

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD M. McGLYNN and U.S. POSTAL SERVICE,
POST OFFICE, Honolulu, Hawaii

*Docket No. 96-1199; Submitted on the Record;
Issued February 18, 1998*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits for the accepted condition of aggravation of post-traumatic stress disorder (PTSD).

On September 15, 1994 appellant, then a 49-year-old letter carrier, filed a claim alleging that the constant dropping of mail trays, loud noises, and the stress of having to learn five new routes exacerbated his PTSD. Appellant was hospitalized at the end of August 1994 for his symptoms.

By report dated September 29, 1994, Dr. Anthony J. Holzgang, a Board-certified psychiatrist, noted that he had treated appellant since his August 27, 1994 hospitalization, that when he was transferred to the Kahala branch of the employing establishment the noise level was much higher, that he had disagreements with his supervisor and alienation from his peers, that he had to learn five new routes, and that appellant was particularly upset by mail trays being dropped behind him which sounded much like gunfire to him. Dr. Holzgang noted that appellant was a 30-year military veteran who saw significant action in Viet Nam, described appellant's dreams, nightmares and flashbacks, and opined that the stress of his new position caused appellant to manifest symptoms of his PTSD. In a September 30, 1994 report, Dr. Holzgang noted appellant's admitting diagnosis as an acute episode of PTSD brought on by conditions at work, and he indicated that appellant was scheduled for further in-patient treatment for PTSD in January 1995. By letter dated January 3, 1995, appellant indicated that he was an in-patient for treatment and would remain so until March 10, 1995.

On July 3, 1995 an Office medical adviser, Dr. Ellen Pichey, reviewed the case record and opined that appellant's work activities caused an aggravation of the PTSD condition. On July 7, 1995 the Office accepted that appellant sustained an aggravation of PTSD. The Office accepted as compensable work factors that mail trays were dropped and that appellant had to learn five new mail routes.

In a July 7, 1995 statement of accepted facts, the Office noted the accepted compensable factors of employment and indicated that the Office accepted appellant's claim for an aggravation of PTSD. In accompanying questions, the Office asked whether appellant had any emotional condition at that time, whether it was a temporary or permanent aggravation, and when it ended. Appellant was referred to Dr. Mohan Nair, a Board-certified psychiatrist, for a second opinion medical evaluation.

By report dated September 28, 1995, Dr. Nair repeated appellant's version of his history of injury, provided a psychosocial history for appellant, and described his educational attainments, reporting that appellant did poorly in school, had trouble reading and writing, dropped out in the eleventh grade, and had no college or technical training other than in the military. Dr. Nair reported appellant's psychiatric history stating that appellant felt severely stressed and started having flashbacks in January 1994, that his first psychiatric hospitalization was in August 1991 related to the Gulf War, that his PTSD symptoms have been present at least from 1989 or 1990, but that he developed psychiatric symptoms only after he was transferred to the Kahala position in July 1994. Dr. Nair reported that appellant had PTSD symptomatology including flashbacks while in the military during training accidents, which required that he take leave, and indicated that appellant never had any problems in the military and the military formed a support system that kept his PTSD under control. Dr. Nair stated that the stress of the new position after the transfer to Kahala was central in causing appellant's symptoms, and that without the situation at work it was likely appellant would not have developed the symptoms. Dr. Nair indicated that appellant's symptoms were based on his poor adjustment to civilian life after 30 years in the military coupled with delayed affects of repeated combat exposure, and stated that retirement, medical illness and the aging process could serve as triggers that activate latent PTSD. Dr. Nair opined that appellant's feelings of helplessness as a postal trainee triggered his latent PTSD symptoms, including intrusive flashbacks. He noted that appellant's symptoms stemmed from preexisting PTSD and from his abrupt transition from military to civilian life, and opined that they were not the result of his work environment or interaction with postal personnel. Dr. Nair stated that while on active duty appellant had been exposed to live gun fire and explosions without having flashbacks or PTSD symptoms, yet had nightmares, flashbacks, and mood disturbances while active in military training and in 1990 or 1991 when dealing with the Gulf War. Dr. Nair stated that appellant's early childhood losses, his absence of a support system, and his discharge from the military were the factors causing the resurgence of PTSD. He added that the increased stress and resurfacing PTSD symptoms, once appellant began working with the employing establishment were due to reading problems and marital difficulties.

Dr. Nair noted that, the Office accepted that appellant sustained an aggravation of PTSD due to the noise of trays dropping and having to learn five new routes. He opined that loud noises within the workplace were not the proximate cause of appellant's resurgent PTSD. Dr. Nair further opined that the stress from changing routes was due to appellant's life long reading and writing problems, and the direct cause of the employment stress was a preexisting developmental reading disorder. He stated that, with respect to appellant's learning five new routes, it should be borne in mind that appellant had accomplished tasks of great complexity in the past, but that the PTSD caused him problems with learning routes and that his learning new routes was complicated by his use of alcohol. Dr. Nair concluded that neither the noise level, the

specific noises, nor the need to learn new routes aggravated, precipitated, accelerated or was the proximate cause of appellant's emotional psychiatric condition. Dr. Nair opined that appellant's accepted aggravation of PTSD was not related to the accepted employment factors but was wholly connected to his preexisting PTSD and developmental reading disorder. Dr. Nair also concluded that appellant had no residue symptoms related to his accepted condition of aggravation of PTSD.

On November 9, 1995 the Office issued appellant a notice of proposed termination of compensation finding that Dr. Nair's report constituted the weight of the medical opinion evidence. The Office found that Dr. Holzgang's report was inconsistent and of diminished probative value, and that Dr. Nair's was the weight of the evidence because it was based upon a complete history, and established that appellant's condition was not causally related to his employment.

On December 11, 1995 the Office issued a decision rejecting appellant's claim finding that the weight of the medical evidence supported that appellant did not suffer an emotional condition causally related to his employment. It then stated that it was terminating compensation that date because the evidence established that appellant had no psychiatric condition causally related to his employment.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation based on an unresolved conflict of medical opinion.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.² The Office did not meet its burden of proof to terminate appellant's compensation in this case.

In the instant case, the Office accepted that appellant sustained an aggravation of PTSD causally related to his employment, based upon the medical reports of Dr. Holzgang who found that appellant's PTSD was aggravated by factors of his federal employment, specifically due to dropped mail trays and the requirement he learn new postal routes. Appellant was subsequently referred to Dr. Nair, an Office referral physician, who opined that appellant's PTSD symptoms were based on appellant's inability to adjust to civilian life, his military retirement, medical illness and the aging process. He concluded that the accepted factors of appellant's employment did not cause or aggravate his emotional disability.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is disagreement between the physician making the examination for the

¹ *Harold S. McGough*, 36 ECAB 332 (1984); see Federal (FECA) Procedure Manual, Part 2 – Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (March 1987).

² See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” The Board finds that there is an unresolved conflict of medical opinion between Dr. Holzgang and Dr. Nair.

As the conflict remains unresolved, the termination decision must be reversed.

Consequently, the decision of the Office of Workers’ Compensation Programs dated December 11, 1995 is hereby reversed.

Dated, Washington, D.C.
February 18, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member