

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA NEELEY and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Los Angeles, CA

*Docket No. 03-1682; Submitted on the Record;
Issued January 12, 2004*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits effective August 25, 2001.

On February 27, 1992 appellant, then a 52-year-old internal revenue service appeals officer, filed an occupational disease claim alleging that on July 11, 1991 she realized her employment-related duties caused or contributed to her stress condition. Appellant stopped work on February 20, 1992. On November 17, 1992 the Office accepted appellant's claim for dysthymia, anxiety disorder and aggravation of histrionic personality disorder. Appellant was placed on the periodic rolls and paid appropriate wage-loss compensation.¹

The Office continued to develop the claim and, in a September 12, 1997 decision, vacated an April 12, 1997 decision and reversed an October 5, 1995 decision.² The Office reinstated benefits retroactively to October 5, 1995 and noted that the conditions of dysthymia and panic (anxiety) disorder were the only accepted conditions remaining as the impartial medical examiner, Dr. Louis L. Lunsky, a Board-certified psychiatrist, had opined that appellant's preexisting personality disorder suffered only a temporary aggravation and ceased as of February 20, 1992.

On June 28, 2001 the Office issued a notice of proposed termination of compensation, finding that the weight of the medical evidence supported that appellant had no continuing disability or medical condition causally related to employment. The Office had determined that

¹ Appellant was initially treated by Dr. Mark Ruddick, a psychiatrist, and was subsequently referred for a second-opinion examination by Dr. Elliott L. Markoff, Board-certified in psychiatry and neurology. Based on his testing, diagnoses and conclusions, the Office accepted that appellant sustained an employment-related emotional condition.

² In the October 5, 1995 decision, the Office terminated appellant's compensation benefits. In the April 12, 1997 decision, the Office denied modification of the prior decision.

a conflict existed between the opinions of Drs. Samuel H. Albert and Stephen Peterson, both of whom were Board-certified psychiatrists. Dr. Albert, who began treating appellant in September 1996,³ indicated that she continued to be completely disabled due to the accepted conditions while Dr. Peterson, who provided a second-opinion evaluation for the Office, opined that appellant could perform any type of work and that she did not suffer from any psychiatric condition. On August 29, 2000 the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record to Dr. Rosalyn Inniss, a Board-certified psychiatrist, for an impartial evaluation.

In Dr. Inniss' June 3, 2001 report, she stated that she had seen appellant on three occasions, October 5 and November 13, 2000 and February 7, 2001. Dr. Inniss advised that she had reviewed the entire case record and reported accurate medical and employment histories and findings on examination. She diagnosed, malingering and a histrionic personality disorder and opined that appellant was not disabled due to a psychiatric illness, with or without work-related factors.

By letter dated July 24, 2001, appellant objected to the use of Dr. Inniss' report, alleging that the physician did not specifically state that she utilized the statement of accepted facts, that she did not perform psychological testing and that her letterhead indicated that she was an "M.D." Appellant also submitted a report dated July 16, 2001, in which Dr. Albert repeated his earlier findings and opined that Dr. Inniss' report was inadequate. Dr. Albert again stated that appellant was unable to perform her usual and customary occupation or any other job at the present time.

In a decision dated August 3, 2001, the Office terminated appellant's compensation benefits, effective August 25, 2001, finding that the weight of the medical evidence established that she no longer had any continuing disability or medical condition that was related to employment. The Office based its decision on the June 3, 2001 report, of Dr. Inniss, the impartial medical examiner.

On August 25, 2001 appellant requested a hearing, which was held on January 9, 2003. In a decision dated March 28, 2003, the Office hearing representative affirmed the August 3, 2001 termination of benefits, finding that there was no medical evidence to support that appellant continued to have residuals of the employment injury.

The Board finds that the Office properly terminated appellant's wage-loss compensation and medical benefits effective August 25, 2001.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation

³ The record indicates that appellant had moved from California, initially to Nebraska and then to Indiana. She, however, continued to receive weekly treatment from Dr. Albert, whose office is in Fountain Valley, California, either in person when she was in the area or via telephone.

⁴ *Roberto Rodriguez*, 50 ECAB 124 (1998).

without establishing either that the disability has ceased or that it is no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.⁶ Furthermore, the Federal Employees' Compensation Act⁷ provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Secretary shall appoint a third physician who shall make an examination.⁸

In the instant case, the Office determined that a conflict of medical opinion existed between the opinions of Board-certified psychiatrists, Dr. Albert, appellant's treating physician and Dr. Peterson, an Office referral physician.⁹ Therefore, the Office properly referred appellant to an impartial medical examiner, Dr. Inniss, also a Board-certified psychiatrist. In a comprehensive report dated June 3, 2001, Dr. Inniss noted that she had met with appellant on three separate occasions and had reviewed the complete record. The physician also indicated that there was no documentation of ongoing treatment and that she had specifically requested progress notes or a treatment plan from appellant's treating physician, Dr. Albert, which she had not received. Dr. Inniss declined to perform psychological testing, explaining that past tests were "consistently inconsistent." The physician diagnosed malingering, histrionic personality disorder, improved morbid obesity, hypertension, chronic body aches and pains and status post breast reduction surgery as well as removal of abdominal apron after profound weight loss. Dr. Inniss explained that appellant was geared to emphasize her limitations and not her strengths and there was no motivation for appellant to give up her purported symptoms and to show a higher level of functioning overall. The physician also noted that appellant had not sought treatment locally despite being able to drive over 60 miles to church but not 30 miles to the local mental health center. She further noted that appellant subsequently went to visit someone after her appointment and concluded that appellant was able to function as she chose. Dr. Inniss opined that appellant was not disabled, based on a psychiatric illness, with or without work factors.

The Board finds that the Office properly relied on Dr. Inniss' comprehensive June 3, 2001 report as a basis for terminating benefits. She not only examined appellant on three occasions, but also reviewed appellant's case record and reported accurate medical and employment histories before concluding that appellant was not disabled. The Office thus properly accorded determinative weight to the impartial medical examiner's June 3, 2001 findings. While appellant submitted a July 16, 2001 report from Dr. Albert, wherein he

⁵ *Martha A. McConnell*, 50 ECAB 128 (1998).

⁶ *Leonard M. Burger*, 51 ECAB 369 (2000).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ 5 U.S.C. § 8123(a); *Richard L. Rhodes*, 50 ECAB 259 (1999).

⁹ As noted previously, Dr. Albert, appellant's treating physician, indicated that appellant was completely disabled due to the accepted conditions while Dr. Peterson, the second opinion physician, opined that appellant could perform any type of work and that she did not suffer from any psychiatric condition.

commented on Dr. Inniss' report and reiterated his opinion that appellant continued to suffer residuals from her employment injury, the Board finds that Dr. Albert's report is insufficient to overcome the special weight accorded to the impartial medical examiner as his opinion formed one side of the conflict that Dr. Inniss resolved.¹⁰

The Board further notes that on appeal appellant alleged that Dr. Inniss did not use the statement of accepted facts or perform psychological testing. In her June 3, 2001 report, however, the physician advised that she had reviewed the case record, which includes the statement of accepted facts. Moreover, Dr. Inniss was not required to perform psychological testing.

In cases such as this where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹ Dr. Inniss provided such a report. Accordingly, the Board finds that the Office properly credited the well rationalized, comprehensive opinion of Dr. Inniss and met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.

The March 28, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 12, 2004

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

¹⁰ *Barbara J. Warren*, 51 ECAB 413 (2000).

¹¹ *Solomon Polen*, 51 ECAB 341 (2000).