

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL D. TUDOR and GENERAL SERVICES ADMINISTRATION,
OFFICE OF PUBLIC BUILDINGS & REAL PROPERTY, Houston, TX

*Docket No. 97-1695; Submitted on the Record;
Issued January 24, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for psychiatric care beginning November 13, 1996.

On July 21, 1986 appellant, then a 38-year-old custodial work inspector, sustained injuries to his back and legs while in the performance of duty. Appellant stopped work and did not return. The Office accepted appellant's claim initially for lumbar strain and later included the following accepted conditions: permanent aggravation of degenerative lumbar disc disease with multiple surgeries and aggravation of mixed bipolar disorder.¹ Appellant was hospitalized and the Office authorized treatment for appellant's emotional condition on numerous occasions between 1991 and November 1996. However, by decision dated February 6, 1997, the Office denied appellant's claim for admission and medical treatment at the West Oaks Psychiatric Hospital beginning November 13 to December 6, 1996 on the grounds that appellant had reached his baseline psychiatric status and his admission was not causally related to his accepted employment injuries.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.² After it has been determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

¹ The Office also determined that the following conditions and surgeries were not work related: a 1963 knee injury; a 1980 automobile accident; a 1983 laminectomy; a 1984 foraminotomy; a 1984 fusion; an October 1985 fusion; and a laminectomy.

² *Mohamed Yanis*, 42 ECAB 325 (1991).

without establishing that the disability has ceased or that it is no longer related to the employment.

Section 8103(a) of the Federal Employees' Compensation Act provides for furnishing to an injured employee "the services, appliances and supplies prescribed by a qualified physician," which the Office "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."³ The Board has found that the Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.⁴

In the present case, appellant had been under treatment on essentially a continuous basis for his psychiatric condition from January 1996 through his admission into the West Oaks Psychiatric Hospital. Dr. George Santos, one of appellant's prior treating physicians referred appellant to the hospital for treatment by Dr. Michael D. Lesem, a Board-certified psychiatrist. The Office authorized Dr. Lesem's evaluation of appellant to allow appropriate medicine to be prescribed, but did not authorize admission or further treatment. In denying psychiatric treatment on and after November 13, 1996, the Office indicated that Dr. Lesem related appellant's admission to a separation from his wife. The Office further reported that Dr. Martin Ceasar, a prior Office referral physician and Board-certified psychiatrist, had indicated that appellant reached his baseline emotional condition prior to January 1, 1996. However, a review of the medical admission reports for appellant reveals that, while his separation from his wife was one factor leading to the deterioration of his emotional condition, appellant was also distressed by ongoing chronic pain from his back condition. A review of the record further reveals that, while in his January 1, 1996 report, Dr. Ceasar did find that appellant's aggravation of his bipolar disorder was minimal and insignificant, in an addendum to that report dated January 15, 1996, Dr. Ceasar changed his position. He indicated that appellant had sustained a major set back after a visit to his wife, that appellant's mood stability was contingent on a structured and safe environment and that appellant was likely to require a minimum of three months in a day treatment setting with movement thereafter to a halfway house after he regained his emotional stability. Thus, the medical reports from Dr. Lesem support a casual relationship between appellant's treatment and his accepted employment injuries and the report by Dr. Ceasar does not contradict this inference. While the reports by Dr. Lesem are not sufficient to establish that appellant's emotional condition is causally related to his accepted employment injuries, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. In the present case, as there was an uncontroverted inference of causal relationship, the Office was obligated to request further information from appellant's treating physician. On remand the Office should further develop the evidence by providing Dr. Lesem with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether appellant's emotional condition is causally related to his accepted injuries. After such development as the Office deems necessary, a *de novo* decision shall be issued.

³ *Id.*

⁴ *James F. Archie*, 42 ECAB 180 (1991); *William E. Gay*, 38 ECAB 599 (1987).

The decision of the Office of Workers' Compensation Programs dated February 6, 1997 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
January 24, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member