

FACTUAL HISTORY

In the prior appeal,² the Board found that the case was not in posture for decision on whether appellant's major depressive disorder was causally related to the accepted factors of her employment. The Board found a conflict between Dr. Kenneth D. Krause and Dr. Gerald S. Fredman, two Board-certified psychiatrists. Dr. Krause determined that the accepted factors of employment did not cause appellant's major depressive disorder, recurrent, moderate. Dr. Fredman concluded that the accepted factors of employment aggravated her major depressive disorder, recurrent, severe. The Board remanded the case for resolution by an impartial medical specialist. The facts of this case, as set out in the Board's prior decision, are hereby incorporated by reference.³

OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Howard J. Entin, a Board-certified psychiatrist, to resolve the conflict. Dr. Entin related appellant's history and symptoms. He reviewed the medical record and statement of accepted facts. Dr. Entin offered a principal diagnosis of major depressive disorder, moderate, chronic, recurrent, in partial remission. He felt that the only accepted factor of employment that could contribute to appellant's symptoms was being called a "bitch" on the workroom floor, which he described as clearly inappropriate and degrading. Dr. Entin found that this upsetting factor temporarily aggravated appellant's preexisting depression, anxiety and obsessive personality style, "but I believe this was a brief aggravation, did not cause continued impairment and that the predominant cause of her chronic psychiatric condition is her difficulties coping with life."

OWCP thereafter accepted appellant's claim for temporary aggravation of major depression, recurrent, moderate, in partial remission and for temporary aggravation of generalized anxiety disorder.

After a year of receiving medical benefits, OWCP asked Dr. Entin to clarify as to when the temporary aggravation of appellant's psychiatric condition would cease. In a supplemental report, Dr. Entin advised that the accepted employment factor of being called a "bitch" was a temporary aggravation lasting for a two-week period, at the end of which, based on his experience, he expected appellant to have coped with the issue. He did not think it would be considered an ongoing stressor.

In a May 26, 2011 decision, OWCP terminated appellant's medical benefits. It found that Dr. Entin's opinion carried the weight of the medical evidence and established that the accepted aggravations had ceased no later than two weeks after the incident occurred in 2004.

² Docket No. 09-433 (issued August 25, 2009).

³ On February 12, 2004 appellant, a 38-year-old customer service supervisor, filed an occupational disease claim alleging depression and stress. OWCP accepted that she supervised 27 clerks and mail handlers, that for one week she reported to work at 4:00 a.m., and that an employee whom she had previously disciplined had called her a "bitch" on the workroom floor.

On October 27, 2011 an OWCP hearing representative affirmed the May 26, 2011 decision. The hearing representative found that Dr. Entin provided sufficient rationale to support his opinion.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to her employment, it may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.⁴ The fact that OWCP accepted an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on OWCP with respect to the period subsequent to the date of termination or modification.⁵

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.⁶ When 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.⁷

ANALYSIS

On remand from the prior appeal, OWCP properly referred appellant to Dr. Entin, a Board-certified psychiatrist, to resolve the conflict between two other Board-certified psychiatrists, Drs. Krause and Fredman, on whether accepted factors of employment caused or aggravated appellant's psychiatric condition. Dr. Entin found that one factor temporarily aggravated appellant's preexisting depression, anxiety and obsessive personality style. He thought it a brief aggravation, one that did not cause continued impairment.

OWCP accepted a temporary aggravation of major depression and generalized anxiety disorder. When it later determined to terminate medical benefits for the accepted condition, OWCP had the burden to establish the specific period of disability.

Dr. Entin was asked to clarify the extent of the aggravation, and he stated that the accepted condition should have been resolved after a two-week period. At the end of that time, he would have expected appellant to have coped with the issue.

⁴ *Edwin Lester*, 34 ECAB 1807 (1983).

⁵ See *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

⁶ 5 U.S.C. § 8123(a).

⁷ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The Board finds that Dr. Entin's opinion represents the special weight of the medical opinion evidence. Dr. Entin thoroughly reviewed appellant's medical record and the statement of accepted facts and based his opinion on a proper medical and factual history. He explained that the major depressive conditions were a result of her many years of living in an abusive relationship and not due to work factors. Dr. Entin clarified that the temporary aggravation of appellant's underlying condition would have lasted no more than two weeks. The Board finds that his medical opinion is entitled to special weight and is sufficient to resolve the conflict.

As the weight of the medical opinion evidence establishes that the aggravation caused by the accepted employment factor was temporary and lasted only a couple of weeks, the Board finds that OWCP has met its burden to justify the termination of appellant's medical benefits for the employment injury.

CONCLUSION

The Board finds that OWCP properly terminated appellant's medical benefits for the accepted psychiatric conditions.

ORDER

IT IS HEREBY ORDERED THAT the October 27 and May 26, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 13, 2012
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