

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK H. OZANICH and PEACE CORPS, NATIONAL
DEVELOPMENT FOUNDATION, Ocho Rios, Jamaica

*Docket No. 96-685; Submitted on the Record;
Issued January 14, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective October 16, 1994 on the grounds that he had no residuals of his December 1987 emotional condition; and (2) whether the Office's refusal to reopen appellant's case for reconsideration of the merits of his claim pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.

On December 2, 1987 appellant, then a 35-year-old peace corps volunteer, filed an occupational disease claim, alleging stress due to severe weight loss which he first became aware of on August 31, 1987.¹ Due to concern by the employing establishment over appellant's medical and psychological condition, appellant was medevaced to Washington, D.C., in early November 1987 for tests and observation. After examination by Dr. Zigmond Lebensohn, a psychiatrist, and Bruce Becker, Ph.D., a clinical psychologist, appellant was diagnosed with borderline personality disorder and was medically terminated by the employing establishment. On July 8, 1988 the Office accepted appellant's claim for personality disorder. On December 6, 1988 the Office authorized payment of compensation for temporary total disability. By letter dated July 28, 1994, the Office advised appellant that it proposed termination of his compensation on the grounds that he was no longer disabled by his employment injury. Appellant disagreed with this determination and submitted evidence he believed was supportive of his position. By decision dated September 15, 1994, the Office terminated appellant's compensation effective October 16, 1994, on the grounds that appellant had no continuing disability as a result of the accepted employment injury. Appellant disagreed and requested a hearing before an Office hearing representative. By decision dated June 5, 1995 and finalized June 9, 1995, an Office hearing representative affirmed the Office's September 1994 decision. Appellant requested reconsideration and submitted additional evidence in support of his claim.

¹ Appellant had lost approximately 30 pounds in a relatively short period of time.

By decision dated December 14, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review.

The Board has duly reviewed the case record and finds that the Office properly terminated compensation effective October 16, 1994.

Under the Act,² once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.³ After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁴

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 in the period subsequent to the date when compensation is terminated or modified.⁵ Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after October 16, 1994, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

In the present case, the Office initially proposed termination of appellant's compensation based on the March 9, 1994 report of Dr. H. Christian Harris, a Board-certified psychiatrist. He indicated that appellant had a preexisting borderline personality disorder at the time he entered the employing establishment's employ which was greatly aggravated by the events that transpired prior to his medical discharge. Dr. Harris reported that there was no evidence of any continuing aggravation of this condition and that appellant was capable of work from a psychiatric standpoint as there were no psychiatric disorders present which would preclude him from working. By letter dated March 29, 1994, the Office requested that Dr. Milton Ashley, a Board-certified psychiatrist and appellant's treating physician, review the report by Dr. Harris. In a letter dated April 27, 1994, Dr. Ashley indicated that in essence he agreed with Dr. Harris. He reported that appellant was working as a realtor, was doing fairly well and that his therapy was almost completed. Dr. Ashley said that appellant would ultimately benefit from an additional six months of therapy; however, he was working productively and that although his income was not up to what he received in compensation, this was no reason not to discontinue or close his case. Although appellant submitted a letter dated August 23, 1994 in which he stated that he was still disabled by the damage to his self-esteem caused by the actions of the employing establishment leading up to his transportation to Washington, D.C., and his medical termination and in which he reiterated his view of those proceedings, his lay assertions cannot

² 5 U.S.C. § 8101 *et seq.*

³ *William Kandel*, 43 ECAB 1011 (1992).

⁴ *Carl D. Johnson*, 46 ECAB ____ (Docket No. 94-404, issued May 31, 1995).

⁵ *Dawn Sweazey*, 44 ECAB 824 (1993).

⁶ *Mary Lou Barragy*, 46 ECAB ____ (Docket No. 93-2326, issued May 25, 1995).

overcome the rationalized medical opinion of Dr. Harris with which his treating physician concurred. The Office has met its burden of proof to justify termination of appellant's compensation effective October 16, 1994.

The Office further finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁷ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁸ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁹

With his request for reconsideration appellant submitted a medical report dated July 20, 1995 by Dr. Ashley. In this report, Dr. Ashley noted that appellant was in psychotherapy twice a week and was struggling to overcome the damage caused by his misdiagnosis/mistreatment in Washington, D.C., by Dr. Lebensohn. Dr. Ashley indicated that this problem manifested itself in obsessive-compulsive behavior. Contrary to the opinion provided in Dr. Ashley's report, there is no evidence in the record that Dr. Lebensohn misdiagnosed appellant. In fact his diagnosis of borderline personality disorder was the basis for the Office's initial acceptance of appellant's claim. The compensable work factor which aggravated appellant's emotional condition was a misunderstanding about the causes of his weight loss and his skin condition while he was on assignment in Jamaica, not his subsequent treatment. In addition, the condition cited by Dr. Ashley, obsessive-compulsive behavior, is not the accepted emotional condition in this case. Therefore, this report is not relevant to the central issue in this case, whether appellant has continuing residual disability due to his personality disorder.¹⁰ Consequently, appellant did not present sufficient evidence to warrant merit review of the Office's prior decision and the Office did not abuse its discretion in denying appellant's request for reconsideration.

⁷ 20 C.F.R. § 10.138(b)(2).

⁸ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁹ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹⁰ *Id.*

The decisions of the Office of Workers' Compensation Programs dated December 14 and June 5 and finalized June 9, 1995 are hereby affirmed.

Dated, Washington, D.C.
January 14, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member