

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA L. HARPER and EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, DISTRICT OFFICE, San Francisco, CA

*Docket No. 00-2003; Oral Argument Held October 11, 2001;
Issued January 4, 2002*

Appearances: *Linda L. Harper, pro se; James Gordon, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any continuing employment-related disability or condition after August 22, 1993.

The case has been before the Board on a prior appeal. By decision dated November 20, 1998, the Board set aside a September 4, 1994 decision of the Office of Workers' Compensation Programs.¹ The Board found that the August 12, 1994 report from Dr. David Isenman, a Board-certified psychiatrist, was insufficient to resolve a conflict in the medical evidence. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

By decision dated September 4, 1999, the Office determined that appellant was not entitled to compensation after August 22, 1993. In a decision dated May 9, 2000, an Office hearing representative affirmed the September 4, 1999 decision.

The Board finds that the Office properly determined that appellant was not entitled to compensation after August 22, 1993.

The Office terminated appellant's compensation effective August 22, 1993 by decision dated August 9, 1993. The weight of the medical evidence was represented by Dr. Javaid Sheikh, a Board-certified psychiatrist selected as a second opinion physician, who opined in reports dated February 10 and May 21, 1993 that appellant's employment-related condition had resolved. Appellant argues that Dr. Sheikh had an inadequate factual history, but the detailed statement of accepted facts provided an adequate basis for Dr. Sheikh's reasoned opinion that

¹ Docket No. 95-2856. The Board had initially issued a decision dated February 9, 1998 reversing the September 9, 1994 decision. On November 20, 1998 the Board granted the Director's petition for correction and issued a decision that set aside, rather than reversed, the September 9, 1994 Office decision.

appellant did not have a continuing employment-related condition. The Board finds that the Office met its burden of proof terminating compensation effective August 22, 1993. After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, she must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.²

In a decision dated June 16, 1994, the Office hearing representative properly found that new evidence submitted by appellant had created a conflict in the medical evidence. In a report dated March 29, 1994, Dr. George Karalis, a psychiatrist, opined that appellant's depression continued to be causally related to her federal employment. Appellant also submitted a March 25, 1994 report from Dr. William Hazle, a psychiatrist, who reiterated his prior opinion that appellant continued to have an employment-related emotional condition and provided additional medical rationale.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.³ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁴

The Office referred appellant to Dr. Isenman to resolve the conflict. As the Board noted in its prior appeal, the August 12, 1994 report was insufficient to resolve the conflict because he did not discuss whether the employment-related condition had resolved by August 22, 1993. Dr. Isenman, however, submitted a supplemental report dated April 28, 1999. He reviewed the medical evidence, noting that appellant's attending psychiatrist, Dr. Hazle, reported that appellant had a low grade depression for most of her life. He opined that appellant's symptoms were the result of her life-long personality disorder, not a reaction to employment-related stress. Dr. Isenman concluded that appellant's employment-related condition had resolved prior to August 22, 1993.

The Board finds that Dr. Isenman's report represents a reasoned medical opinion, based on a complete background that resolves the medical issue. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵ The Board finds that the opinion of Dr. Isenman in his April 28, 1999 report is entitled to special weight. Accordingly, the Board finds that the weight of the medical evidence establishes that appellant's employment injuries had resolved by

² *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

³ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁴ *William C. Bush*, 40 ECAB 1064 (1989).

⁵ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

August 22, 1993. The Office, therefore, properly determined that she was not entitled to compensation after that date.

The decisions of the Office of Workers' Compensation Programs dated May 9, 2000 and September 4, 1999 are affirmed.

Dated, Washington, DC
January 4, 2002

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member