

**United States Department of Labor
Employees' Compensation Appeals Board**

R.B., Appellant

and

**DEPARTMENT OF THE ARMY, ANNISTON
ARMY DEPOT, Anniston, AL, Employer**

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**Docket No. 07-1378
Issued: November 8, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 25, 2007 appellant filed a timely appeal from the April 5, 2007 merit decision of the Office of Workers' Compensation Programs finalizing the termination of her wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this termination.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's wage-loss compensation effective April 14, 2007 on the grounds that she was no longer disabled for work.

FACTUAL HISTORY

On July 26, 2005 appellant, then a 45-year-old compensation program specialist, filed a claim for a recurrence of disability beginning on March 28, 2005 due to her May 4, 2001 employment injury. The Office determined that she sustained a new injury and developed the case as an occupational disease claim. It accepted a bulging C5 cervical disc without herniation and authorized anterior cervical discectomy with fusion surgery, which was performed on

September 28, 2006. By letter dated October 12, 2006, the Office placed appellant on the periodic rolls for temporary total disability.

In a December 5, 2006 report, Robert G. Summerlin, Ph.D., a clinical psychologist, diagnosed major depressive disorder, pain disorder, generalized anxiety disorder and personality disorder. He recommended against appellant's return to work at the employing establishment and supported her application for medical retirement.¹

In a December 11, 2006 report, Dr. James G. White, III, a treating Board-certified neurosurgeon, released appellant to return to work with restrictions. He noted that she has no intention and has no plans of going back to work." Dr. White noted that appellant's psychologist, Dr. Summerlin, recommended that she stay away from the employing establishment and that she was applying for disability retirement. He stated that "[c]ertainly, other than any psychological or psychiatric problems that appellant may have physically, we would allow her to return to work with these restrictions."

On December 20, 2006 the employing establishment offered appellant the position of a modified compensation program specialist, which she refused.

In a letter dated January 8, 2007, appellant refused the job offered by the employing establishment based upon the opinions of Drs. Chindalore and Summerlin. She noted that, while Dr. White had released her to her date-of-injury job as a compensation specialist, Dr. Summerlin recommended against returning to the position.

On February 12, 2007 Dr. White reiterated that appellant had been released to full duty with restrictions, as noted in his December 11, 2006 report.

On February 20, 2007 the Office received a January 26, 2007 report by Dr. Summerlin, the supervisor's portion of appellant's disability retirement application and a February 13, 2007 report by Dr. Christopher S. Randolph, a treating psychiatrist, who noted that appellant had been referred for her depression and reported that she "had recurrent conflicts with her supervisor at work." Dr. Randolph opined that, due to her continued complaints and the chronicity of her mood disorder, appellant "is permanently psychiatrically disabled." Dr. Summerlin concluded that appellant was totally disabled due to her psychiatric condition. In a January 5, 2007 report, Dr. Vishala L. Chindalore, a rheumatologist and treating physician, diagnosed fibromyalgia and opined that appellant was totally disabled due to this condition.

On March 1, 2007 the Office issued a notice of proposed termination of wage-loss compensation. It determined that the weight of the evidence rested with Dr. White's opinion that appellant was physically able of returning to work. With respect to Dr. Summerlin's opinion that appellant was totally disabled due to her psychiatric condition, the Office concluded that this was not relevant as no psychiatric condition had been accepted.

In a letter dated March 23, 2007, appellant noted that, while Dr. White released her to work from a physical standpoint, he noted psychiatric conditions which might preclude her from

¹ In a letter dated December 11, 2006, Dr. Summerlin stated that appellant was applying for disability retirement.

returning to work. She alleged that she was permanently and totally disabled from performing any type of work due to her physical and psychiatric conditions. Appellant also stated that she had applied for disability retirement.

By decision dated April 5, 2007, the Office finalized the termination of appellant's wage-loss compensation.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to 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.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

ANALYSIS

The Office accepted that appellant sustained bulging C5 cervical disc without herniation and authorized anterior cervical discectomy with fusion surgery, which was performed on September 28, 2006. It based its decision to terminate appellant's wage-loss compensation benefits upon medical evidence from Dr. White, a treating physician.

The Board finds that the medical evidence of record supports the termination of appellant's wage-loss compensation benefits. The relevant medical evidence consists of reports from Dr. White, an attending physician, who found that appellant was capable of working with restrictions, suggesting that a psychological component precluded her from returning to work. The Board finds that Dr. White's opinion establishes that appellant has no continuing disability due to her accepted bulging C5 cervical disc without herniation. The record is devoid of any medical evidence supporting that appellant is totally disabled due to her accepted cervical condition.

The record also contains reports from Drs. Randolph and Summerlin diagnosing depression and Dr. Chindalore diagnosing fibromyalgia. Dr. Randolph stated that appellant "had recurrent conflicts with her supervisor at work" and concluded that she was permanently disabled due to "continued complaints and chronicity mood disorder." Dr. Summerlin also concluded that appellant was totally disabled due to a psychiatric condition. Dr. Chindalore opined that appellant was totally disabled due to her fibromyalgia, but offered no opinion as to the cause of the fibromyalgia.

Drs. Randolph and Summerlin diagnosed a psychiatric condition, which they opined was totally disabling. The Board notes that the Office has not accepted a work-related psychiatric

² *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *See Del K. Rykert*, 40 ECAB 284 (1988).

condition. None of the reports by Drs. Randolph or Summerlin contain sufficient medical reasoning explaining how appellant's psychiatric condition was caused or aggravated by the accepted employment injury. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.⁵ The opinions of Drs. Randolph or Summerlin are insufficient to support any continuing disability from appellant's accepted bulging C5 cervical disc without herniation injury.

Dr. Chindalore opined that appellant was totally disabled, but attributed her disability to her fibromyalgia. However, the Office has not accepted fibromyalgia as a work-related condition. Moreover, Dr. Chindalore provided no opinion as to the cause of appellant's fibromyalgia. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁶ Thus, Dr. Chindalore's report is insufficient to establish that appellant has any disability due to her accepted employment injury.

The Board finds that Dr. White's opinion that appellant's employment-related conditions had resolved constitutes the weight of the medical evidence. Accordingly, the Office met its burden of proof to justify termination of wage-loss compensation benefits.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation benefits.

⁵ *Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005).

⁶ *J.M.*, 58 ECAB ____ (Docket No. 06-2094, issued January 30, 2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 5, 2007 is affirmed.

Issued: November 8, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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