

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ZIPPORA G. STEWART and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 99-2465; Submitted on the Record;  
Issued March 8, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that she had no further disability causally related to her November 29, 1977 employment injury.

On November 29, 1977 appellant, then a 42-year-old clerk, filed a claim for a traumatic injury occurring on that date when she bumped her shoulder evading a robbery. The Office accepted appellant's claim for strain of the cervical spine, contusions of the left shoulder and right hip and depressive neurosis. Appellant stopped work on November 29, 1977 and returned to limited-duty employment on July 3, 1978. She subsequently stopped work on July 15, 1978 and did not return.

Following her injury, appellant received treatment from Dr. Roger B. Mendelson, a Board-certified psychiatrist. In a work restriction evaluation dated May 1, 1990, he found that appellant could return to work for four hours per day. In a report dated May 1, 1991, Dr. Mendelson noted that he had last seen appellant on June 29, 1987 and last treated her in January 1985. Dr. Mendelson found that appellant's condition had "significantly improved" and diagnosed "residual dysthemic disorder, nearly in remission." He recommended that appellant begin vocational rehabilitation with an aim toward returning to part-time employment.

By letter dated November 17, 1993, the Office requested that Dr. Mendelson provide a report discussing appellant's current work limitations. He did not respond to the Office's request.

By letter dated November 17, 1995, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Robert Landess, a psychologist, Dr. Joseph Karis, a Board-certified psychiatrist, and Dr. Eugene Galvin, a Board-certified orthopedic surgeon, for second opinion evaluations.

In a report dated December 8, 1995, Dr. Galvin found that appellant had no objective evidence of her accepted conditions of cervical strain, a left shoulder contusion or a right hip contusion. He opined that appellant could work for eight hours per day in her usual employment without restrictions.

In a report dated January 3, 1996, Dr. Karis discussed the results of the psychological testing of appellant by Dr. Landess, reviewed the medical evidence of record and listed findings on examination. He related:

“With respect to the alleged work incidents, [appellant] attributes psychiatric symptoms to them, but is very vague as to how symptoms were related to the initial incidents and as to the future progression of symptoms. Her descriptions of ongoing symptoms over a period of years do not seem to have any clear relationship to reactions to the work events. [Appellant] suggests difficulty in being around people and having feelings that someone might harm her. She reports ongoing depression and frequent crying. [Appellant] does not describe the phobic or panic reactions. On current clinical examination, there seemed to be little objective evidence for acute disturbance. Psychological testing indicated inconsistencies and tendencies to exaggeration. There also appeared to be ongoing and marked personality characterological features, especially schizoid and avoidant, which would be capable of accounting for her reported long[-]term symptoms in the absence of particular industrial factors.”

Dr. Karis diagnosed improved depressive disorder, not otherwise specified, episodic anxiety disorder, not otherwise specified and a mixed personality disorder, not otherwise specified with schizoid, avoidant and dependent features. He stated:

“[Appellant] continues to show some signs of anxiety and depression. However, her descriptions and manifestations of both of these problems seem to be inconsistent and to vary according to ongoing stresses in her life. Clinically at this time she was seen to be generally relaxed and pleasant with no acute manifestations of either anxiety or depression. The symptoms as they occur seemed to be related mostly to her long[-]term personality features. Episodic depression would be related to her general dependence and tendency to withdraw, with little motivation or energy to seek high levels of activity. [Appellant’s] anxiety as described does not seem to involve any particular panic or phobic type reactions -- which might be conceivably related to original injuries. Rather she seems to describe a general social avoidance and discomfort around people in general -- which appears to be part of her ongoing personality structure.”

Dr. Karis opined:

“Based strictly on work-related injury, [appellant] would be capable of returning to her date[-]of[-]injury job. It is this examiner’s opinion that she could probably handle the full duties of that job. If any restriction were to be applied, there might be an arguable basis for a restriction from serving the public at a postal window. However, there would be no rationale for limitation in any of the other duties at

that job. Based on the [appellant's] nonindustrial problems, [she] would [be] expected to have some symptoms of impairment in the performance of the job, but again would not be precluded for it. The main factors in that situation would appear to be the claimant's marked lack of motivation and her opposition to any changes in her long[-]term dependent status."

In an accompanying work restriction evaluation, Dr. Karis indicated that appellant could return to her usual workplace.

In a report dated December 16, 1996, Dr. Carol J. Cohen, a Board-certified psychiatrist, diagnosed dysthymic disorder and panic disorder with agoraphobia. She stated that appellant's "symptoms (depression, insomnia, phobic reactions) started when robbed at gunpoint several times while working." Dr. Cohen opined that appellant could not work due to her phobias.

On June 4, 1999 the Office issued appellant a proposed notice of termination on the grounds that the weight of the medical evidence established that her condition had resolved. In a decision dated July 13, 1999, the Office finalized its termination of appellant's compensation on the grounds that the weight of the medical evidence established that she had no further residuals of her accepted employment injuries of contusions of the left shoulder and right hip, cervical spine strain and depressive neurosis.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that the weight of the medical evidence established that she had no further condition or disability causally related to her November 29, 1977 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>2</sup>

The Board finds that the Office met its burden of proof to terminate appellant's compensation based on its finding that the opinions of the Office referral physicians, Drs. Galvin, and Karis, constituted the weight of the medical evidence. In a report dated December 14, 1995, Dr. Galvin listed essentially normal findings on examination and opined that appellant had no residuals of her left shoulder contusion, right shoulder contusion and strain of the cervical spine. He found that, from an orthopedic standpoint, appellant could resume her regular employment without restrictions. The record contains no contrary evidence or evidence that appellant sought any recent treatment for an orthopedic condition. The opinion of Dr. Galvin, which is based on a detailed review of the evidence of record and a thorough evaluation of appellant, constitutes the weight of the evidence of record and establishes that she had no orthopedic residuals of her employment injury.

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<sup>1</sup> *David W. Green*, 43 ECAB 883 (1992).

<sup>2</sup> *See Del K. Rykert*, 40 ECAB 284 (1988).

In a report dated January 3, 1996, Dr. Karis found that appellant did not have continuing psychiatric disability due to her accepted depressive neurosis and could return to her usual employment. The Board has carefully reviewed the opinion of Dr. Karis and finds that it has reliability, probative value and convincing quality with respect to the conclusion reached regarding whether appellant has any residual condition or disability due to her accepted employment injury of depressive neurosis. Dr. Karis provided a thorough review of the factual and medical background of appellant's claim and accurately summarized the relevant medical evidence. Moreover, Dr. Karis provided a proper analysis of the factual and medical history and findings on examination, including the results of psychological testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>3</sup>

The remaining evidence of record submitted prior to the Office's termination of compensation is insufficient to establish that appellant had continuing disability due to her employment injury. Appellant submitted a report from Dr. Cohen who opined that she was unable to resume employment due to phobias related to repeated robberies at gunpoint while at work. However, Dr. Cohen did not discuss appellant's history of an employment injury when she evaded an attempted robbery on November 29, 1977, but instead generally referred to several robberies at gunpoint.<sup>4</sup> Additionally, Dr. Cohen did not provide any rationale for her conclusion that appellant remained disabled from employment.<sup>5</sup> Consequently, her reports are of little probative value.

The Board, therefore, finds that the Office properly found that appellant had no residuals of her psychiatric condition based on the opinion of Dr. Karis, who found that she could resume her date-of-injury position.

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<sup>3</sup> See *Melvina Jackson*, 38 ECAB 443 (1987).

<sup>4</sup> *Joseph M. Popp*, 48 ECAB 624 (1997) (a medical opinion must be based on a complete and accurate factual and medical history).

<sup>5</sup> *Ronald C. Hand*, 49 ECAB 113 (1997) (a medical opinion not fortified by medical rationale is of little probative value).

The decision of the Office of Workers' Compensation Programs dated July 13, 1999 is hereby affirmed.

Dated, Washington, DC  
March 8, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member