



October 14, 1998, the claims examiner noted that the claim was accepted for left distal ulna fracture, right radial styloid fracture, severe multiple body lacerations, pregnancy complications and specific phobia and adjustment disorder with depressed mood and anxiety.<sup>1</sup> Appellant stopped work and did not return. She was placed on the periodic rolls in receipt of compensation for total disability.

On July 8, 1998 Dr. Ralph B. Blasier, a Board-certified orthopedic surgeon, performed irrigation and debridement of multiple dog bites and application of a volar splint. On July 10, 1998 Dr. Michael S. Meininger, a Board-certified plastic surgeon, performed surgery for closure of multiple complex wounds of the right wrist and forearm and complex closure of multiple open wounds of the left hand and forearm. Appellant was discharged from the hospital on July 11, 1998. In a July 24, 1998 form, Dr. Blasier advised that appellant was totally disabled with restrictions to both wrists. On August 31, 1998 appellant was admitted to Kingswood Hospital due to disorganized thoughts and behavior and not sleeping at night. The record reflects a psychiatric admission to Wyandotte Hospital about 10 years prior.

In an October 1, 1998 report, Dr. Blasier noted that appellant's left wrist was completely healed and that her right wrist showed that the major fragments had healed. There was a small volar chip that remained separated but that it was not giving her clinical difficulties. As to her hands and wrists, he anticipated that she could be back to full duty within a month. He noted that she would have difficulty dialing telephones for approximately three to four months.

In a November 18, 1998 report, Dr. Michael Baghdoian, an attending Board-certified orthopedic surgeon, diagnosed resolved lacerative injuries, hands and fractures of the left distal ulna and right distal radial styloid. From an orthopedic standpoint, her fractures were healed with some limited motion and some residual neuropathic component and posterior cord involvement. Heavy lifting and repetitive use of her upper extremities was contraindicated. He opined that sedentary activities might be best for her. On December 16, 1998 Dr. Baghdoian listed his impression as residuals of soft tissue injury upper extremities, residuals of fractured left distal ulna and right distal radius at the styloid.

With regard to her emotional condition, appellant sought treatment from Dr. Kai Anderson, a Board-certified psychiatrist. In a November 12, 1998 report, Dr. Anderson noted that he initially evaluated appellant on September 23, 1998 and she was seen every two to three weeks for individual supportive psychotherapy and pharmacal therapy. Her current diagnosis was bipolar affective disorder, mixed phase with psychotic features and acute stress disorder. Dr. Anderson noted that appellant admitted to noncompliance with her medications. Due to her illness, appellant was totally disabled and not capable of functioning in her prior job or in any other work capacity. Appellant's current emotional difficulties were directly precipitated by the traumatic event of July 8, 1998, although appellant appeared to have a biological predisposition for an affective disorder as evidenced by a family psychiatric history and a previous psychiatric hospitalization. He noted that her prognosis remained guarded due to the severity of her

---

<sup>1</sup> A note in the case file indicates that because appellant was pregnant when injured, tests and monitoring were necessary in order to determine any adverse effects to the fetus. Therefore a code for "complications of pregnancy" was entered in order for bills to be paid for these procedures. Appellant delivered a healthy baby boy by cesarean section on August 15, 1998.

symptoms and reluctance to take medication. Dr. Anderson was unable to provide a return to work date.

In a March 18, 1999 report, Dr. Raymond G. Mercier, a Board-certified psychiatrist, conducted a second opinion examination at the request of the Office. He opined that appellant's bipolar disorder was not caused by the July 8, 1998 incident. Further, the incident did not cause any acceleration of her disorder. Dr. Mercier noted that appellant would require psychiatric treatment for her lifetime, but it was not related to her work incident.

On November 23, 1999 the Office referred appellant to Dr. Elliot Wagenheim, a Board-certified psychiatrist, to resolve a conflict in medical opinion between Dr. Anderson and Dr. Mercier as to continuing psychological disability causally related to her work injury.<sup>2</sup> In a January 11, 2000 report, Dr. Wagenheim reviewed the history of injury and medical treatment. On examination appellant presented a somewhat childlike, dependent and histrionic manner, which could be as much an artifact of the litigation process as an expression of her underlying personality and/or psychotic diathesis. He noted that he had to further review her records. Dr. Wagenheim reevaluated appellant on July 30, 2001. In a September 25, 2001 report, he found that appellant's emotional disability was directly related to the pit bull attack and that it was highly unlikely that she would ever be able to return to work for the employer. He noted that, with aggressive psychological and psychopharmacological treatment and vocational rehabilitation, appellant would be capable of returning to work in some other capacity. Dr. Wagenheim diagnosed specific phobia (dogs); post-traumatic stress disorder, chronic; and bipolar affective disorder. He noted that appellant appeared to have a significant psychotic affective disorder prior to the July 8, 1998 pit bull attack which continued with a post-traumatic stress disorder and specific phobia superimposed as a result of the July 8, 1998 employment-related dog bite incident.

Appellant underwent vocational rehabilitation, first meeting with the vocational counselor on July 26, 2002. She took classes at Wayne County Community College as part of her rehabilitation. However, vocational rehabilitation did not result in her employment.

In a February 7, 2007 report, Dr. Anderson noted that appellant was unchanged and remained resistant/fearful regarding efforts to allow her to return to work. In a November 30, 2007 report, he noted increased depression and anxiety and noted that she needed continued treatment.

On June 19, 2007 the Office referred appellant to Dr. Michael H. Goslib, a psychiatrist, for a second opinion. In a July 16, 2007 report, Dr. Goslib diagnosed major depression and post-

---

<sup>2</sup> The Office had previously referred appellant to Dr. Bill Nagler, a Board-certified psychiatrist, for an impartial medical examination. In an August 2, 1999 report, Dr. Nagler opined that appellant was suffering from significant depression, post-traumatic stress disorder, possible postpartum depression and a grief reaction from the death of her father. He also noted borderline personality disorder with schizoaffective features. He opined that appellant was unable to work at this time and was in significant need of appropriate antidepressant medication, psychotherapy and counseling. In a July 26, 1999 letter, appellant raised various issues with regard to Dr. Nagler and his conduct of the examination. Furthermore, appellant's union also raised concerns with regard to Dr. Nagler's conduct during the examination. As a result thereof, the Office agreed to exclude Dr. Nagler's report and refer appellant for a new impartial medical examination.

traumatic stress disorder. He noted that appellant's symptoms seemed to be in remission and that from a psychiatric standpoint, he could see no reason she was unable to return to work. Dr. Goslib advised that appellant should be more compliant with taking her prescribed medication.

On February 26, 2008 the Office referred appellant to Dr. Harvey G. Ager, a Board-certified psychiatrist, for an impartial medical examination to resolve the conflict between Dr. Anderson and Dr. Goslib on continuing psychiatric residuals and disability causally related to the July 8, 1998 injury. In a report dated March 4, 2008, Dr. Ager found that appellant was not disabled from a current psychiatric disorder attributable to her prior employment as a letter carrier. He noted that appellant did not have residuals of post-traumatic stress disorder. Dr. Ager stated that it was "pretty much inconceivable that 10 years after a dog bite incident, a patient would still be experiencing a post-traumatic stress disorder or an anxiety disorder, particularly given the amount of counseling she has had over the years." He noted that, if motivated, she would be capable of performing her job as a mail carrier without any restrictions necessary on a psychiatric basis. Dr. Ager noted that any psychiatric treatment she might seek was not causally related to her employment and doubted that she was in need of continuing psychiatric care.

By letter dated March 14, 2008, appellant requested a new treating psychiatrist, contending that Dr. Anderson was no longer available.

On May 2, 2008 the Office referred appellant to Dr. Michael J. Geoghegan, a Board-certified orthopedic surgeon, for a second opinion with regard to her physical injuries. In a report dated May 29, 2008, Dr. Geoghegan opined that from an orthopedic standpoint, appellant had sustained fractures of the left and right upper extremities when attacked by two pit bulls. The fractures were treated appropriately and had gone on to heal without any sequela. The lacerations were well healed with no gross deformity. Dr. Geoghegan noted that she complained of pain radiating up the wrist to the forearm and arm but it was vague and not really specific to any one area of the hand. Based on the physical and radiological examination, appellant made an excellent recovery. In a work limitation form, Dr. Geoghegan advised that appellant could work without restriction at her usual job. He deferred to a psychiatrist on the issue of her psychiatric status.

On June 25, 2008 the Office proposed terminating appellant's compensation and medical benefits, finding that she had no continuing residuals resulting from the psychiatric or physical diagnoses.

In a March 24, 2008 report, Dr. Kyung Han, an attending Board-certified psychiatrist, noted that appellant had recurrent major depression and post-traumatic stress disorder as evidenced by the fact that she was depressed most of the day nearly everyday, had diminished interest in most daily activities, significant weight gain, significant sleep disruption, feelings of worthlessness and hopelessness. He stated that appellant experienced an event where she suffered significant physical injury and had recurrent distress recalling the event. Dr. Han noted that appellant's emotional problems were long-standing but were significantly increased in 1998 when she was attacked by the dog and severely injured while working as a postal carrier. He noted that he would provide sessions with appellant.

In an August 7, 2008 decision, the Office terminated appellant's compensation benefits that date. It found that the weight of medical opinion established that her accepted orthopedic and psychiatric conditions had resolved without disability.

On August 14, 2008 appellant requested a telephonic hearing.

In a decision dated November 4, 2008, an Office hearing representative found that the Office did not meet its burden of proof to terminate compensation. He found that Dr. Geoghegan's opinion was sufficient to terminate benefits related to appellant's physical injuries and there was no evidence that she had disabling physical residuals from her work injury. However, the hearing representative noted that Dr. Ager had not reviewed the entire medical record. Accordingly, the hearing representative reversed the termination decision as to appellant's psychiatric condition.

By letter dated November 13, 2008, the Office requested that Dr. Ager clarify his opinion and address the concerns raised by the hearing representative. On December 27, 2008 Dr. Ager reviewed the additional medical records. He noted that, following his initial evaluation, he had noted that appellant was suffering from long-term characterological problems, including paranoid and histrionic, and as very likely suffering from borderline personality disorder. Dr. Ager also believed that appellant had a prior history of depressive episodes including possible postpartum depression following the birth of her son. He then discussed the additional records. Dr. Ager noted that, given the nature of the dog bite incident, it would not be surprising that appellant might have developed acute stress disorder. By the time he evaluated her, with the passage of time and her treatment she was no longer suffering from post-traumatic stress disorder and his opinion remained unchanged. Dr. Ager noted that appellant was over eager to discuss the dog bite incident, which he viewed as inconsistent with a bonafide post-traumatic stress disorder. He noted that bipolar disorders are caused by genetic, biochemical factors and appellant had a family history of depression. Appellant also had tendencies towards paranoia and depression throughout much of her life as a result of being harassed from an early age.

By decision dated January 21, 2009, the Office terminated appellant's compensation and wage-loss benefits effective that date.

By letter dated January 27, 2009, appellant, through her attorney, requested a telephonic hearing. At the hearing held on May 15, 2009, appellant indicated that she was not presently working. She indicated that she had postpartum depression after giving birth following the dog attack because she could not hold her baby when it was born and could not nurse him because she had casts on her arms. Appellant indicated that she was currently seeing Dr. Han.

By decision dated August 27, 2009, an Office hearing representative affirmed the January 21, 2009 decision.

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

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability

---

<sup>3</sup> *T.F.*, 58 ECAB 128 (2006); *George A. Rodriguez*, 57 ECAB 224 (2005).

causally related to his federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>5</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>6</sup> The fact that the Office accepts a claim for a specified period of disability does not shift the burden of proof to the employee to show he or she is still disabled.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Office accepted that on July 8, 1998 appellant sustained multiple injuries as a result of a pit bull attack that occurred while she was delivering mail as part of her federal duties. It accepted that appellant had sustained physical injuries as a result of this attack, specifically accepting appellant's claim for left distal ulna fracture, right radial styloid fracture, severe multiple body lacerations and pregnancy complications. The Office also accepted that appellant suffered emotional conditions as a consequence of this attack, specifically phobia to dogs, adjustment disorder, depressed mood and anxiety.

With regard to appellant's physical injuries, she received extensive treatment after the injury. However, by October 1, 1998 appellant's physician, Dr. Blasier, noted that appellant's left wrist was completely healed. With regard to her right wrist, he noted that the major fragments were completely healed and that although a small volar chip remained separated, it was not giving her clinical difficulties. Dr. Blasier anticipated that she would be able to return to work full duty within one month. Appellant next received treatment for her physical injuries from Dr. Baghdoian who noted in a December 16, 1998 report that appellant had residuals of soft tissues in her upper extremities, residuals of fractured left distal ulna and right distal radius at the

---

<sup>4</sup> *J.M.*, 58 ECAB 478 (2007); *Elaine Sneed*, 56 ECAB 373 (2005).

<sup>5</sup> *E.J.*, 59 ECAB (Docket No. 08-1350, issued September 8, 2008); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>6</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> See *Dawn Sweazy*, 44 ECAB 824 (1993).

<sup>8</sup> 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>9</sup> *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

styloid. Dr. Baghdoian recommended that appellant return to work some time in the ensuing months, but noted that appellant resisted this advice, choosing to forge ahead with her disability status. The record does not indicate that appellant sought further treatment for her physical injuries after this point. Almost 10 years after Dr. Baghdoian's final report of record, the Office referred appellant to Dr. Geoghegan, who opined in a May 29, 2008 report that from an orthopedic standpoint, appellant had made an excellent recovery, noting that the fractures were treated appropriately and had gone on to heal without any sequela. Based on Dr. Geoghegan's report, the Board finds that the Office properly terminated compensation for appellant's accepted physical injuries. Ten years prior to his report, both Drs. Blasier and Baghdoian, appellant's treating physician, noted that appellant was healing and that they anticipated appellant would return to work in several months. Therefore, there was no medical evidence that conflicted with the well-reasoned opinion of the second opinion physician, Dr. Geoghegan, and the Office properly terminated compensation and medical benefits with regard to appellant's accepted physical injuries.

The Office also accepted appellant's claim for emotional conditions resulting from the July 8, 1998 pit bull attack, specifically noting the acceptance of appellant's claim for specific phobia (dogs), adjustment disorder, depressed mood and anxiety. Appellant has received extensive treatment for her emotional condition. Appellant was treated by Dr. Anderson from September 23, 1998 through at least November 30, 2007. In his November 30, 2007 report, Dr. Anderson noted that appellant still required treatment for depression and anxiety. He also opined that appellant's emotional difficulties were directly precipitated by the traumatic event of July 8, 1998. The Office first sought further development of appellant's emotional condition in March 1999 when Dr. Mercier conducted a second opinion and opined that the July 8, 1998 incident did not cause or accelerate appellant's bipolar disorder. He noted that although appellant would require psychiatric treatment for her lifetime that was not related to her work incident. Due to the conflict between the opinions of appellant's treating psychiatrist, Dr. Anderson, and the second opinion psychiatrist, Dr. Mercier, the Office referred appellant to Dr. Wagenheim for an impartial medical examination. In his September 25, 2001 report, Dr. Wagenheim opined that appellant's emotional disability was directly related to the pit bull attack. Although he noted that appellant appeared to have a significant psychotic affective disorder prior to the July 8, 1998 pit bull attack, post-traumatic stress disorder and specific phobia were superimposed on top of these emotional issues as a result of the dog attack. Dr. Wagenheim also opined that it was highly unlikely that appellant would return to work for the employing establishment, but that with proper treatment as well a vocational rehabilitation, appellant would be able to return to work in some capacity. Accordingly, the Office referred appellant to vocational rehabilitation. However, despite rehabilitation efforts, which included further education at Wayne County Community College, appellant did not return to any employment.

The Office again developed the psychiatric evidence. In a second opinion dated July 16, 2007, Dr. Goslib opined that appellant had major depression and post-traumatic stress disorder, but noted that appellant's symptoms seemed to be in remission from a psychiatric standpoint, and could see no reason why appellant should be unable to return to work. On February 26, 2008 the Office referred appellant to Dr. Ager for an impartial medical examination with regard to appellant's current psychiatric condition, noting that there remained a conflict between the opinion of appellant's treating physician and the second opinion physician. In his March 4, 2008

report, Dr. Ager opined that appellant was not suffering from any post-traumatic stress disorder at that time. He indicated that it was “pretty much inconceivable that 10 years after a dog bite incident, a patient would still be experiencing a post-traumatic stress disorder or an anxiety disorder, particularly given the amount of counseling that appellant had over the years.” Dr. Ager opined that appellant, if she were motivated to do so, would be capable of performing her job as a mail carrier for the employing establishment without any restrictions necessary on a psychiatric basis. He also doubted that appellant was in need of further psychiatric care.

After this impartial medical examination, appellant saw a new treating psychiatrist, Dr. Han, who opined in a March 24, 2008 report that appellant had recurrent major depression and post-traumatic stress disorder. He noted that although these problems appeared to be long-standing, there were significantly increased in 1998 when appellant was attacked by a dog. The Office asked Dr. Ager to review additional evidence, but in a December 27, 2008 report, after reviewing the additional medical records, Dr. Ager remained of the opinion that although he would not be surprised that appellant developed an acute stress disorder as a result of the pit bull attack, he believed that with the passage of time and all her treatment, appellant no longer suffered from a post-traumatic stress disorder and his opinion was unchanged. He noted that appellant was overeager to discuss the dog bite incident, which he viewed as inconsistent with a bonafide post-traumatic stress disorder. Dr. Ager also noted that bipolar disorders are caused by genetic, biochemical factors and that appellant had tendencies towards paranoia and depression throughout much of her life.

The Board finds that the Office properly referred appellant to an impartial medical examiner to resolve the conflict between the opinions of appellant’s treating psychiatrists and the second opinion physicians with regard to whether appellant had continuing residuals from her accepted work-related emotional condition. The opinion of Dr. Ager, as the impartial medical specialist, is entitled to special weight.<sup>10</sup> Dr. Ager determined that appellant was no longer suffering from an emotional condition causally related to the July 8, 1998 dog bite incident. His opinion is well rationalized as it is supported by a thorough review of the medical evidence, other evidence in the record and his personal examination of appellant.

Accordingly, the Board finds that the Office properly determined that appellant had no remaining physical or emotional residuals from her July 8, 1998 injury, and finds that the Office properly terminated appellant’s compensation and medical benefits effective January 21, 2009.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant’s compensation and medical benefits effective January 21, 2009.

---

<sup>10</sup> *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 27, 2009 is affirmed.

Issued: August 16, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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