

**United States Department of Labor
Employees' Compensation Appeals Board**

MARCE J. SCOTT, Appellant

and

**DEPARTMENT OF AGRICULTURE, FOREST
SERVICE, Laramie, WY, Employer**

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**Docket No. 04-1258
Issued: November 12, 2004**

Appearances:
Marce J. Scott, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 7, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 8, 2003, which terminated her compensation effective that date. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case. Appellant also appealed from the Office's nonmerit decision of June 25, 2003, denying her request for reconsideration. Pursuant to the same regulation, the Board has jurisdiction over this nonmerit decision.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective April 8, 2003 on the grounds that she had no residuals after that date of her accepted employment injury, conversion disorder; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 6, 1987 appellant, then a 36-year-old support service specialist, filed an occupational disease claim alleging that she sustained depression, colitis and muscle atrophy due to incidents and conditions at work. She claimed that she was denied a promised promotion, subjected to harassment and discrimination and forced to work in physical and emotional isolation. In September 1988, the Office accepted that appellant sustained an employment-related conversion disorder and began paying appropriate compensation.

Appellant stopped work for various periods and in 1993 she began to participate in a vocational rehabilitation program. By decision dated January 28, 1994, the Office adjusted appellant's compensation based on her capacity to work as a medical records clerk. By decision dated and finalized January 25, 1995, an Office hearing representative reversed the January 28, 1994 decision, finding that the medical evidence did not show that appellant was capable of working as a medical record clerk. He remanded the case to the Office for further development of the medical evidence regarding the extent of her disability.¹

In a report dated March 3, 2000, Dr. Carol Traut, an attending Board-certified psychiatrist, stated that she had seen appellant on a monthly basis from March 1999 to March 2000 and noted that her current diagnosis was chronic post-traumatic stress disorder related to her employment injury. She stated, "I understand that[,] at the time of the injury, [appellant] had a conversion disorder that is not currently active; however, she continues her post-traumatic stress disorder related to her job-related injury." Dr. Traut noted that appellant experienced depression, hypervigilance, social isolation and diminished self-esteem and stated that her psychological stress continued to lead to physical symptoms. She indicated that appellant was unable to deal with people in general or with supervisors in a work setting and that handling her personal paperwork "reenacts the trauma of her original injury." Dr. Traut noted that appellant relived the trauma of the job injury with each new trauma in her life and indicated that she was undergoing physical therapy for fibromyalgia. She stated that appellant's prognosis was poor for return to work and that her symptoms were similar to what she experienced around the time of her injury, although at a somewhat diminished level.

On January 13, 2003 the Office advised appellant that it proposed to terminate her compensation. The Office indicated that the March 3, 2000 report of Dr. Traut showed that appellant no longer had residuals of her accepted conversion disorder.

Appellant submitted a February 12, 2003 report in which Dr. Traut stated that, when she wrote her March 3, 2000 report, she emphasized appellant's post-traumatic stress disorder because this condition was dealt with most actively during her treatment sessions. She noted that appellant advised her that she underreported her "conversion symptoms" because she thought that she was supposed to discuss these symptoms with the physician who treated her physical complaints. Dr. Traut noted that appellant still had various physical symptoms, including fibromyalgia, irritable bowel syndrome, muscle weakness and atrophy and indicated that she had mentioned these continuing physical symptoms in her March 3, 2000 report. She indicated that

¹ As a result of this decision, appellant's compensation was reinstated to its former rate.

appellant provided her with a report in which Dr. Jeffrey Bacon, an attending osteopath, stated that she currently had symptoms of conversion disorder.² Dr. Traut stated, “In light of all this information, I am revising my opinion to include conversion disorder as one of my active diagnoses in addition to the diagnoses I stated in my previous report.” She concluded that appellant continued to be totally disabled and indicated that her continuing employment-related conversion disorder contributed to this disability.

The record was also supplemented to include treatment notes of Dr. Traut dated between March 1999 and January 2003. The Office then arranged for Dr. Robert J. Hilton, a Board-certified psychiatrist and Office medical consultant, to review the medical evidence, including Dr. Traut’s treatment notes and determine whether appellant had a current diagnosis of conversion disorder. In a report dated March 4, 2003, Dr. Hilton determined that such a current diagnosis was not justified. He noted that Dr. Traut’s treatment notes revealed that she did not diagnose conversion disorder in the four years she treated appellant and that she appeared to have based this diagnosis on the opinion of an attending osteopath. Dr. Hilton stated that it was more likely than not that appellant’s personality disorder was the actual root cause of her inability to work.

By decision dated April 8, 2003, the Office terminated appellant’s compensation effective April 8, 2003 on the grounds that she had no residuals after that date of her employment injury, conversion disorder. The Office indicated that the March 3, 2000 report of Dr. Traut showed that appellant’s conversion disorder was not active. The Office stated that Dr. Traut indicated in her February 12, 2003 report, that she was revising her March 3, 2000 report to include conversion disorder as a current diagnosis related to employment factors, but that Dr. Hilton had shown that the change in Dr. Traut’s diagnosis was not established by objective medical evidence.

By letter dated June 17, 2003, appellant requested reconsideration of the Office’s April 8, 2003 decision. She indicated that due to her daughter’s medical condition she was not able to request a hearing within 30 days of the April 8, 2003 decision. Appellant indicated that she had a new physician and suggested that she would submit new medical evidence.

By decision dated June 25, 2003, the Office denied appellant’s request for merit review of her claim.

² In a report dated January 30, 2003, Dr. Bacon stated. “[Appellant] does appear to have some symptoms of conversion disorder including her irritable bowel symptoms, her fibromyalgia and her anxiety, as well. Her anxiety appears to get worse when pressure is placed on her by the government at this time.”

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act,³ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS -- ISSUE 1

The Board finds that the Office has not met its burden of proof to establish that appellant no longer has residuals of her accepted employment injury, a conversion disorder. The Board finds a conflict in the medical evidence between Dr. Traut, an attending Board-certified psychiatrist, and Dr. Hilton, a Board-certified psychiatrist and Office medical consultant, regarding whether appellant continues to have residuals of her accepted employment injury, conversion disorder.⁷

In a February 12, 2003 report, Dr. Traut provided an opinion that appellant continued to have disabling residuals of her accepted employment injury, conversion disorder. She discussed the circumstances under which her March 3, 2000 report was produced, indicating that she emphasized appellant's post-traumatic stress disorder because this condition was dealt with most actively during her treatment sessions and noting that appellant underreported her "conversion symptoms" because she thought that she was supposed to discuss these symptoms with the physician who treated her physical complaints.⁸ Dr. Traut emphasized that appellant still had various physical symptoms, including fibromyalgia, irritable bowel syndrome and muscle weakness and atrophy and she indicated that a report in which Dr. Bacon, an attending osteopath,

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ Section 8123(a) of the Act provide in pertinent part: "If there is 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." 5 U.S.C. § 8123(a). When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence. *William C. Bush*, 40 ECAB 1064, 1975 (1989).

⁸ In her March 3, 2000 report, Dr. Traut diagnosed employment-related post-traumatic stress disorder. She indicated that appellant's conversion disorder did not appear to be active, but noted that her psychological stress continued to lead to physical symptoms and that she was undergoing physical therapy for fibromyalgia. Dr. Traut stated that appellant's prognosis was poor for return to work and that her symptoms were similar to what she experienced around the time of her injury, although at a somewhat diminished level.

reported that appellant had various physical symptoms also supported a finding that she continued to have symptoms of conversion disorder.

In contrast, Dr. Hilton determined in a March 4, 2003 report, that appellant did not have a current diagnosis of conversion disorder. He noted that Dr. Traut's treatment notes revealed that she did not diagnose conversion disorder in the four years she treated appellant and suggested that there was no objective basis for such a diagnosis. Dr. Hilton further indicated that appellant's apparent disability more likely than not was related to her nonwork-related personality disorder.

The Board finds that since the Office terminated appellant's compensation benefits effective April 8, 2003 without having resolved the existing conflict in the medical evidence, it has failed to meet its burden of proof in terminating her benefits.⁹

CONCLUSION

The Board finds that the Office improperly terminated appellant's compensation effective April 8, 2003.

⁹ See *Gail D. Painton*, 41 ECAB 492, 498 (1990); *Craig M. Crenshaw, Jr.*, 40 ECAB 919, 922-23 (1989). Given the Board's disposition of the first issue in the present case, it is not necessary for it to consider the second issue, *i.e.*, whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2003 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 12, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member