

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA E. AVALOS and U.S. POSTAL SERVICE,
POST OFFICE, San Bernardino, CA

*Docket No. 99-406; Submitted on the Record;
Issued September 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On or prior to December 18, 1990 appellant, a postmaster, developed an emotional condition while in the performance of her duties. The Office accepted her claim for psychological factors affecting physical conditions, post-traumatic stress disorder and major depressive disorder, severe, recurrent. Appellant received compensation for temporary total disability.

On further development of the medical evidence, the Office found a conflict in medical opinion between appellant's attending physician, Dr. Perry Maloff, and an Office referral physician, Dr. Charles A. Cole. Dr. Maloff, a psychiatrist, reported that appellant's psychiatric condition had failed to improve significantly and that this condition rendered her temporarily totally disabled. Dr. Cole, a psychiatrist, reported no psychiatric disability secondary to appellant's industrial experience.

To resolve the conflict in medical opinion between attending and referral physicians, the Office referred appellant, together with a copy of the medical record and a statement of accepted facts, to Dr. Jerome H. Franklin, a Board-certified psychiatrist and Dr. Ajit S. Arora, a Board-certified specialist in internal medicine. In a report dated November 1, 1995, Dr. Franklin related appellant's history and findings on mental status evaluation. He listed his principal diagnoses as follows: (1) post-traumatic stress disorder, chronic, by history, but not substantiated by this examination; (2) major depression, recurrent, by history, not substantiated by this examination; (3) depressive disorder, not otherwise specified, by history, not substantiated by this examination; (4) adjustment disorder with mixed emotional features, by history, not substantiated by this examination; (5) psychological factors affecting physical condition, headaches, nonconclusive; and (6) no psychiatric diagnosis at this time. Dr. Franklin reported that if the work events of 1990 aggravated appellant's headaches, this was no more than

a temporary aggravation ceasing, based on appellant's history, within several months with no residual alteration of the underlying condition. Dr. Franklin reported that appellant's headaches did not prevent her from performing modified duties, which he would strongly recommend and that she might well be able to function at her previous usual and customary job as every person with whom she had personal difficulties was no longer at the employing establishment.

In a report dated November 3, 1995, Dr. Arora related appellant's history, findings on physical examination and results of diagnostic testing. He diagnosed the following: (1) chronic headaches mixed, major component being muscle contraction headaches complicated by a minor component of vascular headache; (2) history of gastritis presently stable in absence of use of nonsteroidal anti-inflammatory drugs; and (3) psychiatric issues to be addressed by a competent psychiatrist. Dr. Arora noted that appellant has suffered headaches all her life. Based on her history, he reported, these were temporarily aggravated in times of perceived emotional stress at work as well as outside, though chronic ongoing nonorganic headaches are rarely, if ever, labor disabling. Headaches currently continued, he reported, despite the absence of occupational stressors, and there was evidence of chronic ongoing neck muscle spasm, which would qualify for a diagnosis of chronic myofascial pain syndrome. From a viewpoint of headaches, Dr. Arora reported, it should be appreciated that other than a total temporary disability lasting for a few hours to a couple of days, there probably was no other disability at any time.

On December 18, 1995 Dr. A.J. Botwin, a Board-certified psychiatrist and appellant's new attending physician, noted that he initially saw appellant on July 6, 1995. He indicated that he reviewed available medical records and briefly related appellant's history. After describing his findings on mental status examination, he reported that appellant suffered from major depression, severe, post-traumatic stress disorder and panic disorder with agoraphobia. He reported that appellant was not currently able to return to her former employment responsibilities and that her prognosis was poor.

In a report dated August 9, 1996, Dr. James F. Skalicky, a licensed clinical psychologist, related the history of present illness and cumulative factors leading to disability as described to him by appellant. After reporting his findings on psychological testing, he diagnosed major depression and post-traumatic stress disorder. He reported that appellant was temporarily totally disabled. Based on appellant's history, the medical evidence, psychological testing and appellant's psychiatric symptomatology, Dr. Skalicky concluded that appellant's psychological state was causally related to the work injury of cumulative trauma starting on or about December 18, 1990. He attributed 75 percent of appellant's current disability to the December 18, 1990 injury.

In a decision dated October 4, 1996, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Franklin on the psychiatric issue and by the opinion of Dr. Arora on the issue of headaches, established that appellant no longer suffered from any condition causally related to factors of her federal employment.

In a March 25, 1997 report, Dr. Botwin noted that Dr. Skalicky had provided an accurate, comprehensive history of appellant's medical condition, a history that he himself validated with appellant. He diagnosed major depression, post-traumatic stress disorder and panic disorder with

agoraphobia, and again found that appellant was disabled from performing the requirements of her postmaster position.

In a decision dated March 2, 1998, an Office hearing representative affirmed the termination of appellant's compensation.

The Board finds that the Office properly terminated appellant's compensation benefits.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ 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.²

When there exist 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.³

The weight of the medical opinion evidence in this case rests with Dr. Franklin on the issue of psychiatric residuals and with Dr. Arora on the issue of headaches. Both had a statement of accepted facts and a copy of the medical record, and both provided comprehensive, well-reasoned opinions that appellant had no psychiatric diagnosis and that any disability resulting from an aggravation of her preexisting headache condition was only temporary and ceased within several months. The Board finds that the reports of these physicians are sufficiently well rationalized and based on a proper factual background and are entitled to special weight in resolving the conflicting medical opinion evidence. The reports of Dr. Botwin and Dr. Skalicky are of diminished probative value because their opinions rely on extensive factors of employment related by appellant and are not limited to the factors accepted by the Office and set forth in the statement of accepted facts.⁴ Accordingly, these reports are insufficient to create a conflict with the opinion given by Dr. Franklin.

As the weight of the medical opinion evidence establishes that appellant no longer suffers residuals of her accepted employment injury, the Office has met its burden of proof to justify the termination of appellant's compensation benefits.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁴ Medical conclusions based on inaccurate or incomplete histories are of little probative value; see *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); see also *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions); *Lillian Cutler*, 28 ECAB 125 at 129, 131 (1976); *Norman A. Harris*, 42 ECAB 923 (1991) (addressing compensable factors of employment).

The March 2, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 3, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member