

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA M. BROWN and U.S. POSTAL SERVICE,  
HIGHLAND PARK STATION, Los Angeles, CA

*Docket No. 00-1492; Submitted on the Record;  
Issued August 28, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on the basis that she no longer suffered from residuals of her accepted employment-related injuries; and (2) whether the Office properly denied appellant's request for an oral hearing.

On December 7, 1989 appellant, then a 34-year-old distribution clerk, was involved in an employment-related motor vehicle accident. She described the nature of her injury as "headache, neck pain [and] back pain." She ceased working the day of her injury. The Office initially accepted the claim for cervical strain and later expanded the claim to include concussion syndrome, post-traumatic cephalgia, thoracic sprain, lumbar sprain and post-traumatic stress disorder. Appellant attempted to return to limited-duty on February 12, 1990, however, after just four hours of work she again ceased working and has not returned. The Office placed appellant on the periodic compensation rolls effective April 8, 1990 and she continued to receive appropriate wage-loss compensation through August 1999.

In a decision dated August 9, 1999, the Office terminated appellant's compensation and medical benefits.<sup>1</sup> The Office based its determination on evaluations conducted in June 1999 by a panel of physicians Board-certified in orthopedic surgery, neurology and psychiatry. The medical evidence demonstrated that appellant no longer had residuals of her accepted orthopedic conditions. Additionally, a Board-certified psychiatrist found that appellant's ongoing psychiatric condition was unrelated to her December 7, 1989 employment injury.

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<sup>1</sup> The Office issued a notice of prior termination of compensation on July 8, 1999. In its August 9, 1999 decision, the Office noted that appellant had not responded to its July 8, 1999 notice of proposed termination of compensation. However, the record reveals that appellant sent her response via registered mail on August 3, 1999, which was received August 5, 1999. While the record indicates that the Office received appellant's response prior to the issuance of its August 9, 1999 decision, the mail apparently was not associated with appellant's file until after the decision had been issued. Appellant's response bears a date-stamp of August 10, 1999.

By letter dated September 13, 1999, appellant requested an oral hearing. The Office, however, denied appellant's hearing request by decision dated October 29, 1999. Her request was untimely and the Office further found that the issue of appellant's ongoing employment-related disability could equally well be addressed by requesting reconsideration.

On January 18, 2000 appellant requested reconsideration. While she did not submit any additional medical evidence, appellant resubmitted a letter she had previously written in response to the Office's July 8, 1999 notice of proposed termination of compensation.

By decision dated February 9, 2000, the Office denied modification of the August 9, 1999 decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>2</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for 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 which require further medical treatment.<sup>5</sup>

Appellant received psychiatric treatment from Dr. Mohammad Salem Al-Hosri, a Board-certified psychiatrist.<sup>6</sup> In a report dated April 21, 1999, Dr. Al-Hosri stated that appellant was participating in biweekly individual psychotherapy. Additionally, he noted she was receiving anti-psychotic and anti-depressant medications. Dr. Al-Hosri indicated that appellant's symptoms included "auditory hallucinations, paranoid delusions, severe depressive symptoms including sad mood, lack of enegery (sic) and motivation and poor functional capacity." He also stated that appellant complained of violent and suicidal ideation. Dr. Al-Hosri further noted that appellant's symptoms were "persistent on a daily basis and she hardly gets relief despite her treatment." With respect to appellant's ability to work, the doctor noted she "has no interest or motivation to do the simplest tasks, not to mention going back to work." He explained that, when discussing issues related to work, appellant "becomes extremely paranoid and starts making homicidal and suicidal statements." Dr. Al-Hosri did not believe appellant was "going to even attempt ... going back to work." He noted that she focuses all her anger and paranoid

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<sup>2</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>5</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>6</sup> There is no indication that appellant was regularly receiving any separate medical treatment for her accepted orthopedic conditions.

ideation toward postal coworkers and supervisors and believes they are the cause of her illness. Dr. Al-Hosri characterized appellant's illness as "chronic with no signs of improvement or prospects of returning to any gainful employment." He also completed an April 16, 1999 work capacity evaluation (Form OWCP-5a), finding appellant totally disabled due to her psychiatric condition and physical pain.<sup>7</sup>

In a report dated June 10, 1999, Dr. Paul Tsou, a Board-certified orthopedic surgeon and Office referral physician, noted the following impression: "subjective complaints of spine pain, including lumbar, thoracic and cervical spine, global headaches without objective findings for any orthopedic abnormality at this time." Based upon his physical examination and a review of the record, Dr. Tsou found that "on an objective basis, [appellant] does not suffer any residual symptoms from the accepted accident of December 7, 1989." He explained that "she has subjective complaints of pain all over; however, there are no objective findings to support those complaints." Accordingly, Dr. Tsou found that appellant should be able to perform the full duties of a postal clerk as per her job description.

On June 14, 1999 Dr. Thomas DiJulio, a Board-certified neurologist and Office referral physician, examined appellant. In a report dated June 24, 1999, he found that there was no objective evidence of any symptoms related to the concussion syndrome and post-traumatic cephalgia that occurred on December 7, 1989. Dr. DiJulio stated that appellant's neurologic examination demonstrated no objective findings and, in fact, was entirely normal, "with the exception of a clear attempt to feign weakness and loss of sensation." He further stated that although appellant's "responses were slow, often incomplete and sometimes evasive, there is no evidence that she has a true cognitive deficit and, in fact, there is adequate information in the record that her mental status is, in fact, normal from a neurologic standpoint." Dr. DiJulio explained:

"Symptoms from a cerebral concussion are likely to have resolved within a few weeks or a few months. Therefore, all of the subjective complaints[,] which [appellant] now describes, including the memory problems, the headache, dizziness and the blurred vision, are either related to some other subsequent problem or being feigned by [appellant]."

Based upon his examination and review of the record, Dr. DiJulio did not believe that appellant continued to suffer any objective neurologic findings of concussion syndrome or post-traumatic cephalgia. In conclusion, he noted there was "no objective neurologic evidence that would warrant restricting [appellant] from performing any of her duties as a postal clerk." Dr. DiJulio further stated that there was "no evidence for an organically-based cognitive deficit or any residuals of [appellant's] cervical, thoracic or lumbar sprain that would prevent her from being fully employable in her previous capacity."

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<sup>7</sup> Dr. Al-Hosri's most recent prior report is dated December 18, 1996. At that time he diagnosed major depression, recurrent with psychosis and post-traumatic stress disorder. Dr. Al-Hosri also noted "pain in neck, back and head." He attributed appellant's condition to her work injury and further stated that she could not return to work in any capacity due to her severe pain and psychiatric condition.

The record does not include any contemporaneous medical evidence that either contradicts or calls into question the findings of Drs. Tsou and DiJulio regarding the absence of any objective evidence to support appellant's ongoing complaints of pain due to her December 7, 1989 employment injury. As previously indicated, the only recent treatment appellant received was from her psychiatrist, Dr. Al-Hosri. Although he reported that appellant's psychiatric condition and "physical pain" rendered her totally disabled, he did not identify any objective evidence to support appellant's ongoing complaints of severe pain.

In order to ascertain whether appellant had any psychiatric residuals of her December 7, 1989 employment injury, the Office referred appellant for examination by Dr. E. Richard Dorsey, a Board-certified psychiatrist. In a report dated June 23, 1999, he diagnosed depressive disorder, not otherwise specified and malingering. Dr. Dorsey explained that the psychiatric diagnosis of depressive disorder, not otherwise specified is a disorder with depressive features, which does not meet the criteria for any other affective illness, nor for adjustment disorder with depressed mood. He stated that he did not believe the severity of appellant's depression was anything like the degree she claimed and attempted to demonstrate in the examination. Dr. Dorsey also questioned whether appellant's claimed psychotic symptoms actually existed. He also stated that "[i]t seems most likely ... that [appellant] is greatly exaggerating her symptoms and although I cannot say with assurance that she has no depressive symptoms, whatsoever, she certainly claims no symptoms that would support a diagnosis of [p]ost-[t]raumatic [s]tress [d]isorder." Accordingly, Dr. Dorsey indicated that he did not believe that appellant continued to suffer from an emotional or psychiatric condition related to the December 7, 1989 employment injury.<sup>8</sup> He concluded that "[o]n an emotional basis, she is able to perform the full duties of a postal clerk.

Appellant contends that there is an unresolved conflict of medical opinion between Dr. Al-Hosri and the opinions expressed by the Office's referral physicians; particularly Dr. Dorsey's June 23, 1999 opinion. Dr. Al-Hosri did not specifically attribute appellant's current psychiatric condition to the December 7, 1989 motor vehicle accident. He did, however, state that appellant focuses "all her anger and paranoid ideation toward postal coworkers and supervisors," whom she believes are the cause of her illness. Dr. Al-Hosri further stated that appellant lacked energy and motivation.

In contrast to Dr. Al-Hosri's brief report of April 21, 1999, Dr. Dorsey provided a detailed account of appellant's social, employment and medical histories. He also summarized the voluminous medical records he reviewed and provided commentary on aspects of the record he found noteworthy. Furthermore, Dr. Dorsey fully explained the basis for his findings and conclusions.

Dr. Dorsey addressed appellant's veracity with respect to her alleged symptoms. He noted, among other things, that appellant was vague about normal details, such as her own level of education and her parents' occupations. Additionally, he described as "unusual" appellant's claimed inability to recall none of three objects; particularly in view of the fact that she did not

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<sup>8</sup> Dr. Dorsey surmised that appellant might have some degree of depression most likely due to the prospect of having her benefits terminated as well as her awareness that she had been under surveillance by the postal inspection service.

have any significant degree of dementia. Dr. Dorsey also questioned appellant's alleged auditory hallucinations. He noted that, only after he had inquired about such symptoms, appellant "clamped her hands over her ears and complained of voices." Dr. Dorsey not only found the timing of appellant's display questionable, but also noted that this behavior was inconsistent with appellant's behavior throughout the rest of the examination. He further stated that appellant's behavior was "very unusual [for] most people with true auditory hallucinations." Dr. Dorsey also stated that, prior to the scheduled examination, appellant was observed walking across the parking lot in a normal manner without any unusual gait or apparent fearfulness. However, at the conclusion of the examination she stated she was afraid to leave the office because of supposed postal surveillance and insisted that a staff member accompany or observe her while she returned to her car. In stark contrast to her observed behavior upon entering the building, appellant was noted to behave in a "very fearful and apprehensive manner" upon exiting the building.

Dr. Dorsey's detailed, comprehensive and well-rationalized opinion outweighs Dr. Al-Hosri's recent opinion, which is best described as brief and conclusory. As such, the Board finds that there is no conflict of medical opinion between Drs. Dorsey and Al-Hosri. Consequently, the Office properly relied on Dr. Dorsey's opinion in conjunction with the opinions of Drs. DiJulio and Tsou as a basis for terminating appellant's compensation and medical benefits.

The Board also finds that the Office properly denied appellant's request for an oral hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.<sup>9</sup> However, the Office has discretion to grant or deny a request that was made after this 30-day period.<sup>10</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>11</sup>

Appellant's request for an oral hearing was postmarked September 13, 1999, which is more than 30 days after the Office's August 9, 1999 decision. As such, appellant is not entitled to an oral hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether her work-related disability continues could equally well be addressed by requesting reconsideration.<sup>12</sup>

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<sup>9</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>10</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>11</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>12</sup> The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).

Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for an oral hearing.

The decisions of the Office of Workers' Compensation Programs dated February 9, 2000 and October 29, 1999 are hereby affirmed.

Dated, Washington, DC  
August 28, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member