

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

D.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Inglewood, CA, Employer**

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**Docket No. 06-1645
Issued: April 6, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 14, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated April 10, 2006 terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation and medical benefits on the grounds that she no longer had any disability for work or residuals requiring further medical treatment.

FACTUAL HISTORY

This is appellant's sixth appeal before the Board. In the first appeal, the Board affirmed in part and reversed in part a May 9, 1994 decision of the Office, which found that appellant had

not demonstrated that the 1988 loss of wage-earning capacity determination should be modified.¹ The Board also found that the Office did not meet its burden to rescind acceptance of appellant's claim for PTSD.² In the second appeal, on July 6, 2001 the Board issued an order setting aside a June 22, 1998 nonmerit Office decision and remanded the case for further development.³ The Board found that the Office failed to consider the additional evidence submitted by appellant at the time of the June 22, 1998 decision. 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.⁴ In the fourth appeal, on September 24, 2003 the Board found the case not in posture for a decision as appellant filed an appeal from a notice of proposed termination of compensation.⁵ On December 12, 2003 in the fifth appeal, the Board reversed a May 1, 2003 decision terminating appellant's compensation benefits. The Board found that there was an unresolved conflict in the medical opinion evidence on the issue of whether appellant continued to have any residuals and disability due to her accepted PTSD injury.⁶ The facts and the circumstances of the case as set forth in the prior Board appeals are hereby incorporated by reference.

On January 12, 2005 the Office referred appellant to Dr. Peter Polatin, a Board-certified psychiatrist, to resolve the conflict in the medical opinion evidence. The conflict was between Dr. Marshall Cherkas, appellant's then treating Board-certified psychiatrist, who concluded that appellant continued to suffer from her accepted PTSD and Dr. Barry Edelman, a second opinion Board-certified psychiatrist, who concluded that the condition had resolved. On January 31, 2005 Dr. Polatin, based upon a psychiatric evaluation of appellant, review of the medical evidence and statement of accepted facts, diagnosed recurrent major depressive disorder, panic attacks with agoraphobia and chronic low back pain. He reported that appellant "appears somewhat blunted and depressed" and exhibited no anxiety or emotional lability. Dr. Polatin suggested additional psychological testing to appellant, which "included a mental health interview with a psychologist and M[innesota] M[ultiphasic] P[ersonality] I[nventory] and a Structured Clinical Interview for DSM-IV on Axes I and III." However, appellant informed him that she would not return for this testing. Based upon advice from the Office, the psychiatrist proceeded "to complete the evaluation without the benefit of the" recommended testing. Dr. Polatin concluded that appellant's PTSD "would certainly have resolved by now and certainly could not be expected to continue to perpetuate disability." In support of this conclusion, he stated: "it is hard to believe that original stress symptoms which were recorded as

¹ On September 14, 1981 appellant, then a 34-year-old mail clerk, filed an occupational disease claim attributing her emotional condition to her employment. The Office accepted the claim for post-traumatic stress disorder (PTSD) on May 24, 1983. The record contains evidence that the Office accepted a head contusion, mild cervical strain and acute lumbar spine myofascial strain as a result of a June 28, 1980 traumatic injury. Appellant was placed on the periodic rolls for temporary total disability in 1983.

² Docket No. 94-2492 (issued December 17, 1997).

³ Docket No. 99-1178 (issued July 6, 2001).

⁴ Docket No. 02-0043 (issued October 15, 2002).

⁵ Docket No. 03-1241 (issued September 24, 2003).

⁶ Docket No. 03-2141 (issued December 12, 2003).

reactive to workplace stressors would now be in effect” due to the number of years appellant has been out of work. Dr. Polatin also concluded that appellant’s low back pain was unrelated to her 1980 work injury. He concluded that appellant’s symptoms of depression anxiety and panic attacks represented “an established and entrenched psychiatric disorder of symptoms that are part of her everyday health.” Dr. Polatin then opined that these symptoms were not residuals from her accepted 1980 back injury. Lastly, he stated unequivocally that appellant’s “current symptoms are not related to workplace factors from her original terms of employment in the 1980s or through 1992.”

On September 6, 2005 appellant elected to receive benefits under the Federal Employees’ Compensation Act beginning February 1993.

By notice dated February 24, 2006, the Office advised appellant of its proposed termination of her compensation. It found that the weight of the evidence rested with the well-rationalized opinion of Dr. Polatin, the impartial medical examiner.

In a letter dated March 13, 2006, appellant disagreed with the proposed termination.

By decision dated April 10, 2006, the Office terminated appellant’s wage-loss and medical compensation effective April 15, 2006. The Office found that the weight of the evidence resided with Dr. Polatin, the impartial medical examiner, who concluded that she no longer had any residuals due to her accepted PTSD.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits.⁷ 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.⁸ The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.¹⁰

Section 8123(a) of the Act provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee,

⁷ *Paul L. Stewart*, 54 ECAB 824 (2003).

⁸ *Elsie L. Price*, 54 ECAB 734 (2003).

⁹ *See Del K. Rykert*, 40 ECAB 284 (1988).

¹⁰ *James F. Weikel*, 54 ECAB 660 (2003).

the Secretary shall appoint a third physician who shall make an examination.”¹¹ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.¹²

ANALYSIS

In the fifth appeal, the Board determined that a conflict in medical opinion existed on the issue of whether appellant continued to have residuals of her accepted PTSD and remanded the case for resolution of the conflict. The Office referred appellant to Dr. Polatin for an impartial medical examination to resolve the conflict noted by the Board. Based on Dr. Polatin’s opinion, the Office terminated her entitlement to compensation effective April 15, 2006 on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Polatin, established that she had no residuals or disability due to her accepted PTSD.

On January 31, 2005 Dr. Polatin, based upon psychiatric evaluation of appellant, review of the medical evidence and statement of accepted facts, diagnosed recurrent major depressive disorder, panic attacks with agoraphobia and chronic low back pain. He reported that appellant “appears somewhat blunted and depressed” and exhibited no anxiety or emotional lability. Dr. Polatin concluded that appellant’s PTSD “would certainly have resolved by now and certainly could not be expected to continue to perpetuate disability.” In support of this conclusion, he stated: “it is hard to believe that original stress symptoms which were recorded as reactive to workplace stressors would now be in effect” due to the number of years she has been out of work. Dr. Polatin also concluded that appellant’s low back pain was unrelated to her 1980 work injury. He determined that appellant’s symptoms of depression anxiety and panic attacks represented “an established and entrenched psychiatric disorder of symptoms that are part of her everyday health.” Dr. Polatin then opined that these symptoms were not residuals from her accepted 1980 back injury. He stated that appellant’s “current symptoms are not related to workplace factors from her original terms of employment in the 1980s or through 1992.” Dr. Polatin’s statements were clear and unequivocal.

The Board finds that Dr. Polatin’s impartial medical opinion negated a causal relationship between appellant’s accepted PTSD and is sufficient to establish that she no longer had any residuals from her accepted employment injury. His opinion is sufficiently probative, rationalized, and based upon a proper factual background. Dr. Polatin’s opinion is sufficiently well rationalized and based upon a proper factual background. When an impartial medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, will be given special weight.¹³ The Board finds that the opinion of the impartial medical examiner Dr. Polatin is well rationalized

¹¹ 5 U.S.C. § 8123(a); see also *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006).

¹² *John E. Cannon*, 55 ECAB 585 (2004); *Sharyn D. Bannick*, 54 ECAB 537 (2003).

¹³ *Darlene R. Kennedy*, *supra* note 11.

and constitutes the special weight of medical opinion. The Office's termination of appellant's compensation benefits was proper.

CONCLUSION

The Board finds that the Office met its burden to terminate appellant's compensation benefits as of April 15, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 10, 2006 is affirmed.

Issued: April 6, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board