

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROGER M. GIFFORD and PEACE CORPS,  
Washington, D.C.

*Docket No. 97-507; Submitted on the Record;  
Issued December 7, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective August 15, 1995.

On August 11, 1994 appellant, then a 23-year-old teacher, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on July 23, 1994 he first realized his manic depression was due to the stress he felt while working in Morocco. Appellant stopped work on August 3, 1994. Appellant left Morocco and has not returned to the employing establishment. The Office accepted appellant's claim for bipolar disorder, manic episode in remission.

In a report dated July 6, 1995, Dr. Dan Schellenberg, an attending Board-certified psychiatrist, opined that appellant's episode of psychotic mania was in remission. Dr. Schellenberg also noted that appellant was "not in an affective episode currently; however, I see him as somewhat fragile." Dr. Schellenberg also noted that appellant was being treated with lithium and when the lithium levels dropped, he had "more mood lability."

By decision dated August 15, 1995, the Office terminated appellant's medical and wage-loss compensation on the basis of Dr. Schellenberg's opinion.<sup>1</sup> The Office noted that as appellant's manic episode was in remission that the medical evidence established that appellant no longer suffered from any residuals disability due to his accepted employment injury.

By letter dated August 7, 1996, appellant requested reconsideration and submitted evidence in support of his request.

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<sup>1</sup> In a July 5, 1996 letter, the Office noted that a copy of the appeal rights was not attached to the decision and the Office may have made an error and failed to enclose the appeal rights with the decision. The Office then advised appellant's mother as to appellant's appeal rights.

In a letter dated August 20, 1996, Dr. Schellenberg noted that he treated appellant from August 22, 1994 through December 29, 1995 when appellant was transferred to another psychiatrist. Regarding appellant's bipolar disorder, Dr. Schellenberg opined:

“In terms of any connection to his time in Morocco and the onset of his illness, I should say that I do not believe that acute stresses are the cause of his having bipolar disorder. However, acute stresses such as have occurred being in a different culture in Morocco have been associated with the onset of specific episodes of the bipolar disorder. The bipolar disorder is a recurrent disorder that has frequent relapses.”

In a letter dated September 5, 1996, Dr. James V. Lozer, appellant's treating certified rehabilitation counselor and licensed psychologist, stated he had been treating appellant for his bipolar disorder since September 19, 1995. Dr. Lozer opined “that the stresses he experienced while serving as a Peace Corps volunteer in Morocco precipitated, aggravated, and accelerated his underlying tendency to develop a psychotic disorder.” Dr. Lozer also opined that appellant “never fully recovered from his bipolar disorder and continues to function at a very minimal level.”

By decision dated September 27, 1996, the Office affirmed the August 15, 1995 decision terminating appellant's compensation and medical benefits.

The Board finds that the Office did not meet its burden of proof in terminating compensation.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup> If the Office, however, meets its burden of proof and properly terminates compensation, the burden for reinstating compensation benefits shifts to appellant.<sup>5</sup>

In the present case, the Office accepted the diagnosis of bipolar disorder, manic episode in remission. In its termination decision, the Office relied upon Dr. Schellenberg's opinion that appellant was in remission from his accepted employment injury. In a letter dated July 6, 1995, Dr. Schellenberg opined that appellant was in remission from his episode of psychotic mania and that he saw “him as somewhat fragile.” In a subsequent letter dated August 20, 1996, Dr. Schellenberg, noted that “bipolar disorder is a recurrent disorder that has frequent relapses”

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<sup>2</sup> See *Pedro Beltran*, 44 ECAB 222 (1992); *Mary E. Jones*, 40 ECAB 1125 (1989).

<sup>3</sup> See *Virginia Davis-Banks*, 44 ECAB 389 (1993).

<sup>4</sup> See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> See *Virginia Davis-Banks*, *supra* note 3; *Joseph M. Campbell*, 34 ECAB 1389 (1983).

and that the stresses appellant had in Morocco “have been associated with the onset of specific episodes of bipolar disorder.” The issue is whether there is any causal relationship between a continuing disabling condition and compensable factors of employment. Dr. Schellenberg has offered no opinion as to whether appellant’s disability ceased or is no longer causally related to his federal employment. The mere fact that the condition is in remission does not establish that appellant is no longer disabled due to the accepted condition or that he does not require further medical treatment.

It is the Office’s burden to establish that employment-related disability or residuals have ceased before it may terminate benefits. In order to meet this burden there must be probative medical evidence that disability has ceased or is no longer causally related to employment. The Board finds that the medical evidence of record is not of sufficient probative value to meet the Office’s burden in this case.

The decision of the Office of Workers’ Compensation Programs dated September 27, 1996 is reversed.

Dated, Washington, D.C.  
December 7, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member