

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA H. RENNER and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Hilliard, FL

*Docket No. 03-1618; Submitted on the Record;
Issued March 1, 2004*

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 properly terminated appellant's compensation benefits on the basis that she had no residuals from her accepted employment injury; and (2) whether the Office properly denied appellant's request for reconsideration.

On September 4, 1998 appellant, then a 44-year-old air traffic control specialist, filed a traumatic injury claim alleging that on August 28, 1998 she sustained an emotional trauma.¹ The Office denied this claim on November 4, 1998, May 7 and September 7, 1999.

On October 9, 1998 appellant filed an occupational disease claim alleging that her depression, post-traumatic stress disorder and emotional trauma anxiety were employment related.² She stopped work on August 28, 1998 and has not returned. The Office accepted the claim for anxiety and depression. Appellant was referred for vocational rehabilitation. On January 30, 2001 the Office referred appellant to C.W. Ingebrigsten for vocational rehabilitation services.

On May 3, 2001 the Office referred appellant to Dr. Robert E. Groble, a Board-certified psychiatrist, to resolve a conflict in the medical opinion evidence between Susan G. Joseph, Ph.D., appellant's attending clinical psychologist, and Alan J. Harris, Ph.D., a second opinion clinical psychologist, on the issue of whether appellant had the ability to participate in a rehabilitation program and reemployment.

In a July 9, 2001 report, Dr. Groble diagnosed post-traumatic stress disorder with symptomatic depression and anxiety which was in remission. He concluded that appellant's

¹ This was assigned claim number 06-0711241.

² This was assigned claim number 06-0734916.

accepted employment injury was no longer totally disabling and that she was capable of participating in vocational rehabilitation and seeking reemployment.

On April 29, 2002 Gregory Price, appellant's vocational rehabilitation specialist, closed appellant's case due to her relocation from Florida to Wyoming on May 8, 2002. He noted that appellant should contact Bill Simmons once she relocated to Wyoming and completed her certificate training program on the internet.

In a referral sheet for second opinion dated November 7, 2002, the Office noted the specialist required was a psychiatrist and psychologist for testing.

In a report dated December 9, 2002, Donna M. Veraldi, Ph.D, a second opinion clinical psychologist, based upon a review of the medical evidence, employment injury history and statement of accepted facts, concluded that appellant no longer suffered from her accepted employment injury of adjustment disorder nor did she have any mental impairments which rendered her totally disabled. Dr. Veraldi interviewed appellant, took her history and performed testing which included a mental status evaluation, Beck Depression Inventory -- II, Personality Assessment Inventory, Minnesota Multiphasic Personality Inventory and Rorschach. The Beck test revealed minimal symptoms of depression. Appellant's clinical profile was within normal limits based upon the Minnesota Multiphasic Personality Inventory. This test also revealed a "tendency to be socially introverted." The Rorschach test showed coping deficits and the Personality Assessment Inventory was within normal limits. She noted that the objective evidence indicated that personality and emotional testing were within normal limits. Dr. Veraldi noted that appellant admitted that her symptoms were in remission and that "her symptoms might be triggered by returning to work that was similar to her work at [the] [employing establishment]." In concluding, the psychologist noted that "clinical objective findings indicate emotional and personality testing that is generally within normal limits" and that "past symptoms appear to be in remission, based on [appellant's] presentation, her subjective reports and her test results."

On January 6, 2003 the Office issued a proposed notice of termination of compensation benefits based upon the opinion of Dr. Veraldi who concluded that appellant had no residuals or disability due to her accepted employment injury. The Office informed appellant that she had 30 days to submit additional factual and medical evidence if she disagreed with the proposed action.

In a letter dated January 20, 2003, appellant disagreed with the Office's proposal to terminate her benefits. She argued that the proposal to terminate her benefits was both illegal and erroneous since she was entitled to benefits for total disability while she continued to participate in a vocational rehabilitation program authorized by the Office. Appellant contended that she was still disabled. She further contended that, as the employing establishment determined, her condition disqualified her from her date-of-injury position or any other position for the employing establishment, that she remained entitled to compensation benefits.

By decision dated February 6, 2003, the Office terminated appellant's compensation effective February 22, 2003 on the grounds that the weight of the medical evidence, as represented by Dr. Veraldi, established that appellant's accepted conditions had resolved.

Appellant requested reconsideration in a letter dated February 23, 2003 and provided legal argument in support of her request. She contended that the Office erred in terminating her compensation while she was participating in vocational rehabilitation. Appellant contended that, as the employing establishment determined her condition disqualified her from her date-of-injury position or any other position for the employing establishment, that she was totally disabled and entitled to compensation benefits.

By nonmerit decision dated April 18, 2003, the Office found that appellant failed to present a new argument warranting further merit review.

The Board finds that the Office properly terminated appellant's compensation benefits on the basis that she had no residuals from her accepted employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to 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.⁴ However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.⁵ 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.⁶

The Office accepted appellant's claim for anxiety and depression.

The Office referred appellant for a second opinion evaluation on December 9, 2002 with Donna M. Veraldi, Ph.D., a clinical psychologist. In a December 9, 2002 report, Dr. Veraldi reported interviewing appellant, taking her history and performing diagnostic testing, which included a mental status evaluation, Beck Depression Inventory -- II, Personality Assessment Inventory, Minnesota Multiphasic Personality Inventory and Rorschach. She found that appellant no longer suffered residuals of her accepted employment injury nor did she have any mental impairments which made her totally disabled. Dr. Veraldi noted the objective evidence indicating that personality and emotional testing were within normal limits. She concluded that appellant had no objective findings and no work restrictions due to her accepted employment injuries.

The Board finds that the weight of the medical opinion evidence establishes that, by February 22, 2002, appellant was no longer disabled nor had medical residuals due to her

³ *Lawrence D. Price*, 54 ECAB ____ (Docket No. 02-1541, issued May 19, 2003); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Beverly Grimes*, 54 ECAB ____ (Docket No. 03-42, issued April 18, 2003); *Lynda J. Olson*, 52 ECAB 435 (2001).

⁵ *Thomas Lee Cox*, 54 ECAB ____ (Docket No. 02-1286, issued March 26, 2003); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003); *Franklin D. Haislah*, 52 ECAB 457 (2001).

accepted employment injuries. The Office accepted appellant's claim for anxiety and depression. There is no current medical evidence supporting continuing disability or medical residuals due to these conditions. Appellant has not submitted any recent medical reports from her attending physician. The most recent opinion is that of Dr. Veraldi, a second opinion psychologist, who opined that appellant's employment-related adjustment disorder had ceased and that there were no objective findings in support of her continuing condition or disability. There is no contrary recent medical evidence. Therefore, the Office properly relied on Dr. Veraldi's report in terminating appellant's benefits.

On appeal appellant contends that the Office is required to continue to pay her disability compensation while she is in vocational rehabilitation. As noted above, the Office terminated her compensation benefits effective February 22, 2003 on the basis that the medical evidence established that she had no disability or continuing residuals due to her accepted employment injury.

It is clear from the Federal Employees' Compensation Act and its implementing regulations that vocational rehabilitation is provided and administered as a discretionary component of the federal compensation program and is not an entitlement. Section 8104(a) of the Act, provides, in pertinent part, that the "Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services."⁷ Section 10.518(a) of the Office's implementing regulations provides, in pertinent part, that the Office "*may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. § 8104.*"⁸ (Emphasis added.)

Because appellant had no residual disability due to her accepted employment injury, vocational rehabilitation services are not appropriate.⁹ As previously stated, the purpose of vocational rehabilitation is to assist a disabled employee unable to return to his date-of-injury job. The Board, therefore, finds that the Office did not abuse its discretion in denying appellant's request for continuing vocational rehabilitation services.

The Board also finds that the Office properly denied appellant's request for a merit review.

⁷ 5 U.S.C. § 8104(a).

⁸ 20 C.F.R. § 10.518(a) (1999).

⁹ See *Roniva Brown*, 38 ECAB 338, 343-44 (1987) (finding that the claimant was not entitled to vocational rehabilitation benefits because the medical evidence established that the claimant was able to return to his date-of-injury position). When an employee is no longer disabled within the meaning of the Act and there is no loss of wage-earning capacity, there is no entitlement to vocational rehabilitation benefits under the Act. *Id.*

Section 8128(a) of the Act¹⁰ vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹¹ Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.¹²

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).¹³ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁴

Section 10.608(b) provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.¹⁵

In the February 23, 2003 reconsideration request, appellant reiterated her contention that the Office erroneously terminated her benefits while she was in vocational rehabilitation and that the employing establishment had determined her to be permanently disabled from her position. This argument had been previously raised and addressed by the Office. Appellant has neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant did not submit any evidence on reconsideration. As appellant failed to submit any evidence with her request for reconsideration, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied her request for reconsideration without conducting a merit review.

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ 5 U.S.C. § 8128(a) (“the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.”)

¹² *Raj B. Thackurdeen*, 54 ECAB ____ (Docket No. 02-2392, issued February 13, 2003); *Veletta C. Coleman*, 48 ECAB 367, 368 (1997).

¹³ 20 C.F.R. § 10.608(a).

¹⁴ 20 C.F.R. § 10.606(b)(1)-(2); *see Sharyn D. Bannick*, 54 ECAB ____ (Docket No. 03-567, issued April 18, 2003).

¹⁵ 20 C.F.R. § 10.608(b).

The decisions of the Office of Workers' Compensation Programs dated April 18 and February 6, 2003 are hereby affirmed.

Dated, Washington, DC
March 1, 2004

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member