

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RONALD L. SIMPSON and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, Calif.

*Docket No. 97-1288; Submitted on the Record;  
Issued April 21, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

On November 6, 1978 appellant, a 27-year-old security guard, became involved in a physical altercation at work when he responded to a radio call allegedly requesting him to prevent an individual from taking packages from the building he was guarding. Appellant forcibly stopped the car in which an employee was sitting, then exchanged punches with the employee after he exited the car. Appellant handcuffed the employee and used force to place him in the back of his police car. The employee was released from custody by another security guard and, following an internal investigation and administrative hearing, appellant was terminated by the employing establishment on February 23, 1979.<sup>1</sup>

Appellant was examined on November 6, 1979, by Dr. Leonard W. Kram, Board-certified in psychiatry and neurology. He related appellant's allegations of being harassed and placed under stress by the employing establishment during the last two years of his federal employment and opined that this harassment and stress resulted in his becoming withdrawn and experiencing sleeplessness, extreme depression, nightmares and suicidal thoughts. Dr. Kram, after noting that appellant had undergone psychiatric treatment in 1969 and 1970, diagnosed anxiety neurosis with depressive features and found that appellant was temporarily totally disabled from any type of work due to his psychiatric condition and required psychiatric treatment. He opined that appellant should be considered permanently disabled from any future work as a security guard or any other form of employment with the employing establishment.

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<sup>1</sup> Appellant filed a claim for benefits based on traumatic injuries resulting from this incident on November 8, 1978, which the Office denied in a decision dated June 25, 1979.

Appellant filed a Form CA-2 claim for benefits on April 28, 1980, seeking benefits based on “continuous exposure to harassment and aggravation of psychiatric disability,” which the Office accepted on June 7, 1983 for incremental anxiety and depression.

By letters dated March 2, 1995, the Office scheduled appellant for a second-opinion examination on March 30, 1995 to determine whether he was currently suffering any residuals from his employment-related psychiatric condition.

In a report dated March 24, 1995, Dr. Kram, appellant’s treating psychiatrist, submitted a medical report updating appellant’s emotional and psychiatric condition. He stated that there had been little change in appellant’s clinical status since September 17, 1991 and that he had not been engaged in any form of gainful employment since that time. Dr. Kram advised that appellant was permanently and totally disabled on a psychiatric basis from any type of employment.

Appellant was examined on March 30, 1995, by Dr. Jerome H. Franklin, Board-certified in psychiatry and neurology and the second opinion physician, who found that at the present time appellant did not exhibit the incremental anxiety and depression that he had in the past. He stated:

“[Appellant does have an emotional or psychiatric condition best described as an [a]typical [p]ersonality [d]isorder with [s]chizoid and [p]ersonality [t]raits. This is a life-long pattern which may have been aggravated by his employment at the [employing establishment], but at this point that [p]ersonality [d]isorder is at a level where it would be regardless of whether he worked for the [employing establishment] or not. In my opinion, his [c]hronic [p]ersonality [d]isorder is no longer being impacted by his employment at the [employing establishment].

“I have reviewed the detailed work analysis as described in the [s]tatement of [accepted] [f]acts and, although there were specific work factors that might have exacerbated or aggravated his condition, at the present time these factors are no longer operative. I do not believe that they further contribute[d] to his current emotional or psychiatric condition.”

Dr. Franklin concluded:

“I do not believe that his current psychological status is present on an industrial basis. I feel, if anything, his current status reflects the natural progression of a preexisting disorder which dated back a number of years prior to his employment with the [employing establishment]. Although the job with the [employing establishment] might have aggravated his condition for a short period of time, this was temporary and he has now returned to his premorbid level of psychopathology.”

In a notice of proposed termination dated May 16, 1995, the Office, relying on Dr. Franklin’s opinion, advised appellant that the weight of the medical evidence showed he no longer suffered from any residuals of his work-related psychiatric condition of incremental

anxiety and depression. The Office allowed appellant 30 days to submit additional evidence or a legal argument in opposition to the proposed termination.

In response to the Office's notice of proposed termination, appellant submitted a May 23, 1995 report from Dr. Kram. He stated that there had been little change in appellant's clinical status since September 27, 1991 and that he had been suffering from major depression and mixed personality disorder with paranoid and schizoid features since he began treating him in 1983. Dr. Kram advised that appellant had unsuccessfully attempted to rehabilitate himself in the past and had been unable to hold a job more than several months, that he had not been engaged in any type of work since 1988 and that his condition had not improved to the extent that he could realistically expect to compete in the open labor market. He reiterated that appellant was totally and permanently psychiatrically disabled and opined that the prognosis for improvement in the foreseeable future was poor. Dr. Kram concluded that appellant's disability began as a result of his employment with the employing establishment and had not improved sufficiently to warrant a discontinuation of medical benefits.

By letters dated July 24, 1995, the Office advised appellant that there was a conflict in the medical evidence regarding whether he still suffered residuals from his accepted psychiatric condition and that it therefore scheduled him for a independent, impartial medical examination on August 10, 1995 with Dr. Hyla R. Cass, Board-certified in psychiatry and neurology, in order to resolve this conflict.

In a report dated August 29, 1995, Dr. Cass found that it was clear appellant was psychiatrically disabled and that because of his eccentricities and inability to get along with others, he was unemployable. He stated that appellant was suffering from anxiety, depression, and a personality disorder with schizoid and paranoid traits and that he had a preexisting psychiatric disability as noted by treatment reports from 1970. Dr. Cass opined that there may have been an aggravation of appellant's symptoms as a result of his termination from the employing establishment, which would have caused a temporary total disability for some months afterward. He stated, however, that by the time of his examination 16 years later, particularly in view of his preexisting psychiatric disorder, appellant's current disorder was due to the natural progression of the preexisting disorder. Dr. Cass advised that the specific work factors that might have contributed to his current emotional condition would relate to his perception of persecution, which related back to his paranoid personality rather than to any real work-related issues and that his current condition was one of total disability in terms of the regular job market. He explained that appellant was unable to give or take supervision and unable to cooperate with others because of his paranoia.

Dr. Cass stated that appellant's psychiatric disorder was likely the cause of his difficulty at the employing establishment, which led to his termination and that while the circumstances of his termination may have caused him distress and some exacerbation of symptoms, he was still able to resume work some time later, as well as completing paralegal training and his master's thesis. He concluded that, in his opinion, appellant was totally disabled on a psychiatric basis and that his ability to hold other jobs since his termination indicated that, at that point, he had some ability to function. Therefore, Dr. Cass felt that appellant's current deterioration was due to the natural progression of his illness rather than factors of his federal employment.

By decision dated October 27, 1995, the Office, relying on the opinion of Dr. Cass, the independent medical examiner, found that appellant's accepted psychiatric/emotional condition had resolved as of November 11, 1995 and terminated his compensation effective November 12, 1995.

By letter dated July 12, 1996, appellant requested reconsideration of the Office's previous decision.

By decision dated July 17, 1996, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

By letter dated October 3, 1996, appellant requested reconsideration of the Office's previous decision. Accompanying appellant's request was a September 1, 1996 medical report from Dr. Samuel H. Albert, Board-certified in psychiatry and neurology, who reviewed the medical record and case file and concluded that Dr. Cass's August 29, 1995 report was neither thorough nor well rationalized, was not based on the statement of accepted facts and should therefore be excluded from the weight of medical evidence in the case. Dr. Albert recommended that appellant be referred to a different independent medical examiner.

By decision dated February 18, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain a review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>2</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>3</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>4</sup>

In the present case, appellant failed to show in his October 3, 1996 letter that the Office erroneously applied or interpreted a point of law or fact not previously considered by the Office; nor did he advance a point of law not previously considered by the Office. Neither has he submitted relevant and pertinent medical evidence not previously considered by the Office. The issue in this case is medical in nature and must be addressed by a physician. The only new

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<sup>2</sup> 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.138(b)(2).

<sup>4</sup> *See Eugene F. Butler*, 36 ECAB 393, 398 (1984).

medical evidence which appellant submitted in support of his contention that he still suffered from employment-related residuals of his accepted psychiatric/emotional condition was Dr. Albert's September 1, 1996 report. In his report, Dr. Albert generally contended that appellant's current condition and disability was caused by factors of his federal employment, criticized Dr. Cass's report as unrationalized and therefore not meriting the special weight afforded an independent medical examiner and recommended that appellant be referred to another physician for another independent examination. However, his report failed to meet the criteria necessary to warrant a merit review of appellant's request for reconsideration, as it contained no relevant and pertinent medical evidence pertaining to the issue in this case; *i.e.*, whether appellant still suffered from employment-related residuals of his accepted psychiatric/emotional condition. Dr. Albert did not provide a probative, rationalized medical opinion related to the medical issue in this case; his report was merely an unsupported critique of Dr. Cass's opinion, on which the Office based its decision to terminate appellant's compensation. Therefore, the Office properly refused to reopen appellant's claim for a review on the merits.

The decision of the Office of Workers' Compensation Programs dated February 18, 1997 is therefore affirmed.

Dated, Washington, D.C.  
April 21, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member