

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGETTE WASHINGTON and U.S. POSTAL SERVICE,  
AIRPORT MAIL FACILITY, Jamaica, NY

*Docket No. 00-1802; Submitted on the Record;  
Issued December 18, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective June 19, 1999, on the grounds that appellant no longer had any residuals of her January 18, 1994 employment injury.

On March 30, 1994 appellant, then a 50-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that she injured her neck and shoulder on January 18, 1994 while working. The Office accepted the claim for herniated disc at C4-5 and appellant was placed on the automatic rolls for temporary total disability.<sup>1</sup> The Office subsequently accepted major depression with psychotic features.

On November 10, 1998 the Office issue a proposed notice of termination of compensation on the basis that she had no continuing disability due to her accepted employment injury based upon the second opinions of Dr. David H. Synder, a second opinion Board-certified neurologist, and Dr. Solomon Miskin, a second opinion Board-certified psychiatrist.

On January 21, 1999 the Office referred appellant to Dr. Julius A. Bazan, a Board-certified neurologist, to resolve the conflict in the medical opinion evidence between Dr. Esther Baldinger, an attending Board-certified neurologist, and Dr. Synder, on the issue of whether appellant continued to have any residual neurological disability due to her January 18, 1994 employment injury.

In a February 11, 1999 report, Dr. Bazan diagnosed status post January 18, 1994 employment injury, history of psychotic depression, history of TIA and arthritis of the cervical spine and concluded that appellant had no neurological disability. In support of his conclusion, Dr. Bazan's neurological examination revealed that the neck was "supple full carotid pulses, no bruits," "motor: appearance, tone, power and coordination intact," sensory showed "some mild

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<sup>1</sup> On May 26, 1999 appellant was approved for disability retirement.

decreased sensation to pin prick which is somewhat inconsistent on the right face and left arm.” Under comments, the physician opined:

“With reference to the job injury of January 18, 1994, no relation can be found between patient’s condition and the injuries sustained on January 18, 1994. Patient indeed suffers from arthritis, obesity, had TIA, suffers psychotic depression, which may explain her inability to work but no relation can be found between injuries sustained on January 18, 1994 and between the above-mentioned conditions.”

In an attached work capacity evaluation dated February 11, 1999, Dr. Bazan indicated that appellant was capable of working six hours per day as her arthritis, obesity and chronic pain prevented an eight-hour workday.

On April 22, 1999 the Office referred appellant to Dr. Calvin H. Haber, a Board-certified psychiatrist, to resolve the conflict in the medical opinion evidence between Dr. J. Roosevelt Clerisme, an attending Board-certified psychiatrist and Dr. Miskin on the issue of whether appellant’s disability was causally related to her January 18, 1994 employment injury.

In a report dated May 15, 1999, Dr. Haber, based upon the employment injury history, medical history and examination, concluded that appellant’s depression with psychosis was no longer evident and that she was capable of performing her position from a psychiatric standpoint. The physician indicated that “[t]he length and nature of this inquiry may have artificially caused her to be on these medications for this protracted time [1994 to 1999].” Dr. Haber noted that “[t]here was no evidence of major depression during my examination or in the notes of the prior psychiatrist during her two visits with him.” The physician also noted:

“There is a blend of dysphoria and anxiety that surfaced when we spoke of her situation as she views it, if her claim is denied. This is an appropriate reaction. [Appellant] has illnesses that in an artificial way are not being considered because they are not work related and must cause her to feel less vital and capable of mastering her situation. In a total way, she feels unable to return to work. A lesser position seems to be a blow to her self-esteem (‘I don’t want a desk job’). Her sum total of illnesses included the problems excluded and she wishes she were found disabled. It is a solution.”

On June 14, 1999 the Office finalized the termination of appellant’s compensation effective June 19, 1999.

In a letter dated December 29, 1999, appellant’s counsel requested reconsideration and submitted a November 18, 1998 electromyography and nerve conduction study, a copy of a FECA practice guide, reports dated November 8 and March 20, 1999 by Dr. Baldinger and a March 25, 1999 report by Dr. Clerisme in support of her request for reconsideration.

Dr. Baldinger, in March 20, 1999 report, opined that appellant suffered from “transient cerebral ischemia, cervical radiculopathy affecting the C5, C6 and C7 nerve roots, lumbar radiculopathy (sic) a post-traumatic stress disorder and diabetes mellitus” with the post-traumatic

stress disorder, lumbar radiculopathy and cervical radiculopathy due to her January 18, 1994 employment injury.

In a March 25, 1999 report, Dr. Clerisme diagnosed major depression with psychotic features, cervical disc herniation and chronic pain due to the January 18, 1994 employment injury. He opined that appellant was moderately disabled and that it was “conceivable that she can handle a low pressure, part-time job outside the [employing establishment].” Dr. Clerisme also concluded that her depression was “causally related to the sense of helplessness caused by her chronic back pain secondary to the back injuries sustained at work in January 18, 1994.” He stated appellant had made moderate improvement, but that her residual symptoms continued which might “persist as long as she continues to have chronic pain.”

In a November 8, 1999 report, Dr. Baldinger concluded that appellant continued to suffer from lumbosacral and cervical radiculopathy due to her January 18, 1994 employment injury. She diagnosed post-traumatic stress disorder, which Dr. Baldinger concluded was “due to her inability to perform her duties as a registered nurse which necessitated her leaving her job with the [employing establishment] and her constant pain.” In concluding, she opined that appellant was totally disabled due to her January 18, 1994 employment injury.

On February 29, 2000 the Office denied appellant’s request for modification in a merit decision. In support of its decision, the Office found that the weight of the medical evidence was constituted by the “well-rationalized” reports of the impartial medical examiners, Drs. Bazan and Haber and that Drs. Baldinger and Clerisme were on one side of the conflict resolved by the impartial medical examiner

The Board finds that the Office properly terminated appellant’s compensation benefits effective June 19, 1999 on the grounds that appellant no longer had any residuals of her January 18, 1994 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</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>3</sup> However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.<sup>4</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>5</sup>

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<sup>2</sup> *Gloria J. Godfrey*, 52 ECAB \_\_\_\_ (Docket No. 00-502, issued August 27, 2001).

<sup>3</sup> *Lynda J. Olson*, 52 ECAB \_\_\_\_ (Docket No. 00-2085, issued July 11, 2001).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Franklin D. Haislah*, 52 ECAB \_\_\_\_ (Docket No. 01-208, issued August 1, 2001).

When there are opposing medical reports of virtually equal weight, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion.<sup>6</sup> The opinion of the impartial medical specialist, if based on a proper factual background and sufficiently well rationalized, must be given special weight.<sup>7</sup>

In this case, the Office properly found a conflict in medical opinion between Dr. Baldinger, appellant's attending physician, who opined that appellant is unable to work due to residuals causally related to the January 19, 1994 employment injury and Dr. Snyder, the Office referral physician who opined that, with respect to her herniated disc at C4-5 injury, appellant had no neurological disability and was capable of performing her usual employment. In order to resolve this conflict, the Office referred appellant, a statement of accepted facts, medical records and a list of specific questions to Dr. Bazan for an impartial medical evaluation pursuant to section 8123(a) of the Act. In his February 11, 1999 report, Dr. Bazan provided a history of injury, noted appellant's complaints of pain and his findings on examination and opined that appellant had no objective neurological deficits, no neurological disability and could return to work six hours a day based upon her nonwork disabilities of arthritis, obesity and chronic pain. The Board finds that Dr. Bazan's opinion is based on a complete and accurate factual background and is sufficiently well rationalized to be accorded special weight. Dr. Bazan's opinion thus constitutes the weight of the medical evidence and establishes that appellant did not, at the time of the termination, have any residual neurological disability causally related to her January 18, 1994 employment injury of herniated disc at C4-5.

The Office also properly found a conflict in medical opinion between Dr. Clerisme, appellant's attending Board-certified psychiatrist, who opined that appellant is unable to work due to her chronic pain and feeling of helplessness due to her employment injury and Dr. Miskin, the Office referral Board-certified psychiatrist, who opined that appellant had no psychiatric disability which prevented her from working in a limited duty. In order to resolve this conflict, the Office referred appellant, a statement of accepted facts, medical records and a list of specific questions to Dr. Haber for an impartial medical evaluation pursuant to section 8123(a) of the Act. In his May 15, 1999 report, Dr. Bazan provided a history of injury, medical history and examination to conclude that appellant had no psychiatric disability due to her January 18, 1994 employment injury, which caused her to be totally disabled from working. The Board finds that Dr. Haber's opinion is based on a complete and accurate factual background and is sufficiently well rationalized to be accorded special weight. Dr. Haber's opinion thus constitutes the weight of the medical evidence and establishes that appellant did not, at the time of the termination, have any residual psychiatric disability causally related to her January 18, 1994 employment injury.

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<sup>6</sup> Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f 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." See 5 U.S.C. § 8123(a); *Melvinia Jackson*, 38 ECAB 443 (1987).

<sup>7</sup> *Jane B. Roonhaus*, 42 ECAB 288 (1990).

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.<sup>8</sup> In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.<sup>9</sup> Appellant failed to do this in the instant case.

Following termination and with her request for reconsideration appellant submitted a November 18, 1998 electromyography and nerve conduction study, a copy of a FECA practice guide, reports dated November 8 and March 20, 1999 by Dr. Baldinger and a March 25, 1999 report by Dr. Clerisme. The November 18, 1998 electromyography and nerve conduction study was previously submitted by appellant and considered by the Office when it terminated appellant's compensation benefits. Neither Drs. Baldinger nor Clerisme provided acceptable medical rationale supporting their opinion that appellant's current condition and disability was causally related to her accepted employment injuries and, therefore, their reports are insufficient to outweigh that of Drs. Bazan and Haber. Furthermore, Dr. Clerisme in his March 25, 1999 report, indicated that appellant was not totally disabled due to psychiatric condition as she was capable of working four hours per day in a low stress job. The reports of Drs. Baldinger and Clerisme are insufficient to overcome the well-rationalized reports of Drs. Bazan and Haber. Moreover, the Board notes that, Drs. Baldinger and Clerisme are appellant's attending physicians and were on one side of the conflict which was resolved by Drs. Bazan and Haber.<sup>10</sup>

The February 29, 2000 and June 14, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
December 18, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>8</sup> *Manuel Gill*, 52 ECAB \_\_\_\_ (Docket No. 99-915, issued March 2, 2001); *Franklin D. Haislah*, 52 ECAB \_\_\_\_ (Docket No. 01-208, issued August 1, 2001).

<sup>9</sup> *Talmadge Miller*, 47 ECAB 673 (1996); *Wentworth M. Murray*, 7 ECAB 570 (1955).

<sup>10</sup> *Virginia Davis-Banks*, 44 ECAB 389 (1993).