U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. HOLDERFIELD and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Dalton, GA

Docket No. 03-1234; Submitted on the Record;
Issued September 15, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation effective March 11, 2002.

On June 12, 2000 appellant, a 54-year-old revenue agent, filed an occupational disease claim alleging that on May 5, 1999 she first realized her post-traumatic stress disorder and aggravation of bipolar disease were employment related. The Office accepted the claim for post-traumatic stress disorder and paid appropriate compensation. Appellant stopped work on May 15, 2000 and returned to intermittent part-time light-duty work on January 2, 2001. On January 17, 2001 appellant worked three days a week and the Office paid compensation for the remaining two days.

Appellant filed a claim for compensation (Form CA-7) for intermittent disability during the period September 23 through November 17, 2001.

In an October 11, 2001 report, Dr. Frank G. Pratt, Jr., an attending psychiatrist, concluded that appellant remained partially disabled and that "in her current situation, leaving her at a 60 percent part-time basis makes the best sense." He concluded that appellant continued to have residuals from her accepted condition which precluded her from working full time. He reiterated that the "best outcome would be facilitated" by appellant's transfer to another assignment to the Chattanooga, Tennessee office.

In a letter dated December 4, 2001, the Office informed appellant that she would receive compensation for the period September 26 through November 8, 2001, but the medical evidence was insufficient to support total disability for the period November 13, 2001 and continuing. The Office advised appellant to provide a rationalized opinion from her attending physician explaining how her disability was related to her accepted January 14, 1999 employment injury.

In a December 13, 2001 report, Dr. Pratt stated that appellant had been moved from partial disability to total disability "because she deteriorated." He attributed the deterioration to

"yet another round of unpleasant interaction between [appellant] and her immediate supervisor." Dr. Pratt noted that appellant believed "her current supervisor is closely networked with the supervisor that made [appellant]'s life unbearable."

On December 17, 2001 appellant filed a claim for compensation for the period November 13 through December 15, 2001.

In a report dated January 10, 2002, Dr. Wayne Y. Kim, a second opinion Board-certified psychiatrist, stated that he doubted the diagnosis of post-traumatic stress disorder. He concluded that the correct diagnosis should be adjustment disorder with mixed emotional features and that her symptoms have not resolved. In response to the Office question regarding how appellant's current condition continues to exist, Dr. Kim stated:

> "As long as her perception is such that her work environment is hostile to her, she will continue to feel alienated. She has a rather paranoid orientation in that everyone is against her and she cannot trust anyone at work. Her supervisors are teamed up against her and her coworkers are distant toward her. It appears to me that as she indicated in the examination, as long as she is in the same present work environment she does n[o]t believe she is going to get any better."

Regarding appellant's work capability, Dr. Kim opined that appellant was able to perform her current position on a full-time basis. Next, the physician recommended transferring appellant "to another office setting could be helpful" in response to an Office question regarding treatment which would return appellant "to some type of gainful employment on a regular full-time basis." In concluding, Dr. Kim noted that he had not seen and reviewed Dr. Pratt's treatment notes.

By decision dated January 28, 2002, the Office partially denied appellant's claim for compensation for the period November 13 through December 15, 2001. The Office advised appellant to file a new claim as the disability for the period November 13 to December 15, 2001 was due to a new supervisor and thus was a new injury.

On January 28, 2002 the Office issued a proposed notice of termination of wage-loss compensation based upon Dr. Kim's report.

Appellant requested an oral hearing in a February 27, 2002 letter.

On March 11, 2002 the Office finalized the termination of appellant's wage-loss compensation.

In a report dated May 30, 2002, Dr. Pratt disagreed with Dr. Kim's opinion that appellant was capable of working full time. He concluded that appellant's "anxiety disorder, not otherwise specified rather than PTSD goes back to exposure to a traumatic event *involving threat to physical integrity"* and disabled from working a five-day-a-week schedule. (Emphasis in the original). Dr. Pratt opined that appellant's "earlier work experiences" are associated with her current condition and disability.

By decision dated January 9, 2003, the Office hearing representative set aside the January 28, 2002 decision and remanded the case for further development regarding appellant's entitlement to compensation for the period November 13 to December 15, 2001. The hearing representative affirmed the termination of appellant's compensation effective March 11, 2002. In terminating appellant's compensation, the hearing representative relied upon the opinion of Dr. Kim.

The Board finds that the Office did not meet its burden of proof due to an unresolved conflict in medical opinion.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[1] After determining that an employee has disability causally related to his 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] Whether a particular injury causes an employee disability for employment is a medical issue that must be resolved by competent medical evidence.[3]

In this case, there is a conflict between the opinion of appellant's attending psychiatrist, Dr. Pratt, who stated in his reports that appellant continued to be partially disabled due to employment-related post-traumatic stress syndrome and Dr. Kim, the Office's referral psychiatrist, who opined in his January 10, 2002 report that he doubted the diagnosis of post-traumatic stress disorder and concluded appellant was capable of working full time. Dr. Pratt, in his May 30, 2002, specifically notes his disagreement with Dr. Kim's opinion regarding appellant's disability. Dr. Kim, however, appears to agree with Dr. Pratt that transferring appellant "to another office setting could be helpful" when he responded to an Office question regarding treatment which would return appellant "to some type of gainful employment on a regular full-time basis."

Because the Office did not appoint a third physician to address the conflict in medical opinion between Drs. Pratt and Kim, the issue of whether appellant entitlement to continuing wage-loss compensation for partial disability remains unresolved. The Office carries the burden of proof to justify its termination of compensation and the weight of the medical evidence cannot rest with the conclusion of the second opinion physician when his opinion creates an unresolved

[1] *James C. Bury*, 54 ECAB ___ (Docket No. 03-596, issued April 24, 2003).

[2] *Wiley Richey*, 49 ECAB 166 (1997).

[3] *Maxine J. Sanders*, 46 ECAB 835 (1995).

conflict under 5 U.S.C. § 8123(a).[4] Therefore, the Board finds that the Office has not met its burden of proof.

The January 9, 2003 decision of the Office Workers' Compensation Programs' hearing representative regarding the termination of appellant's compensation is hereby reversed.

Dated, Washington, DC
September 15, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] 5 U.S.C. § 8123(a) states in pertinent part: "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."