

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DINAH E. SINVILLE and U.S. POSTAL SERVICE,
POST OFFICE, Beverly Hills, CA

*Docket No. 03-608; Oral Argument Held May 13, 2003;
Issued July 17, 2003*

Appearances: *C.B. Weiser, Esq.*, for appellant; *Jim C. Gordon Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective December 7, 2001.

On February 13, 1992 appellant, then a 40-year-old distribution clerk, filed an occupational disease claim alleging that she developed a depressive disorder and other emotional conditions as a result of factors of her federal employment. Following a March 20, 1995 second opinion evaluation by Dr. Irving Berkovitz, a Board-certified psychiatrist, the Office accepted the claim for aggravation of major depression and post-traumatic stress disorder (PTSD) on March 29, 1995.

Appellant's primary attending physician, Dr. Philip M. Carman, a clinical psychologist, continued to submit periodic reports supporting that appellant remained totally disabled by her employment-related severe chronic major depression.

In order to determine whether appellant continued to have residuals of the accepted conditions, on September 27, 1996, the Office referred appellant to Dr. Richard Ness, a Board-certified psychiatrist, for a second opinion. In a January 10, 1997 report, Dr. Ness diagnosed preexisting major depressive disorder and mixed personality disorder. Based on a psychiatric examination, medical history and psychiatric testing, he concluded that appellant no longer had any symptoms of aggravation of her preexisting depression or PTSD, and further did not suffer from any psychiatric illness or disability causally related to compensable factors of her employment.

In a detailed report dated May 29, 1998, Dr. Carmen indicated that he had reviewed Dr. Ness' January 10, 1997 report and explained at length why he disagreed with the physician's conclusions. Dr. Carmen reiterated that he felt that appellant continued to suffer from permanent

aggravation of her major depression and PTSD, causally related to accepted factors of her employment.

In a decision dated June 2, 1998, after proper notice, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence was represented by the opinion of Dr. Ness.

Following an oral hearing, held at appellant's request, an Office hearing representative set aside the Office's prior decision, on the grounds that an unresolved conflict in medical opinion existed between Drs. Carman and Ness, requiring further evaluation of appellant by an impartial medical specialist.

Due to the conflict in the medical opinion evidence, on December 2, 1998, the Office referred appellant for an impartial medical examination with Dr. Brian P. Jacks, a Board-certified psychiatrist. In a January 19, 1999 report, Dr. Jacks diagnosed mixed personality disorder and concluded that appellant's employment-related emotional condition had ceased by April 20, 1994.

Appellant, through counsel, subsequently objected to Dr. Jacks' role as an impartial medical specialist, alleging that he was biased in favor of the Office. After considering appellant's arguments, the Office arranged for appellant to undergo a second impartial medical examination by Dr. John Caccavale, a Board-certified clinical psychologist. In a report dated February 24, 2000, Dr. Caccavale opined that the employment-related component of appellant's emotional condition had ceased.

On March 7, 2000 the Office issued a notice of proposed termination of compensation, noting that all employment-related residuals and disability had resolved, and by decision dated April 21, 2000, the Office terminated all compensation, including payment of medical benefits.

Following an oral hearing, held at appellant's request, an Office hearing representative set aside the Office's prior decision on the grounds that Dr. Caccavale, as a clinical psychologist, was not an appropriate specialist to resolve the conflict in medical opinion between Dr. Ness, a Board-certified psychiatrist, and Dr. Carman, a clinical psychologist. Therefore, the hearing representative vacated the Office's prior decision and remanded the case for further evaluation of appellant by a new impartial medical specialist. The hearing representative specifically found, however, that, while neither Dr. Jacks nor Dr. Caccavale could carry the weight of the medical evidence as impartial medical specialists, their reports did not meet the standard for exclusion, and, therefore, could remain in the record for consideration by subsequent medical specialists.

On remand, the Office referred appellant for an impartial medical examination with Dr. Daniel Dorman, a Board-certified psychiatrist.

Prior to examination by Dr. Dorman, however, appellant submitted a report dated June 15, 2001 from her new attending physician, Dr. Mark Perrault, a psychiatrist, who diagnosed PTSD, causally related to appellant's employment, and major depression, chronic, moderate to severe with question of psychotic features, previously aggravated (remission two to four years) by stress related to the employing establishment.

On June 21, 2001 appellant was examined by Dr. Dorman. In his report dated October 8, 2001, completed after his review of the extensive medical records, Dr. Dorman opined that, while appellant's employment had caused a temporary aggravation of her emotional condition, all employment-related disability has resolved within approximately six months.

By letter dated October 23, 2001, based on Dr. Dorman's opinion that appellant's employment-related disability had resolved, the Office issued a notice of proposed termination of compensation.

In response to the Office's notice, appellant submitted a November 9, 2001 report from Dr. Perrault, in which he reviewed and commented on Dr. Dorman's findings.

By decision dated December 7, 2001, the Office terminated appellant's compensation benefits.

On June 26, 2002, an oral hearing was held at appellant's request. Appellant's attending physician, Dr. Perrault, testified at the hearing on appellant's behalf. Following the hearing, appellant submitted a July 29, 2002 report from Dr. Perrault in support of her claim.

In a decision dated October 17, 2002, an Office hearing representative affirmed the Office's termination of benefits effective December 7, 2001, on the grounds that the weight of the medical evidence, represented by the report of Dr. Dorman, the impartial medical specialist, established that appellant no longer suffered from any employment-related residuals of her accepted emotional conditions.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective December 7, 2001.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

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 must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.⁴

¹ *Raymond W. Behrens*, 50 ECAB 221 (1999).

² *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

³ *Raymond W. Behrens*, *supra* note 1.

⁴ *Talmdge Miller*, 47 ECAB 673, 679 (1996).

In the instant case, Dr. Carman, was of the opinion that appellant continued to be disabled due to her accepted employment-related emotional conditions. In response to the Office's request for a second opinion, Dr. Ness opined that there were no continued residuals from appellant's work-related PTSD and that aggravation of appellant's preexisting major depression had ceased.

Where there exists a conflict of medical opinion, the case is referred to an impartial medical specialist for the purpose of resolving the conflict.⁵ If the opinion of the impartial medical specialist is sufficiently well rationalized and based upon a proper factual background, it must be given special weight.⁶

In this case, the Office based its decision to terminate appellant's compensation on the October 8, 2001 report of Dr. Dorman, the impartial medical specialist, who examined appellant on June 21, 2001. He provided an accurate and comprehensive review of appellant's medical work and history and thoroughly reviewed the medical evidence of record. On the basis of this review and his examination, Dr. Dorman diagnosed dysthymia, or depression and adjustment disorder, and explained that, while appellant sustained temporary employment-related aggravations of these conditions, these aggravations had resolved within six months of the last employment incident which had triggered the aggravations. Dr. Dorman further stated that appellant was fully capable of performing her usual and customary work and was not psychiatrically disabled. The Office relied on his opinion in its December 7, 2001 termination decision, finding that all residual disability stemming from her accepted PTSD and aggravation of major depressive disorder had ceased and that appellant currently suffered from no condition or disability causally related to her accepted employment conditions.

The Board holds that the Office properly found that Dr. Dorman's referee opinion, which establishes that appellant no longer suffers from her accepted PTSD and aggravation of major depression was sufficiently probative, rationalized and based upon a proper factual background and that, therefore, the Office acted correctly in according his opinion the special weight of an independent medical examiner.⁷ Accordingly, the Board finds that Dr. Dorman's opinion constituted sufficient medical rationale to support the Office's December 7, 2001 decision terminating appellant's compensation.

Following the Office's termination of compensation, the burden of proof in this case shifted to appellant, who requested a hearing and submitted testimony and July 29, 2002 report from Dr. Perrault. This report and testimony, however, did not contain countervailing, probative medical evidence that appellant continued to suffer from residuals of her accepted conditions. Dr. Perrault merely reiterated his previous conclusions and restated his concerns with respect to Dr. Dorman's report. Accordingly, Dr. Perrault's report did not satisfy appellant's burden of

⁵ Section 8123(a) of the Act provides that: "[I]f there is disagreement between the physician making the examination for the United States and the physician for employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

⁶ *Irene M. Williams*, 47 ECAB 619, 622 (1996); *Roger Dingess*, 47 ECAB 123, 126 (1995); *Carl Epstein*, 38 ECAB 539 (1987).

⁷ *Gary R. Seiber*, 46 ECAB 215 (1994).

proof to submit medical evidence sufficient to warrant modification of the Office's December 7, 2001 termination decision, which properly found that Dr. Dorman's referee opinion constituted the weight of the medical evidence. Dr. Perrault's additional report is, therefore, insufficient to overcome the special weight accorded to the impartial medical specialist report or to create a new conflict.⁸ Accordingly, the Board affirms the Office's October 17, 2002 decision affirming the December 7, 2001 termination decision.

The decision of the Office of Workers' Compensation Programs dated October 17, 2002 is hereby affirmed.

Dated, Washington, DC
July 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ *Virginia Davis-Banks*, 44 ECAB 389 (1993).