

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DORIS JEAN WRIGHT and U.S. POSTAL SERVICE,  
POST OFFICE, Inglewood, CA

*Docket No. 03-2141; Submitted on the Record;  
Issued December 12, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits entitlement on the grounds that she no longer had any disability for work or injury residuals that required further medical treatment.

This is appellant's fifth appeal before the Board. In the first appeal, the Board affirmed in part and reversed in part the May 6, 1994 decision of the Office finding that appellant had not demonstrated that she sustained a recurrence of total disability commencing February 6, 1993. The Board also found that the Office did not meet its burden of proof to rescind its acceptance of appellant's claim for post-traumatic stress disorder (PTSD).<sup>1</sup> In the second appeal, on July 6, 2001 the Board reversed and remanded the case for further development finding that the Office had abused its discretion in denying further merit review. The Board set aside a June 22, 1998 Office decision and remanded the case for further development including consideration of new evidence properly before it, that it failed to consider at the time of the June 22, 1998 decision.<sup>2</sup> In the third appeal, on October 15, 2002 the Board found that appellant submitted sufficient medical evidence to develop the claim as to periods of disability related to her accepted PTSD.<sup>3</sup>

In the fourth appeal, on September 24, 2003 appellant appealed a notice of proposed termination of compensation. The case was not in posture for decision and the appeal was dismissed.<sup>4</sup> The facts and the circumstances of the case as set forth in the prior Board appeals, are hereby incorporated by reference.

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<sup>1</sup> Docket No. 94-2492 (issued December 17, 1997).

<sup>2</sup> Docket No. 99-1178 (issued July 6, 2001).

<sup>3</sup> Docket No. 02-0043 (issued October 15, 2002).

<sup>4</sup> Docket No. 03-1241 (ODA issued September 24, 2003).

Following the third appeal and return of the case to the Office, a new statement of accepted facts and questions were prepared. The Office referred appellant to Dr. Barry Edelman, a Board-certified psychiatrist, for a second opinion examination.

By report dated February 15, 2003, Dr. Edelman reviewed appellant's factual and medical history, noted her present complaints, including ongoing recurrent anxiety attacks with significant physical symptoms such as heart palpitations and discussed the findings of his mental status examination. Dr. Edelman noted that appellant appeared to recognize her mental illness and the need for treatment and had realistic plans for self care. Appellant worked as a distribution clerk as late as 1992 when she stopped work because of panic attacks and back pain. She reported stress due to working in the medical section of the employing establishment and interacting with a nurse who was vicious towards her. Appellant claimed that the nurse was spreading rumors about her. Following various testing modalities, Dr. Edelman diagnosed panic disorder with moderate agoraphobia and depressive disorder, not otherwise specified. Dr. Edelman noted that appellant had a panic disorder with agoraphobia and reported recurrent anxiety attacks with significant physical symptoms which kept her essentially housebound. The onset of appellant's anxiety and panic attacks appeared to have occurred concurrently with her panic attacks and, therefore, appeared to be proximately caused by an employment factor. Dr. Edelman noted that appellant's version of the facts differed from the statement of accepted facts and she reported erratic concentration and social withdrawal which, he opined, would be a significant residual of her psychiatric conditions. Dr. Edelman noted that appellant was receiving medication, individual and group therapy, but it did not appear that her psychiatric functioning would improve, despite her receipt of optimal care. He opined that appellant's level of functioning could be expected to remain the same and that she was not totally disabled from a psychiatric perspective.

In a February 20, 2002 report, Dr. Jillian Daly, a clinical psychologist, examined and tested appellant on February 15, 2003. She noted that it appeared that appellant's defenses were not working adequately for her at that time as her performance on testing illustrated and that she was experiencing a significant degree of depression and anxiety. Dr. Daly also indicated that appellant presently reported difficulty with attention, concentration and memory. She diagnosed mood disorder, including major depressive disorder and/or dysthymic disorder, conversion disorder and/or somatoform disorder and possibly a histrionic and/or passive-aggressive personality trait.

On March 7, 2003 Dr. Edelman provided a supplemental report from a second evaluation of appellant. Dr. Edelman reviewed the statement of accepted facts and revised his earlier opinion on causal relation, noting that he retracted any relationship between appellant's current panic disorder and her past low back injury at work. Following a further request from the Office for clarification, on March 20, 2003 Dr. Edelman stated:

“As noted in the previous supplemental, I retracted any relationship between [appellant's] current psychiatric condition, panic disorder and the compensable factor of employment, which is the low back injury. The reason for this is that the injury had occurred many years ago and [appellant] was subsequently released to work two month[s] after the injury. Also, the claim was reportedly terminated

and retired. Therefore, the previous low back injury is no longer the reason for [appellant's] current emotional condition.”

On March 31, 2003 the Office issued a notice of proposed termination of compensation on the grounds that the medical evidence of record established that appellant had “no psychiatric condition or disability causally related to any compensable factor of employment.” The Office found that Dr. Edelman’s opinion constituted the weight of the medical evidence. Appellant was given 30 days within which to respond and/or provide evidence supporting continued disability.

Nothing further was received from appellant.

By decision dated May 1, 2003, the Office terminated appellant’s wage-loss compensation and medical benefits entitlement, finding that the weight of the medical evidence of record established that appellant had no further disability from or injury residuals requiring further medical treatment, causally related to her employment.

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>5</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>6</sup> Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.<sup>7</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>8</sup>

The Office accepted that appellant sustained PTSD. Therefore, to terminate compensation the Office would have to demonstrate that the PTSD had ceased or that it was no longer causally related to her employment.

As noted in prior Board decisions, appellant’s treating physician, Dr. Cherkas, provided several reports on appellant’s physical and emotional conditions. He found that appellant’s total disability was due to agoraphobia and panic disorder related to her accepted low back injury and back pain, the response to this injury by supervisory staff, the inappropriate handling of her case, pressures regarding “schemes,” anxiety and agoraphobia related to a projected move to Long Beach and as developmental sequelae on the basis of psychopathologic fragmentation of her

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<sup>5</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>6</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>7</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

<sup>8</sup> *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

original PTSD. Dr. Cherkas opined that appellant's continuing disability was, in part, a direct result of her accepted PTSD condition. He stated that the psychopathologic fragmentation would manifest with remissions and exacerbations precipitated by work factors that resembled or symbolized appellant's initial traumatic employment events, including an increasing workload with the packing up of medical records, conflicts with coworkers and contact with critical supervisors. Dr. Cherkas further noted that appellant's agoraphobia and panic disorder about driving and going to work again were a result of the fragmentation due to the initial PTSD, such that appellant's dormant PTSD manifested itself as agoraphobia and panic disorder and was a direct result of the accepted condition. He noted that appellant's diagnosed somatoform disorder had originally been known as psychogenic pain disorder and, therefore, was not a different unrelated condition but merely the result of nomenclature changes.

However, the Office second opinion specialist, Dr. Edelman, opined that he did not find any relationship between appellant's current psychiatric condition, panic disorder and the compensable factor of employment, which was the low back injury. He explained that the injury had occurred many years prior and appellant was subsequently released to work two months after the injury. Dr. Edelman concluded that the previous low back injury was no longer the reason for appellant's current emotional condition.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a 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." The Board finds that there is a conflict in medical opinion between Dr. Cherkas Dr. Edelman as to whether appellant has any disability for work or injury-related residuals requiring further medical treatment, causally related to her accepted conditions.

Therefore, the decision of the Office of Workers' Compensation Programs dated May 1, 2003 is hereby reversed.

Dated, Washington, DC  
December 12, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member