

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

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Billings, MT, Employer**

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**Docket No. 07-810  
Issued: November 21, 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  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 5, 2007 appellant filed a timely appeal from a November 13, 2006 merit decision of the Office of Workers' Compensation Programs affirming the termination of his compensation benefits on the grounds that he had no residuals of his work-related condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to justify termination of appellant's medical and compensation benefits effective July 11, 2005 for his accepted depressive disorder; and (2) whether appellant established that he had any continuing disability after July 11, 2005.

## **FACTUAL HISTORY**

This is the second appeal in the present case. In a June 17, 2005 decision, the Board affirmed Office decisions dated February 23 and June 16, 2004.<sup>1</sup> The Board determined that the Office met its burden of proof in finding that appellant had refused to cooperate with vocational rehabilitation efforts and that it properly reduced his compensation due to his failure to cooperate in vocational rehabilitation efforts. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.<sup>2</sup>

The record includes medical evidence submitted prior to the Board's decision which is relevant to the present appeal. Appellant came under the treatment of Dr. John C. Andre, a licensed clinical psychologist. In reports dated March 4 to May 2, 2003, Dr. Andre stated that appellant was doing relatively well with respect to his mood disorder and opined that he was free of active symptoms and his depression was in remission. He indicated that appellant was unable to return to work at the employing establishment because of the emotional injuries incurred but advised that he was capable of working in other jobs, either in the private sector or with the Federal Government. In a work capacity form dated July 8, 2004, Dr. Andre noted that he could not comment on appellant's current work capacity because he had not seen appellant since April 11, 2003.

The Office referred appellant for a second opinion evaluation to Dr. Robert Caldwell, a Board-certified psychiatrist. In a report dated December 3, 2004, Dr. Caldwell diagnosed major depression, single episode in remission, adjustment disorder with mixed emotional features, resolved, diabetes, hypertension, hyperlipidemia, adjustment disorder and major depressive episode related to work stress and the illness and death of appellant's niece. He noted that appellant experienced harassment and a hostile work environment including continued conflict with his supervisor which caused a major depressive episode. Dr. Caldwell advised that with therapy, antidepressant medication and the resolution of the trauma, appellant's major depressive disorder, single episode, resolved and has not recurred. He indicated that appellant was able to work without restriction but that he return to a job in which he would not have contact with his former supervisor or former coworkers. Appellant also underwent psychological testing performed by Dr. James P. Murphey, a psychologist, on November 11, 2004. Dr. Murphy determined that the results were invalid due to defensiveness.

On December 16, 2004 the Office issued a notice of proposed termination of appellant's medical and compensation benefits for the accepted depressive disorder. It found that Dr. Caldwell's December 3, 2004 report established no residuals of the work-related employment injury.<sup>3</sup>

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<sup>1</sup> The Office accepted that appellant developed a depressive disorder in the performance of his duties.

<sup>2</sup> Docket No. 05-518 (issued June 17, 2005).

<sup>3</sup> In a letter dated December 23, 2004, the Office advised that a copy of Dr. Caldwell's report was sent to Dr. Andre. The record reveals that there was no response from Dr. Andre.

In a letter dated January 10, 2005, appellant contended that he still had residuals of his accepted employment injury. He reiterated the medical and factual history of his case and disputed the findings in Dr. Caldwell's report. Appellant asserted that he was denied the right to return to suitable work at the employing establishment and that the Office improperly reduced his compensation benefits for failure to cooperate with the vocational rehabilitation efforts.

By decision dated July 11, 2005, the Office terminated appellant's compensation benefits for the accepted depression disorder effective that day. It found that the weight of the medical evidence established that he had no continuing disability resulting from his accepted employment injury.

On July 28, 2005 appellant requested an oral hearing before an Office hearing representative. The hearing was held on August 17, 2006. Appellant submitted several statements dated July 23 to August 10, 2005 asserting that the Office committed error, falsified the record and abused its authority by terminating his medical and compensation benefits. He indicated that he attempted to return to duty with the employing establishment without success and requested that he be restored to duty. Appellant submitted materials reiterating the factual and medical history of his claim. He asserted that the Office and the employing establishment denied restoration of his employment rights. Appellant submitted a stipulation of undisputed facts dated August 10, 2006 and asserted that the Office and the employing establishment were required to restore his employment rights. He cited to several Merit System Protection Board decisions in support of this contention. Appellant also submitted a document entitled: "Claimant's Additions and Submission of Requested Information" asserting that the Office improperly reduced or terminated his compensation benefits.

In a decision dated November 13, 2006, the hearing representative affirmed the March 2, 2004 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his or 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.<sup>5</sup> 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 a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>6</sup>

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<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>5</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>6</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

## *ANALYSIS -- ISSUE 1*

The Office accepted appellant's claim for a depressive disorder. In November 2004, the Office referred appellant for a second opinion evaluation by Dr. Caldwell, a psychiatrist. In a report dated December 3, 2004, Dr. Caldwell diagnosed major depression, single episode in remission, adjustment disorder with mixed emotional features, resolved, diabetes, hypertension, hyperlipidemia, adjustment disorder and major depressive episode related to work stress and the illness and death of appellant's niece. He noted that the mental examination revealed that appellant was alert and cooperative, his speech was spontaneous, coherent and grammatical, his thinking was organized, there were no psychotic symptoms and he had no suicidal or homicidal ideation. Dr. Caldwell advised that appellant experienced harassment and worked in a hostile work environment which caused a major depressive episode. However, with therapy, antidepressant medication and the resolution of the trauma, appellant's major depressive disorder had, resolved and had not recurred. He opined that the residuals of appellant's condition were resolved with good functioning since the fall of 2000. Dr. Caldwell advised that appellant was able to work without restriction but advised that he did not return to a job with his prior supervisor or coworkers.

Appellant submitted treatment notes from Dr. Andre, a licensed clinical psychologist, who noted that appellant was doing well with respect to his mood disorder and was free of active symptoms. He concluded that his depression was in remission. Dr. Andre further indicated that appellant could not return to work with the employing establishment because of the emotional injuries incurred there but was capable of working in other jobs, either in the private sector or with the Federal Government. The Board notes that Dr. Andre did not support continuing disability due to the accepted depressive disorder. Rather, he opined that appellant's depressive disorder was resolved, that appellant was free from any active symptoms and did not have any residual disability and could return to work without restrictions. In a work capacity form dated July 8, 2004, Dr. Andre noted that he could not comment on appellant's work capacity because he had not seen appellant for over a year.

After issuance of the pretermination notice, appellant submitted several narrative statements. The Office proposed to terminate his compensation benefits based on the medical evidence from Dr. Caldwell. The underlying issue is medical in nature. As noted, appellant did not submit any additional medical evidence after the pretermination notice.

The Board finds that the opinion of Dr. Caldwell is sufficiently well rationalized and based upon a proper factual background. His report represents the weight of the evidence and establishes that appellant's work-related depressive disorder has resolved. Dr. Caldwell indicated that appellant did not have residuals from the condition of depressive disorder and that he could return to work without restrictions.

For these reasons, the Office met its burden of proof in terminating appellant's benefits for the accepted depressive disorder.

### **LEGAL PRECEDENT -- ISSUE 2**

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he had continuing disability causally related to his accepted employment injury.<sup>7</sup> To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not established that he has any continuing residuals of his depressive disorder on or after July 11, 2005. Appellant did not submit any medical evidence after the termination of benefits. He did not provide a rationalized medical opinion regarding the causal relationship between his current condition and his accepted work-related condition of depressive disorder.<sup>9</sup>

On appeal, appellant asserted that the Office could not reduce or terminate his compensation benefits until the employing establishment returned him to the position found suitable by the Office. In this instance, the issue is medical in nature; whether the medical evidence shows that he has residuals of his accepted condition. The Office terminated appellant's compensation based on the opinion of the Office referral physician, Dr. Caldwell, who opined that the residuals of appellant's accepted depressive disorder were resolved and that appellant had no active symptoms and was functioning well since the fall of 2000. The Board notes that appellant failed to submit any medical evidence supporting that he continued to have residuals of the accepted depressive disorder. Appellant contended that Dr. Caldwell was not competent to render an opinion under Montana law. However, this argument is without merit as Dr. Caldwell is a specialist in the relevant field of medicine.

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<sup>7</sup> *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>8</sup> *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

**CONCLUSION**

The Board finds that the Office has met its burden of proof to terminate benefits effective July 11, 2005. The Board further finds that appellant failed to establish that he had any continuing disability after July 11, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Worker's Compensation Programs dated November 13, 2006 is affirmed.

Issued: November 21, 2007  
Washington, DC

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

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

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