

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA I. KIEBALA and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Los Angeles, CA

*Docket No. 02-2180; Submitted on the Record;
Issued March 12, 2003*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation, effective February 24, 2001.

On November 23, 1994 the Office accepted that appellant, then a 38-year-old outdoor recreation planner, sustained an employment-related post-traumatic stress disorder (PTSD).¹ She had stopped work on June 26, 1991. The Office continued to develop the claim,² and in 1996 referred appellant to Dr. Howard M. Greils, a psychiatrist, for a second opinion evaluation.³ Finding that a conflict in the medical opinion existed between the opinions of Dr. Greils and that of Dr. Thomas R. Dale, appellant's treating Board-certified psychiatrist, by letter dated March 15, 2000, the Office referred appellant to Dr. Robert J. Cooper, a Board-certified psychiatrist, for an impartial medical evaluation.⁴ In a letter dated July 27, 2000, the Office informed appellant that it proposed to terminate her compensation, based on the medical opinion

¹ The Office found, as a compensable factor of employment, that on December 2, 1987 appellant was subjected to verbal abuse during a meeting with an equestrian group.

² On September 3, 1997 appellant's compensation was suspended because, pursuant to 5 U.S.C. § 8123(d), she failed to attend an impartial medical examination. The examination had been scheduled with John L. Caccavale, Ph.D. In a decision dated April 8, 1998, an Office hearing representative remanded the case to the Office for rescheduling of the referee evaluation by a Board-certified medical specialist. Retroactive benefits were to be reinstated after appellant cooperated with the medical evaluation. She was then referred to Dr. David Glass, a Board-certified psychiatrist. Appellant's attorney, however, informed the Office that appellant would not attend the examination. In a decision dated June 16, 1998, appellant's compensation was again suspended for failure to cooperate with a scheduled examination. On November 11, 1999 appellant's attorney requested reconsideration. By decision dated December 15, 1999, the Office denied the request because it did not present clear evidence that the previous Office decision was erroneous. Appellant was then referred to Dr. Cooper.

³ Dr. Greils was initially designated a referee examiner. The Office, however, determined that a conflict in medical evidence did not exist at that time and designated Dr. Greils as a second opinion examiner.

⁴ Drs. Greils and Cooper were furnished with the medical record, a statement of accepted facts and a set of questions.

of Dr. Cooper. By letter dated September 29, 2000, appellant, through her representative, disagreed with the proposed termination, after which the Office obtained a supplementary report from Dr. Cooper. By decision dated February 16, 2001, the Office terminated appellant's compensation benefits on the grounds that she no longer had residuals of the employment injury.

On March 15, 2001 appellant requested a hearing that was held on February 26, 2002. Appellant did not appear at the hearing. Her representative argued that the claim should be expanded to include other physical conditions, that an Equal Employment Opportunity Commission settlement had not been considered, and that the referral physicians, especially Dr. Caccavale, were inappropriately selected. By decision dated May 24, 2002, an Office hearing representative affirmed the February 16, 2001 decision.⁵ The instant appeal follows.

The Board finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁶ In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁷

The relevant medical evidence includes a number of reports in which Dr. Dale, appellant's treating Board-certified psychiatrist, found that appellant continued to be totally disabled due to employment-related PTSD.

Dr. Greils, a psychiatrist who completed a second opinion evaluation for the Office, submitted a report dated January 4, 1996 in which he diagnosed anxiety disorder, not otherwise specified, with depressive features, controlled with psychopharmaceutical intervention, and personality disorder, not otherwise specified with passive-aggressive, narcissistic, and histrionic personality features. He advised that appellant's condition was not due to the December 2, 1987 accepted employment factor and that she was capable of performing her former work as an outdoor recreation planner. Dr. Greils further advised that appellant's physical complaints attributed to stress were not employment related.

⁵ The Board notes that the May 24, 2002 decision stated that "The issue for determination is whether the claimant refused to accept suitable employment when such was offered to her." The issue in the instant case is whether the Office properly terminated appellant's compensation benefits, effective February 24, 2001. The Board deems this error harmless, as the hearing representative later advised that the only issue was whether the medical evidence was sufficient to support that the claimant had any continuing work-related disability.

⁶ See *Patricia A. Keller*, 45 ECAB 278 (1993).

⁷ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

The impartial examiner, Dr. Cooper, provided a comprehensive report dated May 3, 2000, in which he diagnosed major depressive disorder, single episode, severe, without psychotic features, and personality disorder not otherwise specified with obsessive-compulsive disorder, histrionic and narcissistic features. He opined that appellant did not have PTSD and that her psychiatric condition and any stress-related physical condition were not caused by the accepted employment factor that occurred on December 2, 1987. While Dr. Cooper advised that appellant remained totally disabled, he explained that this was not due to the December 2, 1987 factor.

Dr. Cooper addressed the medical evidence of record, noting that appellant's psychiatric diagnosis was a major depressive disorder rather than PTSD. He noted that the equestrian incident occurred on December 2, 1987 and Dr. Samuel Albert did not diagnose the condition of PTSD until August 1, 1991. Dr. Cooper stated that this history did not indicate PTSD during the first years following the accepted employment incident. He explained that, under the DSM-IV, this would be defined as having a delayed onset. Dr. Cooper stated that no psychiatrist of record had ever indicated exactly when appellant developed the delayed onset of PTSD. He opined that appellant's clinical history was characterized as major depressive disorder before her consultation with Dr. Albert, explaining that other early medical providers had diagnosed major depression rather than the PTSD diagnosis. He noted that Dr. Albert's January 10, 1994 report addressed numerous job stressors as reported by appellant, rather than the singular factor of the equestrian meeting.

Dr. Cooper explained that one reason why he concluded the equestrian event was not a contributing factor for appellant's mental disorder was that Dr. Albert had described so many different stressors over the years of treatment. He further explained that appellant's subjective complaints over the years were not those typical for an individual with PTSD. In arriving at the diagnosis of major depressive disorder, Dr. Cooper explained that he relied on the complaints appellant presented upon his examination. He found that her mental status examination was more likely that of an individual with major depression and personality disorder than PTSD. Dr. Cooper stated that the diagnosis of PTSD was frequently inappropriately made. For this reason, he determined that appellant never sustained a post-traumatic stress disorder. Dr. Cooper noted that psychiatric studies noted that delayed PTSD was rare and that he had not seen a case of delayed-onset PTSD in over two decades of practice. He explained that the equestrian event was not an extreme stressor and, while perceived by appellant as frightening, it was not the type of event which typically triggered PTSD. He noted it was an upsetting event, not a major catastrophe.

In this case, the Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Cooper, the referee examiner, who advised that appellant's current condition was not caused by the accepted employment factor that occurred on December 2, 1987. The Office, therefore, properly terminated appellant's compensation, effective February 24, 2001.

The decision of the Office of Workers' Compensation Programs dated May 24, 2002 is hereby affirmed.

Dated, Washington, DC
March 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member