

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

---

**B.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Rockaway Park, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 10-79  
Issued: November 24, 2010**

*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 October 13, 2009 appellant filed a timely appeal from an August 10, 2009 decision of the Office of Workers' Compensation Programs, which affirmed the termination of compensation on the grounds that he refused suitable work. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation effective April 12, 2009 on the grounds that he refused an offer of suitable work.

**FACTUAL HISTORY**

On August 1, 2006 appellant, then a 58-year-old manager of customer services, filed an occupational disease claim for an emotional condition in the performance of duty. He stopped work on July 24, 2006 and returned to restricted duties on March 21, 2007. Appellant stopped again in July 2007. On July 16, 2007 the Office accepted his claim for generalized anxiety disorder. It accepted that false accusations against appellant were made by female employees. Appellant received appropriate compensation benefits.

On November 15, 2007 the Office referred appellant to Dr. Alain De La Chapelle, a Board-certified psychiatrist, for a second opinion to determine the nature and extent of his injury-related disability. In a December 11, 2007 report, Dr. De La Chapelle reviewed appellant's history of injury and provided findings on examination. He determined that appellant remained symptomatic but could return to work full time with restrictions. Dr. De La Chapelle noted that appellant could not work with the females who made false accusations against him in the past.

On January 21, 2008 Juliana Lachenmeyer, Ph.D., a licensed clinical psychologist, advised that appellant could work provided he not be exposed to the possibility of additional false accusations from subordinate employees and/or colleagues.

On February 14, 2008 the Office requested that Dr. De La Chapelle clarify his opinion in light of Dr. Lachenmeyer's report. On March 3, 2008 Dr. De La Chapelle advised that appellant could return to work provided he was not exposed to the subordinate that had accused him or any other accusatory employees.

Appellant began treatment with Dr. Robert D. Martin, a Board-certified psychiatrist. In a March 11, 2008 report, Dr. Martin opined that appellant was unable to return to work. He advised that appellant could only work in an environment that was stable and not confrontational. In a May 6, 2008 report, Dr. Martin opined that appellant was unable to work. He noted that appellant had severe anxiety and was dependent on Xanax. Dr. Martin advised that appellant needed six months of rehabilitation and active psychiatric care. He noted that appellant was unable to act as a supervisor. Dr. Martin advised that appellant would be able to return to work in approximately six months.

On April 24, 2008 the Office referred appellant along with a statement of accepted facts, and the medical record to Dr. William B. Head, a Board-certified psychiatrist, for an impartial medical evaluation to resolve a conflict in opinion between Drs. De La Chapelle and Dr. Lachenmeyer, regarding whether a causal relationship existed between appellant's condition and the accepted injury and whether appellant continued to be disabled from his accepted work injury.

In a May 15, 2008 report, Dr. Head noted appellant's history of injury and treatment. On examination, he found that appellant was moderately anxious and his social judgment was intact. Dr. Head explained that appellant continued to experience anxiety disorder, which was temporary. He recommended six months of psychotherapy. Dr. Head opined that, from a psychiatric perspective, appellant was capable of performing his regular work duties, but should be removed from work at the Far Rockaway and reassigned to another area, preferably without direct supervisory responsibilities, so as to avoid concern of similar claims against him. He noted that, once appellant adjusted to the workplace and regained his confidence, his anxiety would resolve. Dr. Head completed a work restriction form on May 23, 2008. He indicated that appellant could return to an eight-hour workday provided he did not have direct supervisory responsibility of personnel to avoid the possibility of additional complaints being filed against him. Dr. Head noted that appellant should avoid his former work location and coworkers. He also indicated that until appellant was no longer taking Xanax, he should not drive or operate dangerous machinery.

In letters dated July 3, 5 and 6, 2008, appellant contended that Dr. Head's report contained inaccuracies. He noted that he brought his records with him to the appointment and believed that Dr. Head was biased. Appellant advised Dr. Head that it was difficult to work on the computer, watch television or movies because of his inability to concentrate. He informed Dr. Head that he did not drive because of road rage issues. Appellant alleged that the only thing that relaxed him was walking alone on the beach with his dog while listening to music. He also indicated that he was also able to fold laundry and do the dishes while listening to music. Appellant also alleged that he never saw Dr. Lachenmeyer, but rather an intern who was not a psychologist. He noted the conflict should be between Dr. Martin and the second opinion physician, not an intern. Appellant resubmitted Dr. Martin's May 6, 2008 report.

On August 1, 2008 the Office requested that Dr. Head clarify his opinion.

In a September 2, 2008 report, Dr. Martin reiterated that appellant was unable to work due to repeated false allegations from his employer and coworkers.

In a September 15, 2008 cover letter, the employing establishment provided a modified job offer based upon Dr. Head's restrictions. On September 12, 2008 the employing establishment offered appellant a modified manager position at its Brooklyn location. The duties of the position included verifying information for routes prior to inspection, using maps and annotating maps, delivery of blocks, directional relays and capability to commute to stations. The employing establishment noted that appellant would not be at his former workstation to limit exposure to his former workers, have no direct supervisory responsibility and would not be involved in driving or operating dangerous machinery while taking his current medications

In a September 22, 2008 addendum, Dr. Head noted that he had reviewed the additional evidence. He reiterated that appellant was capable of working in a full-time capacity with restrictions.

By letter dated October 30, 2008, the Office advised appellant of its determination that the position offered by the employing establishment was suitable. It noted that the impartial medical examiner determined that the modified position was found to be suitable within his medical restrictions. The Office informed appellant that the weight of the medical evidence was represented by Dr. Head. Appellant was advised that he should accept the position or provide an explanation for refusing the position within 30 days. The Office informed him that, if he failed to accept the offered position and failed to demonstrate that the failure was justified, his compensation would be terminated.

In an October 31, 2008 statement, appellant declined the job offer due to his current mental and physical state. He alleged an intervening injury due to the letter. Appellant also requested authorization for his upper gastrointestinal condition and reimbursement for his sick leave. On November 12, 2008 he informed the Office that he had two upper ulcers as a result of his anxiety. The Office received emergency room records dated October 9, 2008. A physician's assistant noted that appellant was seen for an acute distress disorder and anxiety disorder.

In a December 11, 2008 duty status report, Dr. Martin reiterated that appellant could not return to work.

On February 23, 2009 the Office confirmed that the actual location of the job offer was in Brooklyn.

By letter dated February 23, 2009, the Office advised appellant that his reasons for refusing the offered position were not valid and provided him with 15 days to accept the position or face termination of his compensation.

Dr. Martin provided a March 5, 2009 work capacity evaluation. He noted that appellant was fearful of attacks from female workers and could not work with them. Dr. Martin listed four factors that appellant required when identifying a suitable position. They included an apology, location in an environment where his past injuries would not recur, to take his medication and he must receive his "sick time."

On March 19, 2009 the employing establishment confirmed that the position remained available.

By decision dated March 31, 2009, the Office terminated appellant's entitlement to monetary compensation benefits, effective April 12, 2009, on the basis that appellant had refused to accept suitable work. It determined that the report of Dr. Head, the impartial medical examiner, represented the weight of the evidence.

In an April 20, 2009 telephone memorandum, appellant informed the Office that he returned to work on that same date; however, he left after four hours because the job exceeded his medical limitations and was not the position he originally accepted.

In an April 21, 2009 report, Dr. Martin noted that appellant could return to duty part time on April 20, 2009.

In an April 22, 2009 telephone memorandum, appellant informed the Office that the employing establishment indicated that it did not have a position within his limitations. On April 23, 2009 he contacted the Office and explained that the position required that he walk routes by himself despite his limitations on working by himself.

By letter dated May 14, 2009, appellant requested reconsideration. He noted that he did not accept the job offer due to false allegations that were made against him. Appellant alleged that the allegations were never substantiated. He also noted that Dr. Head's examination was not valid as the allegations occurred afterwards.

In a May 12, 2009 report, Dr. Martin noted that appellant was able to return to work, for four hours per day, five days a week. He advised that appellant work in the presence of other supervisors and not be subjected to solo interactions with "craft employees." Dr. Martin noted that in all other respects, appellant could perform his normal duties. He advised that appellant could return to his full schedule after an undetermined period.

By decision dated August 10, 2009, the Office denied modification of its prior decision.<sup>1</sup>

---

<sup>1</sup> This decision stated that the medical conflict was between Dr. Martin and Dr. De La Chapelle.

## LEGAL PRECEDENT

Once the Office accepts a claim it has the burden of proving that the employee's disability has ceased or lessened before it may terminate or modify compensation benefits.<sup>2</sup> Section 8106(c)(2) of the Federal Employees' Compensation Act<sup>3</sup> provides that the Office may terminate the compensation of a disabled employee who refuses or neglects to work after suitable work is offered to, procured by or secured for the employee.<sup>4</sup> The Board has recognized that section 8106(c) is a penalty provision which must be narrowly construed.<sup>5</sup>

Section 8123(a) provides that, if there is a 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>6</sup> Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>7</sup>

## ANALYSIS

The Board finds that the Office did not meet its burden of proof in terminating monetary benefits under 5 U.S.C. § 8106(c) as there is an unresolved conflict in the medical evidence.

The Office found a conflict in the medical evidence between Dr. De La Chapelle and Dr. Lachenmeyer regarding whether a causal relationship existed between appellant's conditions and the accepted injury and whether appellant continued to be disabled from his accepted work injury. It referred appellant to Dr. Head to resolve the conflict and it afforded Dr. Head's report special weight, with regard to appellant's ability to work and in terminating his compensation. However, no conflict in medical opinion arose between Drs. De La Chapelle and Lachenmeyer prior to the referral to Dr. Head.<sup>8</sup> The Board notes that both Drs. De La Chapelle and Lachenmeyer advised that appellant could return to work provided he was not exposed to the subordinates who had falsely accused him in the past. As no conflict in the medical evidence existed, Dr. Head cannot be considered an impartial medical specialist and his report is not entitled to special weight.

The Board finds that there currently exists a conflict in the medical evidence between Dr. Head for the Office, who found that appellant could work full time within restrictions, and

---

<sup>2</sup> *Karen L. Mayewski*, 45 ECAB 219, 221 (1993); *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

<sup>3</sup> 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8106(c)(2).

<sup>4</sup> *Camillo R. DeArcangelis*, 42 ECAB 941, 943 (1991).

<sup>5</sup> *Steven R. Lubin*, 43 ECAB 564, 573 (1992).

<sup>6</sup> 5 U.S.C. § 8123(a).

<sup>7</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985).

<sup>8</sup> *See Delphia Y. Jackson*, 55 ECAB 373 (2004) (a conflict under 5 U.S.C. § 8123 cannot exist unless there is a conflict between an attending physician and an Office physician).

Dr. Martin, a treating physician, who opined that appellant could not work full time. In his initial and supplemental reports, Dr. Head opined that appellant could work full time within restrictions and he noted the reasons for his opinion. Dr. Martin found that appellant was unable to return to full-time work and provided reasons in support of his opinion.

As a conflict in the medical evidence existed between the opinions of Drs. Martin and Head at the time the Office terminated monetary compensation, the Office did not meet its burden of proof to terminate these benefits.

On appeal, appellant disagrees with the Office's decision in terminating his compensation. As noted above, the Office did not meet its burden of proof to terminate his benefits.

**CONCLUSION**

The Board finds that the Office did not meet its burden of proof in terminating appellant's monetary compensation effective April 12, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 10, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 24, 2010  
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