

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAYMOND W. BEHRENS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Washington, D.C.

*Docket No. 97-1289; Submitted on the Record;
Issued January 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that he had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's disability compensation.¹

Under the Federal Employees' Compensation Act,² when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.³ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased,⁴ even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁵

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.⁶ Thus, after the Office determines that an

¹ On February 12, 1991 the Board issued a Decision and Order, Docket No. 90-1770, remanding this case to the Office for further evidentiary development of whether appellant was entitled to waiver of the recovery of an overpayment in the amount of \$8,073.28. The Office granted waiver of the overpayment on May 28, 1991.

² 5 U.S.C. §§ 8101-8193 (1974).

³ *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

⁴ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁵ *John Watkins*, 47 ECAB ____ (Docket No. 94-1615, issued May 17, 1996); *Marion Thornton*, 46 ECAB 899, 906 (1995).

⁶ *William Kandel*, 43 ECAB 1011, 1020 (1992).

employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁷

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability during the period subsequent to the date when compensation is terminated or modified.⁸ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

In this case, appellant's notice of occupational disease, filed on July 13, 1979, was accepted by the Office for adjustment disorder of adult life with anxiety and depression, based on the opinions of Dr. Lawrence A. Brain and Dr. Don Stein, both Board-certified in psychiatry, and Dr. Carl Hanfling, Board-certified in family medicine. Appellant retired on July 16, 1980.

On December 6, 1995 the Office issued a notice of proposed termination of benefits, based on the February 13, 1995 report of Dr. Milton C. Williams, a psychiatrist, who found no evidence of continuing disability due to mental illness. Appellant responded to the notice with a letter from Dr. Williams stating that appellant would not be able to return to his regular work as a tax law specialist.

On January 10, 1996 the Office terminated appellant's compensation and medical benefits on the grounds that the medical evidence established that the work-related emotional condition had ceased. The Office noted that Dr. Williams attributed appellant's inability to return to work to his present age and 15 years of retirement.

Appellant timely requested an oral hearing, which was held on September 9, 1996. Appellant argued at the hearing that the issue was not whether he still suffered from a psychiatric illness but whether he could return to his former employment. Appellant stated that even if the employing establishment offered him a position, he would be unable to work because the stressful conditions that resulted in the diagnosed adjustment disorder had not changed over the years. Appellant testified that to meet its burden of proof in establishing that his disability no longer existed, the Office would have to put him back to work and see whether he could work.

On December 10, 1996 the hearing representative affirmed the termination order on the grounds that appellant was not entitled to compensation because he had no continuing disability from the work-related condition. The hearing representative noted that the Office erroneously paid compensation in the absence of any actual illness and that appellant's current preclusion from his former employment was based on the mere possibility of future injury.

⁷ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁸ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

⁹ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

The Board finds that the medical evidence establishes that appellant's work-related emotional condition has long since resolved and that he has no residuals of the accepted injury.

Dr. Williams found in his February 3, 1993 report, that appellant presented "with no evidence of psychiatric illness at this time." Dr. Williams repeated this opinion in his February 13, 1995 and January 2, 1996 reports. Second, as early as February 4, 1986, Dr. Brain reported that appellant's condition had resolved about one month after he stopped work in 1979. Finally, in April 1992, Dr. Paul W. Kantack, a Board-certified psychiatrist, concluded that appellant's depression was in remission, noting that appellant had had no major depressive episodes since last seen in 1989. Thus, the emotional condition caused by appellant's work no longer exists.

Appellant's physicians consistently indicated that he could not return to his former employment unless work conditions had changed and that at present he was unable to work because of his advanced age. Appellant argued that he was still disabled from working and thus entitled to compensation, because he had not been offered a position to which he could return.

These conclusions are immaterial to the issue of whether the work-related mental condition prevents appellant from working. The fact that no work at the employing establishment is available to appellant is no basis for entitlement to disability benefits if the disabling condition has resolved. The fact that appellant's physicians believed that he could sustain emotional injury if forced to work under similar circumstances is a future possibility, not a present disability.¹⁰ And the fact that appellant is now well into a "productive retirement," as noted by Dr. Brain, is not medical grounds for a finding of disability.

Inasmuch as the medical evidence is uncontradicted that appellant has no continuing disability resulting from the accepted work injury, the Board finds that the Office has met its burden of proof in terminating compensation.¹¹

¹⁰ See *Mary A. Geary*, 43 ECAB 300, 309 (1991) (finding that fear of future injury is not compensable under the Act); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

¹¹ See *Wanda E. Maisonet*, 48 ECAB ____ (Docket No. 94-2466, issued November 29, 1996) (finding that the weight of the medical evidence was sufficient to establish that appellant had no remaining residuals of her work-related back injury and noting that appellant's attending physician had reviewed videotapes of appellant's daily activities, which showed her in multiple episodes of lumbar squatting, running, dancing, and twisting).

The December 10, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 14, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member