

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESTER M. CHAPPELLE and DEPARTMENT OF THE ARMY,
WESTERN AREA MTMC, Oakland, Calif.

*Docket No. 97-2078; Submitted on the Record;
Issued May 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to establish that appellant's accepted psychiatric conditions had ceased.

The Board has duly reviewed the case record and finds that the Office did not meet its burden of proof in this case.

In the present case, the Office accepted that appellant, a computer assistant, sustained chronic cervical strain syndrome, acceleration of preexisting narcissistic personality disorder and psychogenic pain disorder on February 14, 1985 when she "turned too fast" in the performance of her federal employment. Appellant continued to work, missing work intermittently, until August 1987 when she stopped work. On August 30, 1991 the Office found that appellant was no longer suffering from any orthopedic condition causally related to the accepted injury. The Office found that appellant's accepted psychiatric conditions did continue to disable appellant. Appellant remained in receipt of compensation benefits arising from the accepted psychiatric diagnoses. On June 20, 1996 the Office terminated appellant's compensation benefits effective July 21, 1996. The Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence established that appellant no longer had any psychiatric residuals or disability causally related to her federal employment. An Office hearing representative affirmed the termination of appellant's compensation benefits by decision dated April 3, 1997.

In the present case, the medical evidence of record establishes that shortly after the Office accepted that the diagnoses of acceleration of preexisting narcissistic personality disorder and psychogenic pain disorder were causally related to appellant's accepted February 14, 1985 employment injury, appellant selected and the Office authorized Dr. Ida Hilliard, a Board-certified psychiatrist, to treat appellant for these conditions. She continued to submit annual narrative reports to the record indicating that appellant continued to be treated for the accepted conditions and that appellant remained disabled. In a lengthy narrative report dated September 13, 1994, Dr. Hilliard diagnosed dysthemia, psychogenic pain disorder and

narcissistic personality disorder. She opined that appellant's conditions were now permanent and stationary and that while appellant had shown some improvement in her coping abilities with respect to pain while in psychotherapy, she would require ongoing monthly supportive psychotherapy indefinitely to maintain her present level of psychological functioning. She explained that appellant's conditions were directly related to the accepted work injury of February 14, 1985 and its aftermath, which significantly worsened and made symptomatic her preexisting narcissistic personality traits. Dr. Hilliard also noted that appellant's depressive symptoms were directly related to appellant's losses of self-esteem and productivity which she sustained from the accepted work injury and her incapacity for work. Finally, she stated that appellant continued to be totally disabled and unable to work in any capacity. On October 24, 1994 Dr. Hilliard wrote to the Office advising that she wished to amend her previous report, regarding recommended treatment, as she now felt that consideration should be given to referral of appellant to a comprehensive pain management facility where appropriate strategies could be developed for coping with appellant's chronic pain disorder. Dr. Hilliard continued to submit progress reports to the record indicating that appellant should be referred to a pain management program and indicating that appellant remained in treatment and continued to be disabled from work.

Based upon Dr. Hilliard's recommendation that appellant participate in a pain management program, the Office referred appellant to Dr. Morey A. Weingarten, a psychiatrist, for a second opinion evaluation. In a report dated August 21, 1995, Dr. Weingarten opined that appellant's ongoing complaints were not causally related to her accepted aggravation of personality disorder. He noted that it had been accepted that appellant's orthopedic injury resolved as of 1991 and that he found it difficult to attribute any current pain complaints to her somatic focusing precipitated by the injury of 1985. Dr. Weingarten stated that all physicians of record had concluded that appellant's pain was not primarily organically based and her treatment course supported this assessment. He noted that appellant's personality disorder would have predicted such a course. Dr. Weingarten concluded that appellant's aggravation of preexistent personality disorder, with its associated somatic focusing, that was precipitated by her accepted industrial injury had long since remitted. However, he indicated that in the absence of a clearly defined history due to appellant's obstructionistic behavior, he was unable to define when the temporary aggravation ceased. Regarding the diagnosis of psychogenic pain disorder, Dr. Weingarten stated that the diagnosis no longer existed in the Diagnostic Statistical Manual, but had been replaced by the diagnoses of a pain disorder associated with psychological or medical factors, or both. He noted that the "notion of psychogenic pain was a difficult and likely flawed concept." Dr. Weingarten stated that a pain management program would not likely help appellant as the type of pain complaints appellant had were generally unresponsive to traditional treatment and pain management programs.

The Board finds that the Office did not meet its burden to terminate appellant's compensation benefits as an unresolved conflict exists in the medical opinion evidence.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.¹

In the present case, the Office terminated appellant's compensation benefits on the grounds that the report of the Office's second opinion physician, Dr. Weingarten, constituted the weight of the medical evidence and established that appellant was no longer disabled due to the accepted conditions of acceleration of narcissistic personality disorder and psychogenic pain disorder. He opined that appellant's acceleration of narcissistic personality disorder had ceased and that the diagnosis of psychogenic pain disorder no longer existed in the diagnostic manual and was at best a flawed and difficult concept. Dr. Weingarten concluded that as appellant had not responded to a variety of medical approaches, further pain management treatment would be of no avail for appellant.

The medical evidence of record also establishes that appellant continued treatment with Dr. Hilliard, her authorized psychiatrist, on a regular basis from 1991. She submitted a number of reports to the record documenting that appellant's accepted psychiatric conditions continued to disable her. Dr. Hilliard also explained that conservative treatment was not helping to resolve the accepted conditions and therefore recommended that appellant participate in a pain therapy program. A conflict therefore existed in the medical opinion evidence as to whether appellant's accepted condition continued to disable her.

5 U.S.C. § 8123(a) provides that if there is 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. The Office did not refer appellant to an impartial medical specialist to resolve the conflict in the medical opinion evidence. As the Office did not resolve the conflict in the medical opinion evidence as to whether the accepted psychiatric conditions continued to disable appellant, the Office did not meet its burden of proof in this case.

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

The decisions of the Office of Workers' Compensation Programs dated April 3, 1997 and June 20, 1996 are hereby reversed.

Dated, Washington, D.C.
May 5, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member