

Appellant alleged that when she returned to light-duty work in July 1984¹ she was referred to as a “rehab” which meant “sick, lame and lazy” and felt that she was “picked on.” She noted that a supervisor publicly scolded her in the presence of coworkers, that she and a coworker had to perform extra work after September 1989 when two of the four clerks assigned with her were moved to a special work project and that she was required to work outside her medical restrictions. A supervisor allegedly yelled at appellant in the computer room and slammed books on a cabinet behind her, a supervisor unfairly required her to have a fitness-for-duty examination and she felt excluded from overtime work and social gatherings. On May 10, 1990 her supervisor acted abusively when she told her to complete a project before starting annual leave.

Appellant also claimed that in March 1990 coworkers resented lifting scheme card boxes for her, that her supervisor only had a few seconds to discuss anything with her, that she was unhappy that her job changed from a modified clerk to a schemes clerk and that a supervisor criticized her for incorrectly changing one zip code but did not mention the other items she handled properly. On May 10, 1990 she was unfairly placed on leave without pay status for about six days, confidential psychiatric reports were released to those who harassed her, a supervisor expressed reservations about her suitability for a job that she bid on and that, when she was upset, a supervisor told her to act like a “big girl.

The Office accepted that appellant sustained an employment-related depressive reaction and paid her appropriate compensation for periods of disability. The Office accepted that appellant established employment factors with respect to being called a “rehab,” being publicly scolded by a supervisor in the presence of coworkers and having to perform extra work after September 1989 when two of the four clerks assigned with her were reassigned to another project.²

In August 2001, the Office referred appellant to Dr. Harish Kher, a Board-certified psychiatrist, for further evaluation of her emotional condition. On September 24, 2001 Dr. Kher detailed the history of the treatment of appellant’s emotional condition. He indicated that on the date of examination appellant denied being depressed, stated that she felt “good” and denied disturbance of memory, concentration, sleep or appetite. Dr. Kher diagnosed major depressive disorder under remission and stated that the depressive symptoms that appellant initially experienced had resolved. He indicated that she did not have any work restrictions and would benefit from some type of gainful employment to help improve her self-esteem and self-worth. Dr. Kher stated that appellant could work her regular job for eight hours per day.

On July 17, 2002 Dr. Robert E. Groble, appellant’s attending physician, stated that he concurred with Dr. Kher that appellant’s depressive symptoms had been “largely brought under control” due to the fact that she lived a “very isolated and constricted life.” He stated, “[appellant] continues to be intensely reactive emotionally to any memories of her previous work

¹ Appellant first sustained a back injury at work in 1970 and periodically stopped work due to this employment-related back condition.

² The Office determined that the other claimed employment factors were not factually established or did not qualify as employment factors.

experiences, the discrimination and emotional abuse she experienced and the fear that being placed in any such environment would involve the recurrence of this abuse and harassment.”

The Office determined that there was a conflict in the medical evidence between Dr. Groble and Dr. Kher regarding the nature and cause of appellant’s emotional condition. It referred appellant to Dr. Anjali Pathak, a Board-certified psychiatrist, for an impartial medical examination and opinion on the matter.

On October 27, 2002 Dr. Pathak provided an extensive description of appellant’s history of work injuries and the treatment of her emotional condition. He indicated that during the examination appellant’s affect and mood were within normal limits and that she focused on her belief that her supervisors released confidential documents to her coworkers. Dr. Pathak stated that the psychiatric testing he administered revealed that she had a severe histrionic presentation and was an individual with significant disturbance who was likely to register physical complaints of delusional proportion. He noted that this disturbance was not related to depression or chronic pain, but rather, was related to severe personality trait disturbance problems and long-standing problems with somatoform disorder. Dr. Pathak diagnosed several conditions which he indicated were not related to work -- undifferentiated somatoform disorder, depressive disorder and personality disorder with histrionic, dependent, avoidant and paranoid traits. He indicated that, in the absence of work stressors, appellant would have registered multiple somatic complaints and suffered recurrent bouts of depression and anxiety in direct proportion to the severity of her personality disturbance problems. Dr. Pathak indicated that appellant’s employment-related emotional condition had ceased by the date of her second opinion examination on September 24, 2001 as no depressive symptoms were present at that time. He stated:

“[I]t is most likely that [appellant] would have become psychiatrically disabled for employment even if she had never [worked] for the [employing establishment]. Her combined psychiatric problems are likely to have manifested in any work setting with predictable, similar outcome. [Appellant] does not appear to be engaging in conscious malingering, however, her report of anatomical and psychiatric dysfunction are not validated by her observed behavior and test results.”

In a July 31, 2003 letter, the Office advised appellant of the proposed termination of her compensation based on the opinion of the impartial medical specialist, Dr. Pathak. In an October 17, 2003 decision, the Office terminated appellant’s compensation effective November 2, 2003. The Office found that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Pathak who determined that appellant no longer had residuals of her employment-related emotional condition.

Appellant requested a hearing before an Office hearing representative. At the October 25, 2005 hearing, she contended that Dr. Pathak only examined her for 20 minutes and did not provide a comprehensive assessment of her condition. Appellant alleged that several other impartial medical specialists were passed over before Dr. Pathak was chosen.

In a decision dated and finalized December 16, 2005, an Office hearing representative affirmed the October 17, 2003 decision.

LEGAL PRECEDENT

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

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, the Secretary shall appoint a third physician who shall make an examination."⁷ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS

The Office accepted that appellant sustained an employment-related depressive reaction and paid her appropriate compensation for periods of disability. The Office accepted that she established employment factors with respect to being called a "rehab," being publicly scolded by a supervisor in the presence of coworkers and having to perform extra work after September 1989 when two of the four clerks assigned with her were reassigned to another project.

The Board notes that the Office properly determined that there was a conflict in the medical opinion between Dr. Groble, appellant's attending Board-certified psychiatrist, and Dr. Kher, a Board-certified psychiatrist acting as an Office referral physician, on the issue of whether appellant continued to have residuals of her employment-related emotional condition. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Pathak, a Board-certified psychiatrist, for an impartial medical examination and an opinion on the matter.⁹

³ 5 U.S.C. §§ 8101-8193.

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 5 U.S.C. § 8123(a).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ *See supra* note 7 and accompanying text.

On September 24, 2001 Dr. Kher indicated that on the date of examination appellant denied being depressed, stated that she felt “good” and denied disturbance of memory, concentration, sleep or appetite. He diagnosed major depressive disorder under remission and stated that the depressive symptoms that appellant had initially experienced had resolved. Dr. Kher determined that appellant could work her regular job for eight hours per day. In contrast, Dr. Groble found that appellant continued to have residuals of her employment-related emotional condition. On July 17, 2002 he stated that he concurred with Dr. Kher that appellant’s depressive symptoms had been “largely brought under control” due to the fact that she lived a “very isolated and constricted life.” However, Dr. Kher continued to believe that appellant’s remaining problems were employment related and stated, “[appellant] continues to be intensely reactive emotionally to any memories of her previous work experiences, the discrimination and emotional abuse she experienced and the fear that being placed in any such environment would involve the recurrence of this abuse and harassment.”

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Pathak, the impartial medical specialist selected to resolve the conflict in the medical opinion.¹⁰ The report of Dr. Pathak establishes that appellant had no disability due to her employment-related emotional condition after November 2, 2003.

On October 27, 2002 Dr. Pathak indicated that during the examination appellant’s affect and mood were within normal limits and that the psychiatric testing he administered revealed that she had a severe histrionic presentation and was an individual with significant disturbance who is likely to register physical complaints of delusional proportion. He indicated that this disturbance was not related to depression or chronic pain, but rather, was related to severe personality trait disturbance problems and long-standing problems with somatoform disorder. Dr. Pathak diagnosed several conditions which he indicated were not related to work -- undifferentiated somatoform disorder, depressive disorder and personality disorder with histrionic, dependent, avoidant and paranoid traits. He indicated that appellant’s employment-related emotional condition had ceased by the date of her second opinion examination on September 24, 2001 as no depressive symptoms were present at that time.

Dr. Pathak’s opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹¹ He provided medical rationale for his opinion by explaining that appellant’s underlying condition was such that in the absence of work stressors she would have registered multiple somatic complaints and suffered recurrent bouts of depression and anxiety in direct proportion to the severity of her personality disturbance problems. Dr. Pathak discussed appellant’s examination results and findings on diagnostic examination and explained how they showed that her personality and somatoform disorders were nonwork related and were the cause of her continuing problems.

Appellant asserted that Dr. Pathak only examined her for 20 minutes and did not provide a comprehensive assessment of her condition. However, the Board has carefully reviewed

¹⁰ See *supra* note 8 and accompanying text.

¹¹ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

Dr. Pathak's report and finds that he performed a comprehensive evaluation and fully addressed appellant's medical condition. Appellant alleged that several other impartial medical specialists were passed over before Dr. Pathak was chosen, but she did not further explain her allegation or present evidence in support of it. For these reasons, the Office properly relied on the opinion of Dr. Pathak to terminate appellant's compensation.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective November 2, 2003 on the grounds that she had no disability after that date due to her employment-related emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' December 16, 2005 decision is affirmed.

Issued: May 31, 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