

accepted post-traumatic stress disorder and panic disorder as consequential injuries. As of March 8, 2003, appellant began receiving wage-loss compensation benefits. She sustained a recurrence of disability on August 13, 2003. Appellant's claim for a recurrence of disability on November 18, 2003 was denied on January 10, 2005 and January 31, 2006.

In a June 17, 2006 work capacity evaluation form, Dr. Kristi L. Kotz, an attending family practitioner, diagnosed chronic neck and back pain with radiculopathy and panic disorder. Appellant could perform limited-duty work for four hours a day.

In notes dated October 19, 2007 through February 15, 2008, Debra Finnegan-Suler, Ph.D., an attending licensed clinical psychologist, diagnosed post-traumatic stress disorder, panic disorder and pain disorder associated with psychological factors and a chronic medical condition. She found appellant disabled due to her December 13, 2002 motor vehicle accident.

On September 17, 2008 Dr. Steven J. Valentino, a Board-certified orthopedic surgeon and an Office referral physician, reviewed the medical history, including diagnostic test results, and provided findings on examination. Appellant walked normally, performed heel and toe walk and was able to squat and return to erect posture without difficulty. There was no spasm, malalignment trigger points or subluxation of the spine. Range of motion was completing intact and painless. The spinous process interspinous ligaments facets, sacroiliac joints and proformis evaluations were normal. Sitting and supine straight leg raising and femoral stretch tests were negative. On neurologic examination, deep tendon reflexes were intact. Motor and sensory examinations were normal. There were no pathological reflexes. Upper extremity examination was normal. Lower extremity examination was normal. Dr. Valentino diagnosed a resolved right knee sprain left trapezial sprain, left wrist sprain, lumbar sprain, disc herniation and history of prolonged post-traumatic stress disorder and panic disorder. Based on appellant's physical examination and his review of medical records and diagnostic studies, he found no orthopedic residuals of the December 13, 2002 employment injury.

On September 18, 2008 Dr. Richard B. Saul, a Board-certified psychiatrist and neurologist and an Office referral physician, reviewed the medical history and performed a psychiatric evaluation. Appellant had pain in her lower back and right leg and tightness in her chest, arms and neck. She experienced anxiety and depression from pain and not working. Appellant had panic attacks once or twice a day, but described them as "not bad." Dr. Saul opined that appellant continued to have an anxiety disorder, but it was no longer attributable to her December 13, 2002 employment injury. Appellant's post-traumatic stress disorder was significantly resolved and she was able to drive. Her current psychological problems were due to life situations that were not job related. Appellant was able to return to full duty.

The Office found a conflict in medical opinion between Dr. Kotz and Dr. Finnegan-Suler on one side and Dr. Valentino and Dr. Saul on the other. It referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. David R. Pashman, a Board-certified orthopedic surgeon and Dr. Gladys S. Fenichel, a Board-certified psychiatrist and neurologist, for an examination and evaluation to resolve the conflicts in medical opinion as to whether she had any remaining disability or medical condition causally related to her December 13, 2002 employment injury.

In a November 21, 2008 report, Dr. Pashman reviewed the medical history and provided findings on physical examination. Appellant walked well on heels and toes. There was good uncoiling of the thoracolumbar spine. Knee and ankle jerk were intact bilaterally. Dorsiflexion was intact bilaterally. Sitting root, straight leg raising and Patrick's test were negative. Peripheral pulses were present and equal. There was no sign of muscle atrophy. Examination of the cervical spine revealed full, but slightly guarded, range of motion in all planes. There was no paraspinal or trapezial spasm. There was no tenderness to palpation about the exit of the greater occipital nerve into the skull. Appellant was nontender about the clavicles, acromioclavicular joints, supraspinatus insertion or bicipital groove. Reflexes were equal and symmetrical in both the biceps, triceps and brachioradialis jerk. Tinel's, Phalen's and Adson's tests were negative at the wrists and elbows. There was no sign of upper extremity muscle atrophy. Dr. Pashman found that appellant's accepted conditions had resolved. She had preexisting degenerative cervical and lumbar disc disease with spondylolisthesis at L5-S1. Objective findings from her orthopedic examination were normal. Subjective discomfort in the right sciatic notch with referral anteriorly to the front of the thigh was not an anatomical finding. Dr. Pashman opined that appellant had no objective orthopedic pathology or functional limitations related to the December 13, 2002 employment injury.

In a December 1, 2008 report, Dr. Fenichel reviewed the medical history and provided the results of a psychiatric evaluation. Appellant reported pain across her shoulders, neck and arms. She had a stiff neck and low back pain. Appellant was cooperative and engaged in the mental status examination. She changed her position frequently during the evaluation, citing pain. Appellant described her mood as calm and advised that she was able to keep herself calm. She displayed a full range of affect appropriate to context. Appellant advised that she was able to cope with her pain and stress. She experienced anxiety attacks about twice a week. Breathing exercises and meditation helped control her anxiety symptoms. Appellant was oriented and her fund of knowledge was intact. She related a detailed history that corresponded to the medical records. The results of a mental status profile revealed inconsistency in her responses indicating that she may not have attended carefully to item content. The profile identified much psychological distress, intense feelings of self-doubt and low morale. Appellant identified problems with anxiety and depression. Dr. Fenichel noted that she had received more than five and one half years of cognitive behavioral therapy and had learned strategies for managing her anxiety, depression and pain. Appellant had received maximum therapeutic benefit from her treatment by Dr. Finnegan-Suler and required no additional treatment. Dr. Fenichel opined that appellant did not have any disability as a consequence of psychiatric conditions accepted as related to the December 13, 2002 employment injury. Her accepted post-traumatic stress disorder and anxiety disorder had resolved.

In a January 7, 2009 report, received by the Office on February 2, 2009, Dr. Kotz reviewed the medical history. Appellant had chronic pain in her neck, shoulders and low back caused by the December 13, 2002 employment injury. Her knee and wrist symptoms had essentially resolved. Dr. Kotz diagnosed chronic cervical pain and lumbar spondylolisthesis. He found appellant totally disabled.

By letter dated January 8, 2009, the Office advised appellant of its proposed termination of her wage-loss compensation and medical benefits, finding that the reports of Dr. Pashman and

Dr. Fenichel established that she had no remaining disability or medical condition causally related to her December 13, 2002 employment injury.

By decision dated February 10, 2009, the Office finalized its termination of appellant's wage-loss compensation and medical benefits effective February 15, 2008.¹

Appellant requested a review of the written record. She asserted that the Office did not properly select the referee physicians because it did not use an alphabetical list of physicians. In notes dated November 18, 2008 through February 12, 2009 and a January 19, 2009 narrative report, Dr. Finnegan-Suler found that appellant was totally disabled due to her work-related post-traumatic stress disorder and panic disorder.

By decision dated July 9, 2009, an Office hearing representative affirmed the February 10, 2009 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² It may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Furthermore, 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 that require further medical treatment.⁵

Section 8123(a) of the Federal Employees' Compensation Act provides that "if there is disagreement between the physician making the examination for the "United States" and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."⁶ 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.⁷

¹ Regarding appellant's assertion that the impartial medical specialists were not properly selected from the Physician Directory System's (PDS) list because the names were in random order not alphabetical order, the Office noted that its national Office provided the physician lists which were in random order.

² *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

³ *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

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

⁷ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

ANALYSIS -- ISSUE 1

The Office found a conflict in medical opinion between appellant's attending family practitioner and psychologist and the Office referral physicians as to whether she had any residuals of her December 13, 2002 employment-related orthopedic and emotional conditions. It referred her to Dr. Pashman and Dr. Fenichel for a resolution of the conflict.

Dr. Pashman reviewed the medical history and provided findings on physical examination of appellant's spine and upper and lower extremities. He found that her accepted conditions had resolved. Appellant had nonwork-related preexisting degenerative cervical and lumbar disc disease with spondylolisthesis at L5 to S1. Objective findings from her orthopedic examination were normal. Dr. Pashman opined that appellant had no objective orthopedic pathology or functional limitations related to the December 13, 2002 employment injury. The report of Dr. Pashman is based upon a complete and accurate factual and medical background and detailed findings on physical examination. The Board finds that Dr. Pashman's thorough and well-rationalized report established that appellant had no residuals of her December 13, 2002 concussion, lumbar sprain and strain, herniated disc at C6-7 and sprains and strains of both lower extremities. Accordingly, the Office met its burden of proof in terminating her wage-loss compensation and medical benefits, related to her accepted orthopedic conditions, effective February 15, 2008.

Dr. Fenichel reviewed the medical history and provided the results of appellant's psychiatric evaluation. She was cooperative and engaged in the mental status examination. Appellant described her mood as calm and reported that she was able to keep herself calm. She displayed a full range of affect appropriate to context. Appellant advised that she was able to cope with her pain and stress. Breathing exercises and meditation helped control her anxiety symptoms. Appellant was oriented and her fund of knowledge was intact. She related a detailed history that corresponded to the medical records. The mental status profile revealed inconsistency in her responses indicating that she may not have attended carefully to item content. The profile identified much psychological distress, intense feelings of self-doubt and low morale. Appellant identified problems with anxiety and depression. Dr. Fenichel noted that appellant had received more than five years of cognitive behavioral therapy and had learned strategies for managing her anxiety, depression and pain. Appellant required no additional treatment. Her accepted post-traumatic stress disorder and anxiety disorder had resolved. The report of Dr. Fenichel is based upon a complete and accurate factual and medical background and a psychiatric evaluation. The Board finds that Dr. Fenichel's thorough and well-rationalized report established that appellant had no residuals of her December 13, 2002 post-traumatic stress disorder and panic disorder. Accordingly, the Office met its burden of proof in terminating her wage-loss compensation and medical benefits, related to her accepted emotional conditions, effective February 15, 2008.

On appeal appellant asserts that the referral physician reports were not sufficient to create a conflict in medical opinion. While appellant's treating physician, Dr. Kotz, continued to find appellant partially disabled due to chronic neck and back pain with radiculopathy and panic disorder and Dr. Finnegan-Suler, appellant's psychiatrist, continued to find her disabled due to post-traumatic stress and panic disorder, the Office referral physicians concluded that appellant no longer had residuals of the accepted injury. Dr. Valentino reviewed the medical history,

including diagnostic test results, and provided detailed findings on physical examination. There were no abnormalities found in appellant's spine or upper and lower extremities. Based on the thorough physical examination and review of medical records and diagnostic studies, Dr. Valentino found no orthopedic residuals of the December 13, 2002 employment injury.

Dr. Saul reviewed the medical history and performed a psychiatric evaluation. Appellant's psychological problems in 2008 were due to personal life situations that were not job related. He opined that appellant had no psychiatric residuals of her December 13, 2002 employment injury and was able to return to full duty.

The Board finds that the reports of Dr. Valentino and Dr. Saul were sufficient to create a conflict in medical opinion regarding appellant's disability causally related to her December 13, 2002 employment injury.

Appellant contends that the impartial medical specialists were not properly selected. A physician selected by the Office to serve as an impartial medical specialist should be wholly free to make a completely independent evaluation and judgment. To achieve this, it has developed specific procedures for the selection of impartial medical specialists designed to provide safeguards against any possible appearance that the selected physician's opinion is biased or prejudiced. The Office procedure manual contemplates that impartial medical specialists will be selected from Board-certified specialists in the appropriate geographical area on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and the Office.⁸ PDS should be used for this purpose wherever possible.⁹ The PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations.¹⁰ The PDS database of physicians is obtained from the American Board of Medical Specialties (ABMS) which contains the names of physicians who are Board-certified in certain specialties. In this case, appellant alleged that the impartial medical specialists were improperly selected. The record reflects adequate documentation that the PDS was used and the impartial medical specialists were selected in accordance with Office procedure. Bypass screens reflected the reasons for the nonselection of physicians and the Office noted that Drs. Fenichal and Pashman were selected in strict accordance with the PDS procedures. There was no showing that the use of these physicians as the impartial medical specialists would undermine the appearance of impartiality or compromise the integrity of the system for selecting these specialists.¹¹ Appellant did not establish that either Dr. Pashman or Dr. Fenischel were biased in their opinions regarding her medical conditions. Their opinions are entitled to the weight of the medical evidence.

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003). See also *Willie M. Miller*, 53 ECAB 697 (2002); *Arden E. Butler*, 53 ECAB 680 (2002).

⁹ *Id.*

¹⁰ Federal (FECA) Procedure Manual, *supra* note 8 at Chapter 3.500.7 (September 1995, May 2003).

¹¹ *D.F.*, 61 ECAB __ (Docket No. 09-1463, issued August 12, 2010).

LEGAL PRECEDENT -- ISSUE 2

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the employment injury.¹² In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.¹³

ANALYSIS -- ISSUE 2

The Board finds that, following the proper termination of her compensation and medical benefits effective February 15 2008, appellant failed to establish that she had any continuing disability or medical condition causally related to her December 13, 2002 employment-related concussion, lumbar sprain and strain, herniated disc at C6-7, sprains and strains of both lower extremities, post-traumatic stress disorder and panic disorder.

In notes dated November 18, 2008 through February 12, 2009 and a January 19, 2009 narrative report, Dr. Finnegan-Suler found that appellant was totally disabled due to her work-related post-traumatic stress disorder and panic disorder. An additional report from a claimant's physician, which essentially repeats earlier findings and conclusions, is generally insufficient to overcome the weight accorded to an impartial medical specialist's report where appellant's physician had been on one side of the conflict in the medical opinion that the impartial medical examiner resolved.¹⁴ Dr. Finnegan-Suler was on one side of the conflict which Dr. Fenichel's opinion was found to resolve. Dr. Fenichel is a Board-certified psychiatrist and neurologist, whereas Dr. Finnegan-Suler is a clinical psychologist. The additional reports from Dr. Finnegan-Suler are not sufficient to outweigh or create a new conflict with Dr. Fenichel's opinion that appellant's accepted emotional conditions had resolved. For these reasons, the notes of Dr. Finnegan-Suler do not establish that appellant had any medical condition or disability after February 15, 2008 causally related to her December 13, 2002 employment injury. Appellant failed to meet her burden of proof.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective February 15, 2008. The Board further finds that appellant did not meet her burden of proof to establish that she was disabled after February 15, 2008 due to her December 13, 2002 employment injury.

¹² *I.J.*, *supra* note 2; *Anna M. Blaine*, *supra* note 3; *see Fred Foster*, 1 ECAB 127, 132-33 (1948).

¹³ *I.J.*, *supra* note 2; *Gary R. Sieber*, 46 ECAB 215, 222 (1994); *see Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁴ *See Roger G. Payne*, 55 ECAB 535 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 9 and February 10, 2009 are affirmed.

Issued: September 23, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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