United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 10-604**
	)	**Issued: December 15, 2010**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Atlanta, GA, Employer	)	

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 January 4, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 2, 2009 which terminated his compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUE

The issue on appeal is whether the Office properly terminated appellant's compensation and medical benefits effective November 22, 2009.

FACTUAL HISTORY

On December 17, 1987 appellant, then a 29-year-old correctional officer, filed a traumatic injury claim alleging that he sustained an emotional condition on November 23, 1987.

[1] The Board notes that, following issuance of the November 2, 2009 decision, the Office issued a January 13, 2010 decision denying appellant's request for a hearing as untimely. However, as appellant filed his appeal with the Board on December 21, 2009, the Office's January 13, 2010 decision is null and void as it pertains to the same issue over which the Board has jurisdiction. *See Arlonia B. Taylor,* 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

He was held hostage from November 23 to December 3, 1987 by rioting Cuban detainees at the employing establishment while in the performance of duty. Appellant stopped work on December 14, 1987. The Office accepted his claim for stress reaction, post-traumatic stress disorder and dermatitis. Appellant returned to work on March 28, 1992. However, he stopped work again in June 1998 and did not return. The Office paid wage-loss compensation for injury-related disability.

On April 14, 2009 the Office referred appellant to Dr. Gregory A. Haley, a Board-certified psychiatrist, for a second opinion regarding his current status and work ability.[2] In a May 4, 2009 report, Dr. Haley noted appellant's history and examined him. Appellant reported that he preferred to avoid people other than his family although he noted that he had coached a boy's basketball team for two to three nights a week for 10 years. On examination, his thought processes were logical and sequential. Appellant liked to "point out the actions of others in regard to his stressors and spend relatively little attention on his own actions." He showed a "great deal of agitation if this point is pursued." Dr. Haley noted that, while appellant had a general distrust of others; it was not severe enough to prevent him from dealing with excitable kids and parents for the last 10 years as a coach. Appellant reported his reasons for not working included, "being lied to," an angry incident with another coemployee, accruing enough time in the government for retirement and "paranoia seeping up sometimes." He was calm and appropriate throughout until he was challenged. Dr. Haley noted that appellant flipped his papers, became agitated and shouted "if you don't value what I did for this country." He noted that appellant turned off abruptly and while appearing "a little tearful" advised him that "you may be right doc, I may need to get some treatment for this" on his way out. Dr. Haley explained that he was merely pointing out recommendations from 2006 and 2007 evaluations. He observed that appellant was well oriented, aware of current events and had a good fund of common knowledge and average intellect. Dr. Haley noted that appellant had applied to various federal agencies including a sheriff's office. He noted that he was not offered any position or told that his pay requirements could not be met.

Dr. Haley observed that appellant did not avoid the position for fear that he could not manage it. Appellant indicated that he was not changing careers because he did not wish to start over and he was not going to do manual labor. Dr. Haley found that appellant did not have residuals from the employment injury. He attributed appellant's distrust of others, poor sleep and occasional violent dreams to his personality composition/perspective and not to the employment trauma. Dr. Haley noted that appellant was able to tolerate parents of a children's basketball league for 10 years, twice a week. If he thought that appellant had significant residuals, he would recommend the same treatment that was recommended in 2006 and 2007 which appellant chose not to pursue. Dr. Haley opined that "choice on his part is the best indication of the level of distress/limitation his reported symptoms cause him on an ongoing basis" and noted appellant's pursuit of other law enforcement positions since the trauma. He

[2] An earlier 2009 appointment with another physician was cancelled when the physician refused to see appellant after threatening telephone calls were made to the physician's office. Prior to this, the record reflects that the Office referred appellant to Dr. David B. Rush, a clinical psychologist, who, on March 15, 2006, diagnosed chronic work-related post-traumatic stress disorder. Dr. Rush noted that appellant did not actively seek treatment and might be presenting himself less favorably than his average functioning would indicate. He opined that appellant could work in a low stress environment. In an April 30, 2007 report, Dr. Brian Teliho, a Board-certified psychiatrist and Office referral physician, opined that appellant could not work as he had active post-traumatic stress disorder that needed to be stabilized through therapy or medication before returning to work.

explained that appellant would "object vociferously to this report and to me and will resist return to work. I think his demonstrations of threatening behavior under duress could eventually lead to trouble and or violence with him, but I do n[o]t relate it to one incident of three traumatic days in 1987." Dr. Haley opined that there was "nothing I can determine that would prevent him working other than his distaste for what he believes to be a step back in type of employment and not being properly valued for his contribution to this country by continuing his disability." He diagnosed resolved post-traumatic stress disorder, a personality disorder, knee trouble, early hypertension, marital, family and financial stressors. Dr. Haley completed a work capacity evaluation. He advised that appellant was capable of working an eight-hour day. Dr. Haley opined that appellant "should easily be able to perform any and all office work he is educated appropriately for with full contact with the public." He indicated that, while appellant was pursuing positions in allied fields, with allied populations his disposition was not suited to direct prison inmate contact or control.

On August 21, 2009 the Office issued a notice of proposed termination of compensation. It proposed to terminate appellant's compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Haley, established that the residuals of the work injury of November 23, 1987 had ceased.

In a November 2, 2009 decision, the Office terminated appellant's compensation benefits effective November 22, 2009. It found that the weight of medical evidence rested with Dr. Haley and supported that appellant no longer had residuals of the accepted work-related conditions.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[3] Having determined that an employee has a disability causally related to his or her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[4]

ANALYSIS

In the instant case, the Office accepted that appellant sustained reaction, post-traumatic stress disorder and dermatitis.

On April 14, 2009 the Office referred appellant for a second opinion examination with Dr. Haley, a Board-certified psychiatrist. The Board notes that the most recent medical reports of record before that of Dr. Haley were from the second opinion examinations in 2006 and 2007.[5] The Office properly referred appellant for an updated second opinion evaluation.[6]

[3] *Curtis Hall,* 45 ECAB 316 (1994).

[4] *Jason C. Armstrong,* 40 ECAB 907 (1989).

[5] *See supra* note 2. There is no medical evidence supporting any ongoing work-related dermatological condition.

[6] *See* 20 C.F.R. § 10.320.

In a May 4, 2009 report, Dr. Haley examined appellant and explained that he was well oriented, aware of current events and had logical and sequential thought processes. While appellant was generally distrustful of others, his condition was not severe enough to prevent him from dealing with children and parents for 10 years as a coach. Dr. Haley noted that appellant was calm and acted appropriate until he was challenged, but he was able to cease such behavior abruptly. He noted that appellant had applied for jobs with federal agencies and a sheriff's office and observed that he did not avoid the positions for fear that he could not manage them. Rather, appellant informed him that he was not changing careers because he did not wish to start over and was averse to manual labor. Dr. Haley concluded that appellant did not have any residuals from the employment injury, finding that his post-traumatic stress disorder had resolved. He explained that appellant was able to tolerate parents of a children's basketball league for 10 years and that he had chosen not to pursue treatment. Dr. Haley attributed appellant's distrust of others to his personality composition and perspective which was not due to his employment. He opined that appellant's demonstrations of threatening behavior under duress could lead to trouble and or violence, but it was not related to the employment-related trauma from 1987. Dr. Haley found nothing that would prevent appellant from work "other than his distaste for what he believes to be a step back in type of employment and not being properly valued for his contribution to this country by continuing his disability." He opined that appellant could work eight hours daily. Dr. Haley advised that appellant "should easily be able to perform any and all office work he is educated appropriately for with full contact with the public." He noted that he did not find appellant's "disposition suited to direct prison inmate contact or control." Dr. Haley did not attribute any inability to work to the accepted employment exposure or conditions.

The Board finds that Dr. Haley's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted conditions. The Board also notes that there are no current reports from a treating physician to contradict these findings. Because appellant no longer has residuals or disability related to his accepted November 23, 1987 employment condition, the Office properly terminated entitlement to wage-loss compensation and medical benefits effective November 22, 2009. Accordingly, the Office's decision to terminate appellant's compensation and medical benefits shall be affirmed.

On appeal, appellant alleged that he was subjected to a very high level of sabotage and fraud which was directed at him and his family. He contended that Dr. Haley's report was fraudulent and misrepresented the facts on six occasions but did not submit any medical evidence to counter the findings made by Dr. Haley or other evidence to support bias or misrepresentation. Appellant did not provide evidence, as requested on August 21, 2009 while he submitted additional evidence with his appeal, the Board has no jurisdiction to review such evidence for the first time on appeal.[7]

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's benefits effective November 22, 2009.

[7] 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952). This decision does not preclude appellant from seeking to have the Office consider such evidence pursuant to a reconsideration request filed with the Office.

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2010
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