appellant's compensation effective that date on the grounds that Dr. Ness' medical opinion established that she had no ongoing emotional condition or residuals causally related to the accepted compensable employment factors.

In a November 15, 1996 letter, appellant, through her counsel, requested reconsideration of the Office's decision accompanied by medical evidence. By decision dated January 27, 1997, the Office denied appellant's request for modification based on a merit review of the claim.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.² 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.³

Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁴ Inasmuch as a conflict did exist in the medical opinion evidence between Drs. Savodnik and Albert as to whether appellant had any continuing disability causally related to the accepted employment factors, the Office properly referred appellant to Dr. Ness for an impartial medical evaluation.

¹ The Office found that the following incidents occurred within appellant's performance of duty: (1) the placement of demands upon appellant to finish her route faster than she was capable of doing in May 1998 by the employing establishment; and (2) placement of appellant on leave-without-pay status by the employing establishment when appellant stopped work in October 1988 that was later determined to be inappropriate by a union settlement.

² *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ 5 U.S.C. § 8123(a).

When there exists 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 upon a proper factual background, must be given special weight.⁵

In his January 30, 1996 medical report, Dr. Ness provided a history of appellant's October 1988 employment injury and social background, his findings on mental and psychological examination and a detailed review of medical records along with comments about the records. He also reviewed with appellant, her experiences pertaining to the employing establishment, noting certain allegations were not included under the statement of accepted facts. Dr. Ness made the following diagnoses: (1) dysthymic disorder with episodes of recurrent major depression with moderate symptoms and poor prognosis and undifferentiated somatoform disorder with fair prognosis on Axis I; (2) mixed personality trait disturbance with passive-dependent, passive-aggressive, hypochondriacal and histrionic features on Axis II; (3) chronic obesity, right eye blindness, high blood pressure, ruled out cardiac arrhythmia, remote history of minor surgeries and a more recent bladder suspension surgery on Axis III; (4) psychosocial and environmental problems including difficulties with her primary support group, and economic and housing problems on Axis IV; and (5) a current global assessment of functioning scale score of 55 reflecting moderate psychological symptoms and predicting moderate difficulty in social or occupational functioning on Axis V.

Dr. Ness opined that the bulk of appellant's psychiatric impact was due to job experiences that were not accepted as factors of employment under the statement of accepted facts, a variety of other job experiences and personal life challenges through the years. Dr. Ness opined that appellant no longer had any continuing disability caused by the accepted employment factors. He explained that based on the medical records, appellant experienced total temporary psychiatric disability for nine months due to the accepted employment factors and that her two years of outpatient psychotherapy constituted more than adequate treatment to relieve any of her psychiatric symptoms. Dr. Ness also explained that the earlier medical records revealed appellant was ready to return to work by 1989. He further explained that from a subjective standpoint, appellant felt that she was disabled for work. Dr. Ness specifically expressed disagreement with several aspects of Dr. Albert's report, noting that Dr. Albert had reached disability conclusions based on incomplete data gathering and symptomatic exaggeration. Additionally, he stated that objectively appellant had been able to maintain her life routine and from a mental standpoint, appellant showed her chronic dysthymic mood, her pattern of somatization and a mixed personality trait disturbance. Dr. Ness also stated that appellant's reality testing was intact, there was no generalized anxiety to disable her and that she was organically clear of dementiform illness. He then stated that appellant's partial psychiatric disability prevented her from returning to her position as a letter carrier due to a lack of motivation to do so. Dr. Ness noted specific medical treatment for appellant.

Appellant submitted Dr. Albert's November 11, 1996 letter disagreeing with Dr. Ness' findings and opinion. Dr. Albert's letter also disagreed with the psychological findings of Alex B. Caldwell, a clinical psychologist, which were relied upon by Dr. Ness. Dr. Albert's

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

letter, however, failed to explain how or why appellant continued to be totally disabled due to her accepted employment factors.

The Board finds that Dr. Ness' opinion is sufficiently well rationalized to support a finding that appellant is no longer disabled due to her accepted emotional conditions and based on a proper factual and medical background. Therefore, it must be accorded special weight on the issue of whether appellant had any continuing disability causally related to the her accepted compensable employment factors. Inasmuch as Dr. Ness' opinion constitutes the weight of the reliable, probative and substantial evidence, the Board finds that the Office properly terminated appellant's compensation benefits effective February 27, 1996.

The January 27, 1997 and February 27, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
August 2, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member