

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

N.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Beaverton, OR, Employer)

**Docket No. 06-2076
Issued: July 11, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 12, 2006 appellant filed a timely appeal from an August 3, 2006 merit decision of the Office of Workers' Compensation Programs terminating her compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation benefits effective August 6, 2006 on the grounds that she had no further disability due to her accepted employment injury; and (2) whether the Office properly terminated authorization for medical benefits.

FACTUAL HISTORY

On July 31, 1998 appellant, then a 42-year-old city letter carrier, filed an occupational disease claim alleging that she sustained clinical depression causally related to factors of her federal employment. The Office accepted the claim for a temporary aggravation of obsessive

compulsive personality disorder and post-traumatic stress disorder (PTSD). Appellant stopped work on June 7, 1998. The Office placed her on the periodic rolls effective September 25, 1999. Appellant returned to work for four hours on March 27, 2002 but stopped work on March 28, 2002.¹ The Office returned her to the periodic rolls effective September 6, 2002.

By letter dated September 30, 2003, the Office referred appellant to Dr. Charles G. Bellville, a Board-certified psychiatrist, for a second opinion examination. In a report dated October 10, 2003, Dr. Bellville discussed appellant's history of severe injuries due to a 1987 nonemployment-related motor vehicle accident. He further addressed her employment history and noted that the Social Security Administration found her disabled in June 2003. Dr. Bellville diagnosed chronic, severe major depression with melancholia or psychotic features, panic attacks with agoraphobia, an anxiety disorder or PTSD. He stated:

“As others have opined, her job at the [employing establishment] may have temporarily aggravated some preexisting conditions. Her depression, from which she seemed to have recovered following the 1987 motor vehicle accident, returned again following the events at the [employing establishment]. Her panic attacks, which had never completely resolved, worsened. Her obsessive-compulsive-type symptoms worsened.”

Dr. Bellville noted that appellant had difficulty with changes at the employing establishment due to “rigidity of her nature” and prior traumas. He asserted:

“At this point, work is no longer the major factor, although her ‘transference’ with the [employing establishment] may be a major factor in her continued regression and low functioning. This is not something caused by the [employing establishment] but something within her. Clearly, the major reasons for her ongoing difficulties must have something to do with factors beyond the [employing establishment], since she is worse now than she was when she worked there and she has not worked there in several years.”

Dr. Bellville opined: “It is my opinion that June 1, 2003, would be about the time when the work-related factors would end and her continuing difficulties would be related to factors independent of the [employing establishment], in a majority.” He found that appellant was unable to return to her usual employment because of her pathological “transference and regression.” In a work restriction evaluation, Dr. Bellville indicated that appellant was unable to return to her usual work due to her phobia of driving and need for structure. He determined that she could work “in a sheltered workshop situation, working probably no more than two hours a day, with very little driving to get there and in a highly structured situation.”

On February 16, 2004 the Office requested that Dr. Kenneth Ihli, a licensed clinical psychologist and appellant's attending physician, review and comment on Dr. Bellville's report. On March 23, 2004 Dr. Ihli responded that he “generally agree[d]” with Dr. Bellville's

¹ By decision dated September 5, 2002, the Office terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work. On June 9, 2003 an Office hearing representative reversed the September 5, 2002 decision.

conclusions regarding the “impact of [appellant’s] experiences with the [employing establishment].” He stated: “Dr. Bellville’s estimate of the ending date for the work[-]related factors also appears appropriate given that [appellant] was found to be disabled as of that time.”

By decision dated May 21, 2004, the Office terminated appellant’s compensation and medical benefits effective that date on the grounds that the evidence showed that she had no further employment-related disability or residual condition.

Appellant requested an oral hearing. She submitted a report dated June 23, 2004 from Dr. Ihli, who asserted that she continued to be affected by her experiences with the employing establishment. He stated: “To me, it means that you were not capable of any employment and that is the purpose of Social Security Disability.”² On November 19, 2004 Dr. Ihli related that he generally agreed with Dr. Bellville’s conclusion that appellant’s continuing difficulties after June 1, 2003 were due to nonwork factors “in the majority.” He stated:

“His phrase ‘in the majority’ made sense to me in that it appeared to me to indicate that he accepted that the [employing establishment] experiences could still be affecting you, but that ‘factors independent of the [employing establishment],’ essentially preexisting factors, were now the major factors. Related to the stated date of June 1, 2003, my assumption was that the date made sense since you were granted disability status at that time. I frankly was not attempting to determine responsibility but rather indicating my belief that you were disabled for purposes of employment at that time.

“I realize this is a rather lengthy reply, so to summarize, I disagree that employment[-]related issues ceased to affect you on June 1, 2003. However, I did not read Dr. Bellville’s report as stating that, but rather that it was no longer the major factor.”

By decision dated June 23, 2005, the Office hearing representative affirmed the May 21, 2004 termination decision but found a conflict in medical evidence between Dr. Ihli and Dr. Bellville regarding whether appellant had continuing employment-related disability.

On November 1, 2005 the Office reinstated appellant’s compensation benefits and placed her on the periodic rolls retroactive to May 16, 2004. On March 21, 2006 the Office referred appellant Dr. Eric Goranson, a Board-certified psychiatrist, for an impartial medical examination.

In a report dated April 16, 2006, Dr. Goranson reviewed the medical evidence of record and listed findings on examination. He questioned the diagnosis of PTSD. Dr. Goranson diagnosed obsessive-compulsive disorder (OCD) and a mixed personality disorder unrelated to employment. He asserted that appellant had not received the appropriate medical care because she had not been properly diagnosed with OCD but instead medicated haphazardly.

² In a July 11, 2003 work restriction evaluation, Dr. Ihli found appellant unable to work. In a May 7, 2003 report, Dr. Ihli and Dr. Howard Rosenbaum, a Board-certified psychiatrist, found that she was totally disabled from employment.

Dr. Goranson stated: “In summary, [appellant’s] psychiatric treatment has been ineffective and has actually made her worse. This is primarily because the appropriate diagnosis has not ever been made and, because of that, appropriate treatment has not been instituted.” Dr. Goranson concluded that appellant did not have PTSD and “never did” during her employment. He asserted:

“Even though I disagree with the decision that she did have a work-related problem, it would be reasonable to assume that the work conditions did combine with a preexisting illness to provide a temporary worsening of symptoms which, primarily because she did not receive appropriate diagnosis or treatment, caused her condition to worsen to the point where she is perhaps worse off now than she was, even when she became ill in the first place.”

Dr. Goranson opined that any psychological disorder due to the compensable factors of employment had resolved long ago. He found that appellant was unable to work due to her “untreated psychiatric condition” which was not employment related.³

On May 12, 2006 the Office notified appellant of its proposed termination of her compensation and medical benefits. On June 2, 2006 appellant described inaccuracies in Dr. Goranson’s report and noted that he was not provided with clinic records from Dr. Ihli or Dr. Rosenbaum.

By decision dated August 3, 2006, the Office terminated appellant’s compensation and authorization for medical benefits effective August 3, 2006. The Office determined that Dr. Goranson’s opinion represented the weight of the evidence and established that she had no further employment-related disability or condition.

LEGAL PRECEDENT -- ISSUES 1 & 2

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee’s benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office’s burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ Additionally, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical

³ On April 20, 2006 appellant alleged that the statement of accepted facts (SOAF) provided to Dr. Goranson and Dr. Bellville was inaccurate and biased. In a letter dated May 16, 2006, the Office informed appellant that it had provided Dr. Goranson with a February 4, 1999 SOAF and addendums dated May 8, 2001 and November 2, 2005.

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁶ *Pamela K. Guesford*, 53 ECAB 727 (2002).

treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁷

ANALYSIS -- ISSUES 1 & 2

The Office accepted that appellant sustained an aggravation of PTSD and obsessive compulsive personality disorder due to factors of her federal employment. She stopped work on June 7, 1998 and returned to work for four hours on March 27, 2002. Appellant stopped work on March 28, 2002 and did not return. The Office determined that the record contained a conflict in medical opinion on the issue of whether she had any further disability due to her employment injury and referred her to Dr. Goranson for an impartial medical examination. The Office terminated appellant's compensation by decision dated August 3, 2006 based on its finding that his opinion represented the weight of the medical evidence and established that she had no further employment-related condition or disability.⁸ The Board finds, however, that the record did not contain a conflict in medical opinion at the time of the Office's referral of appellant to Dr. Goranson for an impartial medical examination.

The Office determined that a conflict existed between Dr. Bellville, who provided a second opinion examination and Dr. Ilhi, appellant's attending physician. In a report dated October 10, 2003, Dr. Bellville diagnosed severe major depression, panic attacks with agoraphobia and an anxiety disorder or PTSD. He found that work was no longer the "major factor" causing appellant's continuing psychological difficulties. Dr. Bellville opined that the work-related aggravation of appellant's emotional condition ceased on June 1, 2003 "in a majority." He determined that she was unable to perform her usual employment but could work for no more than two hours per day in a "highly structured situation" without much driving. Dr. Bellville's finding that the "majority" of appellant's employment-related aggravation of her emotional condition had ceased is insufficient to negate causal relationship. Where the medical evidence reveals that factors of employment contributed in any way to the disabling condition, such condition is considered employment related for the purposes of compensation under the Federal Employees' Compensation Act.⁹ On March 23, 2004 Dr. Ilhi agreed with Dr. Bellville's conclusions. On November 19, 2004 Dr. Ilhi explained that he did not believe that appellant's work-related aggravation of her emotional condition ceased on June 1, 2003 but instead agreed with Dr. Bellville that her continued problems resulted "in the majority" from factors which were not employment related. As the record did not contain an opinion from an Office referral physician that appellant's disability due to her employment-related aggravation of PTSD and obsessive compulsive personality disorder had ceased, there was no conflict in medical opinion

⁷ *Id.*

⁸ The Office terminated appellant's compensation in a May 21, 2004 decision. In a decision dated June 23, 2005, a hearing representative affirmed the June 23, 2005 decision but found a conflict existed on the issue of continuing disability. The Office returned appellant to the periodic rolls and reinstated her compensation retroactive to May 16, 2004. As the Office paid appellant compensation for her employment injury, it again has the burden to terminate her benefits by showing that the disability ceased or was no longer employment related. *See Gloria J. Godfrey, supra* note 4.

⁹ *Roger W. Griffith*, 51 ECAB 491 (2000); *Jack L. St. Charles*, 42 ECAB 809 (1991).

at the time the Office referred her to Dr. Goranson. Consequently, the Board finds that Dr. Goranson is an Office referral physician rather than an impartial medical examiner.

On April 16, 2006 Dr. Goranson evaluated appellant and reviewed the medical evidence of record. He diagnosed obsessive-compulsive disorder and a mixed personality disorder unrelated to employment. Dr. Goranson opined that appellant had been ineffectually treated due to misdiagnosis and improper medication. He found that appellant was disabled from work due to her “untreated psychiatric condition” unrelated to employment. Dr. Goranson concluded that any psychological condition resulting from the compensable employment factors had resolved.

The Board finds that the record contains an unresolved conflict in medical opinion between Dr. Ilhi and Dr. Goranson regarding whether appellant has any further disability and need for medical treatment resulting from her accepted employment injury of a temporary aggravation of PTSD and an obsessive compulsive personality disorder.¹⁰ Accordingly, the Office did not meet its burden of proof to terminate appellant’s compensation benefits.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation and authorization for medical benefits effective August 6, 2006.

¹⁰ Section 8123(a) provides that, 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.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 3, 2006 is reversed.

Issued: July 11, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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