

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNICE BURTON and U.S. POSTAL SERVICE,
POST OFFICE, City of Industry, Calif.

*Docket No. 96-1208; Submitted on the Record;
Issued March 16, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective October 15, 1995.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Appellant filed a claim on August 29, 1990 alleging she developed stress due to factors of her federal employment. The Office accepted her claim for major depression on November 7, 1991 and entered appellant on the periodic rolls. By decision dated September 11, 1995, the Office terminated appellant's compensation and medical benefits effective October 15, 1995 finding that she was no longer disabled due to her accepted employment injury. Appellant, through her attorney, requested reconsideration and by decision dated January 9, 1996, the Office modified its September 11, 1995 decision, finding that appellant was entitled to continuing medical treatment due to residuals of her accepted condition.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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.⁴

The Office referred appellant to Dr. John Hochman, a psychiatrist, for a second opinion evaluation. Dr. Hochman diagnosed schizophrenia and found this condition was not causally related to appellant's accepted employment factors. Based on this report, the Office notified appellant of its intent to terminate her compensation benefits. Appellant's attending physician, Dr. Carl S. Wells, a clinical psychologist, disagreed with Dr. Hochman's assessment of appellant's condition and disability. The Office properly found that there was a conflict of medical opinion between appellant's physician, Dr. Wells, diagnosing major depression causally related to her accepted employment factors, and the second opinion physician, Dr. Hochman, and referred appellant for an impartial medical examination by Dr. Irwin I. Rosenfeld, a Board-certified psychiatrist.⁵

Dr. Rosenfeld reviewed a statement of accepted facts as well as medical records and examined appellant. He diagnosed major depressive disorder causally related to appellant's accepted employment incidents. Dr. Rosenfeld then responded to the specific questions posed by the Office and concluded that although appellant was not totally disabled due to her accepted condition, appellant was not "psychiatrically" capable of returning to her date-of-injury position, and could return to modified duty or rehabilitation services for four hours a day. He also stated that appellant required further medical treatment including drug therapy for her accepted condition.

The Office requested a supplemental report on May 15, 1995 inquiring whether appellant was disabled due to her accepted condition and whether she continued to experience medical residuals. Dr. Rosenfeld responded on May 20, 1995 and stated appellant had some residual symptoms and she could return to work. He stated her residual depression required more aggressive treatment with medication.

On July 24, 1995 the Office requested that Dr. Rosenfeld opine whether appellant was psychiatrically capable of returning to work as a letter carrier. Dr. Rosenfeld completed a psychiatric work capacity evaluation on July 28, 1995 and restricted the volume of appellant's work to "within reason (*i.e.*, not overwhelming)." He stated, "Despite residual symptoms, I believe she can return to work w.n.t. *psychiatric* disability." (Emphasis in the original). Dr. Rosenfeld completed a narrative report on July 28, 1995 and stated that appellant was psychiatrically capable of handling the position of letter carrier, but that he questioned her orthopedic capacity.

In situations where there are 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 on a proper

⁴ *Id.*

⁵ Section 8123(a) of the Federal Employees' Compensation Act, provides: "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." 5 U.S.C. § 8123(a).

factual background, must be given special weight.⁶ In this case, Dr. Rosenfeld's report was based on a proper history and provided medical rationale supporting his opinion that appellant had medical residuals due to her accepted employment condition. Although his initial reports were inconclusive regarding whether appellant had any disability due to her accepted condition, his July 28, 1995 report clearly stated that appellant was capable of returning to her date-of-injury position and that therefore she was no longer disabled.

The Office properly relied on Dr. Rosenfeld's report in terminating appellant's compensation benefits and properly found that she was entitled to further medical treatment due to the residuals from her accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated January 9, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 16, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).