

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES ISSAC and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Louisville, KY

*Docket No. 98-826; Submitted on the Record;  
Issued December 6, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 28, 1995 on the grounds that appellant's employment-related emotional condition had ceased by and no later than May 12, 1995.

The Board has duly reviewed the case record in this appeal and finds that the Office properly terminated appellant's compensation effective May 28, 1995 on the grounds that appellant's employment-related emotional condition had ceased by and no later than May 12, 1995.

On July 21, 1988 appellant, then a 51-year-old painter, filed a claim for an occupational disease (Form CA-2) alleging that he first realized that his emotional condition and other related problems were caused or aggravated by his employment on July 12, 1988. Appellant stopped work on July 12, 1988.

By decision dated March 28, 1989, the Office found the evidence of record insufficient to establish a causal relationship between the claimed injury while in the performance of duty and appellant's disability. In an April 7, 1989 letter, appellant requested reconsideration of the Office's decision.

In a decision dated June 13, 1989, the Office found the medical evidence of record sufficient to establish appellant's claim.<sup>1</sup> Accordingly, the Office vacated its March 28, 1989 decision.

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<sup>1</sup> In finding that appellant had established his claim, the Office accepted appellant's claim for depression reaction and adjustment reaction due to a July 12, 1988 employment incident in which appellant alleged verbal abuse by a co-employee.

By letter dated January 5, 1995, the Office referred appellant, along with a statement of accepted facts, a list of specific questions regarding his emotional condition and medical records, to Dr. Robert R. O'Connor, a Board-certified psychiatrist and neurologist.

Dr. O'Connor submitted a February 10, 1995 medical report finding that appellant was no longer disabled due to his accepted employment injury and that appellant could return to his regular work.

In a notice of proposed termination of compensation dated April 6, 1995, the Office advised appellant that it proposed to terminate his compensation based on Dr. O'Connor's February 10, 1995 medical report. The Office also advised appellant to submit additional medical evidence supportive of his continued disability within 30 days. In an April 20, 1995 response letter, appellant stated that he was still disabled due to his accepted employment-related emotional condition and that he was unable to return to work because he had not been released to do so by his treating physicians. No additional medical evidence was submitted.

In a May 12, 1995 decision, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence of record established that appellant's disability resulting from his July 12, 1988 employment injury had ceased by and not later than May 12, 1995. The Office terminated appellant's compensation benefits effective May 28, 1995.

In a June 3, 1995 letter, appellant requested an oral hearing before an Office representative.

By decision dated May 17, 1996, a hearing representative affirmed the Office's May 12, 1995 decision.

Appellant requested reconsideration of the Office's decision on November 14, 1996.

By decision dated January 10, 1997, the Office denied modification based on a merit review of the claim.

Appellant requested reconsideration of the Office's decision on May 6, 1997.

In a decision dated July 29, 1997, the Office denied modification based on a merit review of the claim.

In an undated letter, appellant requested reconsideration of the Office's decision.

By decision dated December 11, 1997, the Office denied modification based on a merit review of the claim.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.<sup>2</sup> After it has determined that

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<sup>2</sup> *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

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.<sup>3</sup>

In this case, the Office terminated appellant's compensation benefits based on Dr. O'Connor's February 10, 1995 medical report. In this report, Dr. O'Connor indicated a review of medical records and his findings on physical examination. He opined that appellant did demonstrate some anxiety which seemed to be a little more than appropriate under the circumstances, but stated that "I see no indication of current depression, and [appellant] states that his eating pattern and sleeping pattern seem to be doing quite well. Being off all medicine and functioning on a relatively good level would suggest that he is no longer suffering from major depression, or an adjustment-type reaction." Dr. O'Connor noted appellant was off medication for over one year and receiving therapy. He opined that "I do not see current high levels of anxiety, or depression, as that which was demonstrated at the time of the incident that precipitated [appellant's] depression." Dr. O'Connor concluded that "[i]n my medical opinion, I see no rationale to explain why this patient cannot return to his former employment as a painter." The Board finds that Dr. O'Connor's medical report constitutes a rationalized medical opinion based on an accurate factual and medical background to support the Office's finding that appellant was no longer disabled due to the accepted employment-related emotional condition. Therefore, his opinion constituted the weight of medical evidence on the issue of whether appellant had any continuing disability causally related to the accepted emotional condition as of the Office's May 12, 1995 termination decision.

In support of his continued disability, appellant submitted the February 12, 1994 medical report of Dr. B. Thomas Thacker, a clinical psychologist and a treating physician. In this report, Dr. Thacker indicated that appellant's condition had stabilized, that appellant's emotional condition was due to a psychotic break while working for the employing establishment and that the possibility of regression was high unless appellant continued weekly psychotherapy sessions. He discussed his goal to have appellant return to work. Dr. Thacker failed to explain how or why appellant had any continuing disability causally related to the accepted employment injury.

In further support of his continued disability, appellant submitted medical treatment notes covering intermittent periods from June 12, 1995 through September 1, 1998 from the employing establishment and test results. These treatment notes and test results failed to address whether appellant had any continuing disability causally related to the accepted emotional condition.

Appellant also submitted the October 26, November 21 and December 28, 1995 and February 29, 1996 treatment notes of a certified social worker whose signature is illegible. The Board finds that these notes are insufficient to establish continued disability inasmuch as a social worker is not considered to be a "physician" under the Federal Employees' Compensation Act.<sup>4</sup>

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<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>4</sup> 5 U.S.C. § 8101(c).

Therefore, the certified social worker's treatment notes do not constitute competent medical evidence.<sup>5</sup>

Appellant submitted the November 20, 1995 medical report of Dr. Paul Winkler, a psychiatrist and employing establishment physician, indicating that he had treated appellant for major depression since June 1995, that appellant was on medication for his condition and that appellant was still receiving treatment. Appellant submitted the December 1, 1995 and February 29, April 29 and August 12, 1996 medical treatment notes of Dr. Steve Burton, an employing establishment psychiatrist. Dr. Winkler's report and Dr. Burton's medical treatment notes failed to address how appellant's continuing emotional condition was causally related to the accepted July 12, 1988 employment incident.

In a February 27, 1997 medical report, Dr. Burton indicated a diagnosis of recurrent major depression due to 1988 work-related incident. Dr. Burton further indicated that appellant had no history of psychiatric problems prior to 1988. He also indicated that since appellant had been receiving medical treatment he had failed to obtain gainful employment. Dr. Burton concluded that there was clear relationship between the work-related problems of 1988 and appellant's disability. The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury was insufficient, without supporting medical rationale, to establish causal relationship.<sup>6</sup> Inasmuch as Dr. Burton failed to provide any medical rationale explaining how or why appellant had any continuing disability causally related to the accepted work-related emotional condition, his report is insufficient to establish continued disability causally related to the accepted employment injury.

In his September 22, 1997 medical report, Dr. Thacker stated that the results of a psychiatric examination indicated that appellant continued to suffer severe depression and intense anxiety. He further stated that, although appellant's symptoms were less severe during his course of treatment, they were never totally in remission and that the intensity of the original symptoms would most likely return if appellant encountered a major stressor(s). Dr. Thacker then stated that appellant's intense feelings of depression and anxiety returned as a result of not being rehired in his same position by the employing establishment, being informed that he was no longer disabled and having his compensation benefits terminated. He opined that appellant's condition occurred as a result of the trauma he received while employed at the employing establishment, that appellant's current symptoms may recede, but will never fully disappear and that appellant will have to be treated for this condition for the rest of his life. Dr. Thacker concluded that appellant was permanently and totally disabled. He failed to address how appellant's continuing disability was due to the accepted July 12, 1988 employment incident. Rather, Dr. Thacker attributed appellant's emotional condition to events that do not constitute compensable employment factors under the Act. Specifically, regarding the employing establishment's refusal to rehire appellant constitutes an administrative matter which is not compensable under the Act unless the employing establishment committed error or abuse in

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<sup>5</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>6</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).

handling the matter.<sup>7</sup> In this case, the employing establishment declined to rehire appellant due to a reorganization of personnel. The record does not establish that the Office committed error or abuse in declining to rehire appellant. Concerning the Office's termination of appellant's compensation benefits, the Board has held that the processing of a claim bears no relation to the duties that the employee is hired to perform and does not arise in the performance of duty.<sup>8</sup> Therefore, Dr. Thacker's medical report is insufficient to establish continued disability due to the accepted employment-related emotional condition.

Inasmuch as Dr. O'Connor's medical opinion constitutes the weight of the reliable, probative and substantial evidence, the Board finds that the Office properly terminated appellant's compensation effective May 28, 1995 on the grounds that appellant's employment-related emotional condition had ceased by and no later than May 12, 1995.

The December 11, July 29 and January 10, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
December 6, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Donald E. Ewals*, 45 ECAB 111 (1993).

<sup>8</sup> *George A. Ross*, 43 ECAB 346, 353 (1991).