

FACTUAL HISTORY

On November 17, 1994 the Office accepted that appellant, then a 54-year-old window distribution clerk, sustained a major depressive disorder as a result of an April 5, 1994 assault in the workplace by a coworker.² Appellant stopped work for various periods and received wage-loss compensation.

Appellant received treatment from Charles Wheaton, Ph.D., a clinical psychologist, who diagnosed prolonged post-traumatic stress disorder due to the April 5, 1994 incident. Dr. Wheaton indicated that appellant showed symptoms, including intrusion of related material into her consciousness, avoidance of related anxiety producing stimuli and increased emotional arousal, which were characteristics of post-traumatic stress disorder. On December 29, 2003 the Office changed the accepted injury from major depressive disorder to prolonged post-traumatic stress disorder. Appellant stopped work on October 21, 2004 and did not return.

In mid 2005, the Office referred appellant to Dr. Alexander Kechriotis, a Board-certified psychiatrist, for a second opinion evaluation. On July 22, 2005 Dr. Kechriotis determined that appellant's work-related condition had resolved. He found that she no longer met the criteria for post-traumatic stress disorder or a depressive disorder. Dr. Kechriotis advised that appellant's adjustment problems and associated anxiety were not related to her work.

On August 26, 2005 the Office requested that Dr. Wheaton review the reports of Dr. Kechriotis and provide comments. In September 16 and November 1, 2005 reports, Dr. Wheaton disagreed with Dr. Kechriotis' opinion and stated that appellant continued to be disabled by post-traumatic stress disorder related to the April 5, 1994 work incident. He indicated that appellant exhibited several criteria of the condition including markedly diminished interest or participation in significant activities and avoidance of activities, places or people that arouse recollections of the trauma.

The Office determined that a conflict in medical opinion arose between Dr. Kechriotis and Dr. Wheaton regarding whether appellant continued to have residuals of the accepted employment injury. In order to resolve the conflict, it referred her to Dr. John R. Delaney, a Board-certified psychiatrist, for an impartial medical examination, pursuant to section 8123(a) of the Federal Employees' Compensation Act.

On April 3, 2006 Dr. Delaney reviewed a history of appellant's medical treatment and noted that she began to develop emotional problems in the 1990s sometime during her second marriage or after its termination. In 1995, a mental health counselor indicated that he had been working with appellant for about five years with an initial focus on her marriage, divorce and the reaction of her children to the process. Dr. Delaney stated that appellant had a great deal of stress over the years which predated the April 5, 1994 work incident and that this nonwork-related stress continued to the present time. Appellant's nonwork-related stress included the sudden death of her father within about two months of the April 5, 1994 work incident, dealing with the substance abuse problems and legal problems of her younger son, helping to raise the

² The record reveals that a coworker came up behind appellant and placed his right forearm on her upper body and his left hand on her mouth after she accused him of sexually harassing another coworker.

child of her oldest son whose wife was severely mentally ill, moving in with and caring for her mother who has an inoperable brain tumor and dealing with the long-term mental instability of her younger brother, a Vietnam veteran. Dr. Delaney determined that appellant's present emotional condition was nonwork-related chronic anxiety disorder which had been present for many years. Appellant did not show any evidence of post-traumatic stress disorder in her present clinical presentation. Dr. Delaney noted that the physician who initially treated appellant after April 1994 diagnosed a major depressive episode in the presence of a long-standing dysthymia. He advised that, with the help of medical treatment, appellant's depressive disorder and post-traumatic stress disorder eventually resolved over time. The condition that remained was appellant's preexisting chronic anxiety disorder which at times had elements of depression, panic and phobias.³

In a January 11, 2007 letter, the Office advised appellant that it proposed to terminate her compensation. It noted that the opinion of Dr. Delaney represented the weight of the medical evidence with respect to continuing work-related residuals. The Office provided her an opportunity to submit additional evidence in support of her claim.

In a January 30, 2007 letter, Dr. Wheaton reiterated his diagnosis of post-traumatic stress disorder and his opinion that appellant was totally disabled. He stated that appellant met all the diagnostic criteria for the condition, including distressing dreams and intense psychological distress. Dr. Wheaton discounted appellant's treatment for emotional conditions prior to April 5, 1994 and indicated that the assault of appellant by her brother with a motor vehicle occurred after Dr. Delaney's evaluation. He stated that the symptoms of appellant's original work-related condition were reactivated by her proposed return to the employing establishment, the life stressors cited by Dr. Delaney and the harassment by her brother (including assault).

In a February 5, 2007 letter, Dr. George Warren, an attending Board-certified psychiatrist, stated that he disagreed with the opinion of Dr. Delaney. He indicated that Dr. Delaney's opinion was disputed by those of several physicians and stated, "It is likely that [appellant's] current condition stems from the accepted work-related condition."

In a March 7, 2007 decision, the Office terminated appellant's compensation benefits effective March 18, 2007 based on the opinion of Dr. Delaney.

In an April 11, 2007 report, Dr. Walter B. Afield, an attending Board-certified psychiatrist, stated that appellant had been treated five years prior to April 5, 1994 by a licensed mental health counselor. Appellant had the symptomology of post-traumatic stress disorder, including difficulty in close places and avoiding places she needed to be. Dr. Afield indicated that appellant's problems with her abusive brother intensified the reaction which she had from the work-related incident. He recommended psychological testing to determine whether appellant could work. Dr. Afield conducted testing on May 16, 2007 which he stated showed that appellant had severe post-traumatic stress disorder.

³ Dr. Delaney also completed a work restrictions form indicating that appellant could return to her regular duties as a window distribution clerk.

In a November 17, 2007 decision, the Office affirmed its March 7, 2007 decision. It found that Dr. Afield's reports were not based on a complete or accurate factual and medical history.

Appellant submitted notes dated January 3 to April 8, 2008 from Dr. Afield who continued to diagnose post-traumatic stress disorder. Dr. Afield stated that appellant had legal issues concerning her brother which continued to cause her to be upset.

In a July 17, 2008 decision, the Office affirmed its November 20, 2007 decision. It noted that Dr. Afield related appellant's problems to nonwork factors.

Appellant requested reconsideration arguing, through her attorney, that there was a conflict in the medical evidence regarding her work-related residuals. In a September 3, 2008 report, Dr. Afield advised that appellant continued to have post-traumatic stress disorder related to the April 5, 1994 work incident as evidenced by such symptoms as recurring nightmares about the incident. He stated that appellant appeared to have "the ability to work through" her nonwork-related problems.

In a November 10, 2008 decision, the Office affirmed its July 17, 2008 decision.

In a February 20, 2009 report, Dr. Gary K. Arthur, an attending Board-certified psychiatrist, noted that appellant reported that she had occasional intrusive memories of the April 5, 1994 events and that she had minimal stressors not related to that incident, other than financial stressors. Dr. Arthur stated that the diagnosis of post-traumatic stress disorder had a confusing and controversial history and that many psychiatrists hesitated to diagnose it. He noted that all the prior evaluators diagnosed post-traumatic stress disorder, anxiety or depression due to the April 5, 1994 incident. Dr. Arthur indicated that research showed that post-traumatic stress disorder causes neuromicrobiological changes in the brain (some permanent) which cause patients to have an underlying constant ability to overreact to stressors, particularly those similar to the original stressor. He concluded that appellant's post-traumatic stress disorder was "a neurobiological damage deficiency condition which is never going to be resolved or go away." Dr. Arthur attached several articles regarding post-traumatic stress disorder.

In a May 28, 2009 decision, the Office affirmed its July 17, 2008 decision, finding that Dr. Arthur did not provide adequate medical rationale.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

must establish by the weight of the reliable, probative and substantial evidence that he or she had a employment-related disability which continued after termination of compensation benefits.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 When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁸ 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.⁹

The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.¹⁰

ANALYSIS

The Office accepted that appellant sustained post-traumatic stress disorder due to an April 5, 1994 assault at work. It terminated her compensation benefits as of March 18, 2007 based on the opinion of Dr. Delaney, a Board-certified psychiatrist serving as an impartial medical specialist. The Board finds that the special weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Delaney. The opinion of Dr. Delaney established that appellant had no work-related residuals after March 18, 2007.

The Office properly determined that there was a conflict in the medical opinion between Dr. Wheaton, an attending clinical psychologist, and Dr. Kechriotis, a Board-certified psychiatrist serving as an Office referral physician, regarding whether appellant continued to have residuals of her accepted employment injury.¹¹ In order to resolve the conflict, the Office

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁷ 5 U.S.C. § 8123(a).

⁸ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

⁹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁰ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹¹ In a July 22, 2005 report, Dr. Kechriotis determined that appellant’s work-related condition had resolved and indicated that she no longer met the criteria for post-traumatic stress disorder or a depressive disorder. In September 16 and November 1, 2005 reports, Dr. Wheaton expressed his disagreement with Dr. Kechriotis’ opinion and posited that appellant continued to be disabled by post-traumatic stress disorder related to the April 5, 1994 work incident.

properly referred appellant to Dr. Delaney, pursuant to section 8123(a) of the Act, for an impartial medical examination and an opinion on the matter.

On April 3, 2006 Dr. Delaney noted that it appeared from the records that appellant began to develop emotional problems in the 1990s sometime during her second marriage or after its termination. He noted that in 1995 a mental health counselor indicated that he had been working with appellant for about five years with an initial focus on her marriage, divorce and the reaction of her children to the process. Dr. Delaney stated that appellant had a great deal of stress over the years which predated the April 5, 1994 work incident and that this nonwork-related stress continued to the present time.¹² Dr. Delaney determined that appellant's work-related condition, post-traumatic stress disorder, had resolved and found that her present emotional condition was properly characterized as nonwork-related chronic anxiety disorder which had been present for many years.

The Board has carefully reviewed the opinion of Dr. Delaney and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Delaney's opinion is based on a proper factual and medical history and he accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.¹³ Dr. Delaney provided medical rationale for his opinion by explaining that appellant did not show any evidence of post-traumatic stress disorder in her present clinical presentation. He indicated that, with the help of medical treatment, including medications, appellant's depressive disorder and post-traumatic stress disorder eventually resolved over time. Dr. Delaney further explained that the condition that remained was appellant's preexisting chronic anxiety disorder.

After the Office's March 7, 2007 decision terminating appellant's compensation effective March 18, 2007, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after March 18, 2007 due to residuals of her accepted work injury. Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiner, Dr. Delaney, in terminating appellant's compensation effective March 18, 2007, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her accepted employment injury after March 18, 2007.

Appellant submitted an April 11 2007 report of Dr. Afield, an attending Board-certified psychiatrist. On appeal she argued that Dr. Afield's opinion created a new conflict in the medical evidence regarding her continuing work-related residuals. Dr. Afield stated that

¹² Appellant's nonwork-related stress included the sudden death of her father within about two months of the April 5, 1994 work incident, dealing with the substance abuse problems and legal problems of her younger son, helping to raise the son of her oldest son whose wife was severely mentally ill, moving in with and caring for her mother who has an inoperable brain tumor and dealing with the long-term mental instability of her younger brother, a Vietnam veteran.

¹³ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

appellant had been treated five years prior to April 5, 1994 by a licensed mental health counselor. He indicated that she had the symptomology of post-traumatic stress disorder, including difficulty in close places and avoiding places she needed to be.¹⁴ Dr. Afield stated that appellant's problems with her abusive brother intensified the reaction which she had from the work-related incident. He stated that he needed to obtain some psychological testing to determine whether she could continue to work.

The Board finds that Dr. Afield's opinion is of limited probative value because it does not contain adequate medical rationale in support of its conclusions and it is not based on a complete and accurate factual and medical history.¹⁵ Dr. Afield did not adequately explain the basis of his diagnosis of post-traumatic stress disorder or why he felt this condition continued to be related to the April 5, 1994 incident. He did not provide any notable discussion of appellant's nonwork-related stressors or explain why they would not have been the sole cause of her continuing problems. In fact, in later reports Dr. Afield emphasized the stress caused by appellant's problems with her brother.¹⁶

Appellant also submitted a February 20, 2009 report of Dr. Gary K. Arthur, an attending Board-certified psychiatrist. On appeal appellant argued that Dr. Arthur's opinion created a new conflict in the medical evidence. Dr. Arthur noted that appellant reported that she had occasional intrusive memories of the April 5, 1994 events and that she had minimal stressors not related to that incident, other than financial stressors. Dr. Arthur indicated that research showed that post-traumatic stress disorder causes neuro-microbiological changes in the brain (some permanent) which cause patients to have an underlying constant ability to overreact to stressors, particularly those similar to the original stressor. He concluded that appellant's post-traumatic stress disorder was "a neurobiological damage deficiency condition which is never going to be resolved or go away."

The Board finds that Dr. Arthur's report is of limited probative value regarding appellant's work-related residuals because it is lacking in adequate medical rationale. Dr. Arthur did not sufficiently explain why he felt the observed symptoms were still related to the April 5, 1994 incident that occurred almost 15 years earlier. He did not provide a detailed description of appellant's nonwork-related stressors or their role in her current emotional condition. Dr. Arthur suggested that appellant sustained permanent brain damage related to her post-traumatic stress disorder, but he did not present findings, such as the results of diagnostic testing, to support this assertion. He attached several articles regarding post-traumatic stress disorder to his report, but

¹⁴ Dr. Afield conducted testing on May 16, 2007 which showed that appellant had severe post-traumatic stress disorder.

¹⁵ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁶ In a January 30, 2007 letter, Dr. Wheaton reiterated his diagnosis of post-traumatic stress disorder due to work and restated his opinion that appellant was totally disabled. However, as he was on one side of the conflict, his additional report is essentially duplicative of his stated opinion and is insufficient to give rise to a new conflict. See *Richard O'Brien*, 53 ECAB 234 (2001). In a February 5, 2007 letter, Dr. Warren, an attending Board-certified psychiatrist, indicated that Dr. Delaney's opinion was disputed by those of several physicians and stated, "It is likely that her current condition stems from the accepted work-related condition." He did not provide any explanation for his opinion and therefore it is of limited probative value.

such materials are of general application and are not determinative of whether appellant continued to have work-related residuals.

For these reasons, appellant did not show that she has residuals of her work-related emotional condition after March 18, 2007 and the Office properly denied her claim.

CONCLUSION

The Board finds that appellant does not have residuals of her work-related emotional condition after March 18, 2007.

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2009 and July 17, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 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