

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH L. ANDERSON and FARM CREDIT ADMINISTRATION,
OFFICE OF EXAMINATION, Spokane, WA

*Docket No. 98-2415; Submitted on the Record;
Issued April 6, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation benefits effective January 4, 1998.

On June 12, 1989 appellant, then a 36-year-old examiner, filed a notice of occupational disease alleging that he developed post-traumatic stress syndrome as a result of his fear of traveling by airplane in the course of his federal employment.

On June 6, 1989 the Office accepted appellant's claim for the condition of "simple phobia (of flying)" and placed appellant on the periodic rolls to receive compensation for temporary total disability. The Office subsequently reduced appellant's compensation based on his ability to earn wages as an accountant.

The Office subsequently referred appellant, along with a statement of accepted facts, to Dr. David Bot, a Board-certified psychiatrist, for a second opinion examination. On October 9, 1995 Dr. Bot reviewed the history of appellant's injury. He noted that on July 11, 1988 appellant experienced extreme turbulence. Dr. Bot indicated that appellant stated he feared turbulence rather than flying. Following a mental examination, he diagnosed a specific, situational-type phobia of airplane turbulence as opposed to a fear of flying. Dr. Bot stated that this diagnosis was directly related to the July 11, 1988 incident. He stated that appellant's phobia would continue to disable him from his usual work as an employing establishment examiner. Dr. Bot restated that appellant did not have a fear of flying, but a fear of turbulence.

On October 30, 1995 Dr. Bot wrote that appellant had a marked persistent fear of turbulence and that he also would have an anxiety response if he experienced turbulence. He concluded that these two factors disabled appellant from his previous employment as an examiner.

On January 3, 1996 the Office issued a proposed notice of termination on the basis that disability from appellant's injury had ceased. The Office allowed appellant 30 days to submit additional argument or evidence.

By decision dated December 30, 1997, the Office finalized its proposed termination of compensation. In an accompanying memorandum, the Office stated that Dr. Bot's medical opinion establishing that appellant had no continuing disability as a result of the accepted condition, but only a fear of future exposure to potentially harmful conditions, represented the weight of the medical evidence.

On January 26, 1998 appellant requested a written review of the record.

By decision dated June 18, 1998, the Office hearing representative affirmed the Office's December 30, 1997 decision terminating benefits. The hearing representative found that Dr. Bot's well-rationalized opinion represented the weight of the medical evidence and established that appellant's condition only stemmed from his fear that he would experience turbulence while flying and that employment-related disability would result.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits effective January 4, 1998.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or 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.¹ Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.² To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires further medical treatment.³

In the present case, the Office accepted appellant's claim that his fear of flying disabled him from his position as an examiner, which required frequent air travel and awarded appellant compensation benefits. On October 9 and 30, 1995 Dr. Bot, a second opinion physician and a Board-certified psychiatrist, relied on appellant's recitation of his history, to find that he feared turbulence while flying, rather than the separate act of flying. Consequently, Dr. Bot opined that appellant was disabled due to a marked persistent fear of turbulence and his fear that experiencing turbulence would create an anxiety response. Both the Office hearing representative, in its June 18, 1998 decision and the Office, in its December 30, 1997 decision, terminated appellant's benefits based on their assessment that Dr. Bot's opinion established that appellant feared future injury from turbulence rather than flying. Nevertheless, his opinion, that appellant feared turbulence, which is an inherent part of all flying, and that this fear was

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

² *Furman G. Peake*, 41 ECAB 361, 364 (1990).

³ *Id.*

disabling, actually supports appellant's contention that he remains disabled from his accepted condition. Dr. Bot's opinion, therefore, is not a sufficient basis for terminating appellant's compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated June 18, 1998 and December 30, 1997 are reversed.

Dated, Washington, D.C.
April 6, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member