

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE LAZA and U.S. POSTAL SERVICE,
POST OFFICE, Vega Alta, PR

*Docket No. 97-2644; Submitted on the Record;
Issued October 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established a recurrence of disability on or after December 23, 1992 causally related to his May 30, 1992 accepted injury.

On June 2, 1992 appellant, then a 39-year-old window clerk, filed a notice of traumatic injury alleging that he sustained an emotional condition on May 30, 1992 when he was a victim of an armed robbery in the course of his federal employment. Appellant stopped working on June 2, 1992 and returned to his regular employment on June 9, 1992. On July 13, 1992 the Office of Workers' Compensation Programs accepted the claim for anxiety reaction.

On December 23, 1992 a criminal complaint was issued by the United States accusing appellant of embezzlement of federal property.

On May 10, 1993 Dr. Jose R. Rodriguez-Santiago, appellant's treating psychiatrist, evaluated appellant with regards to his capacity to stand trial. Dr. Santiago stated that appellant was capable of standing trial, but that he could not return to his previous job due to the great mental damage he suffered since he was assaulted at gun point in the course of his federal employment. He further stated that appellant was susceptible to breaking emotionally under situations of severe mental stress.

On July 23, 1993 appellant filed a notice of recurrence of disability alleging that he suffered a recurrence on December 23, 1992. Appellant indicated that he stopped working on that date. Appellant stated that he initially returned to his job as a window clerk upon his doctors advice that it would help him forget the incident of May 30, 1992. In describing the circumstances of the recurrence, appellant stated that he was accused of misappropriating postal funds on December 23, 1992. He stated that he was arrested and that this caused another nervous breakdown.

On September 8, 1993 Dr. Robert L. Denney, a clinical psychologist, evaluated appellant for the purpose of determining if appellant was mentally competent for a trial. Dr. Denney noted the May 30, 1992 assault and reviewed the treatment appellant received. He noted that appellant had trouble working following the incident due to anxiousness and that this condition led to money handling mistakes which resulted in criminal charges being filed. Dr. Denney noted that appellant's depression increased to such a degree that he was hospitalized on December 28, 1992. Dr. Denney diagnosed post-traumatic stress symptoms and major depressive episode with psychotic features in partial remission.

On November 30, 1993 Dr. Santiago diagnosed a major depressive episode (single) with psychotic traits partially controlled with treatment. Dr. Santiago recorded that the history of the injury provided by appellant was that two gunmen robbed and threatened him on May 30, 1992 resulting in anxiety, nervousness and insomnia. He further noted that appellant continued to relive the incident. Dr. Santiago checked "yes" to indicate that the condition was caused or aggravated by an employment activity and explained that as appellant continued with the same job there was a progression of symptoms. He concluded that appellant remained unable to work.

On January 11, 1994 Dr. Santiago indicated that appellant was not psychologically capable of standing trial. He indicated that appellant had been greatly affected by the events following the assault in May 1992. Dr. Santiago stated that on appellant's last visit on December 27, 1992 appellant was suffering an exacerbation of his condition, major depression with psychotic features.

Appellant subsequently submitted a statement indicating that on December 23, 1992 he was unjustly accused of postal misappropriation. He stated that he was arrested and that this caused another nervous breakdown.

On January 28, 1994 the criminal charges against appellant were dismissed.

On February 3, 1994 Dr. Santiago, a psychiatrist, described the nature of appellant's present impairment as depression, nervousness, anxiety, confusion, partial disorientation and abnormal thought production. He diagnosed a major depressive episode with psychotic features. He indicated that appellant was permanently incapacitated from his job as a window clerk.

By decision dated April 28, 1994, the Office rejected appellant's claim because the evidence established that appellant suffered a new injury and thus the fact of a recurrence was contraindicated. In an accompanying memorandum, the Office indicated that appellant may have suffered a new traumatic injury as a result of being arrested on December 23, 1992. The Office, therefore, found that a recurrence was not established.

On June 3, 1994 Dr. Santiago stated that appellant had been suffering from a major depressive disorder since May 30, 1992. Dr. Santiago stated that appellant told him he continued to work as a window clerk against medical advice and under protest until his condition worsened to the point he was hospitalized on December 28, 1992. Dr. Santiago stated that, although appellant was arrested on December 23, 1992, that was not a precipitating factor in the recurrence of his illness. He stated the fact that appellant was forced to continue working as a window clerk and the pressure of the Christmas rush contributed to his breakdown.

By decision dated June 14, 1994, the Office rejected appellant's claim that he sustained an injury in the performance of duty on December 23, 1992. Following this decision, appellant requested a hearing which was held on March 21, 1995.

On March 15, 1995 Dr. Santiago stated that appellant developed severe psychiatric symptoms after he was the victim of a gun point assault on May 30, 1992. He stated that appellant was initially diagnosed with post-traumatic stress disorder. Dr. Santiago stated that appellant's condition did not improve and that, on October 2, 1992, he was diagnosed with a major depressive disorder (single episode) with psychotic symptoms. He indicated that appellant continued to struggle at work and that he recommended that appellant be assigned different duties. Dr. Santiago stated that he saw appellant on December 26, 1992 when he was suffering from severe depressive symptoms, strong suicidal ideation and work problems. He stated that appellant's condition was chronic and that he would not be able to work again. Dr. Santiago indicated that appellant should not have returned to work as a postal clerk dealing with the public and handling money. He stated that appellant's money handling difficulties and subsequent arrest stemmed from the May 1992 assault and the failure to reassign appellant to different duties.

By decision dated June 21, 1995, an Office hearing representative found that appellant failed to establish a new injury occurring on or about December 23, 1992. The hearing representative, however, found that appellant's representative argued at the hearing that appellant established a recurrence of disability of his prior condition and that this claim should be developed upon reconsideration.

In a letter received by the Office on July 18, 1995, appellant requested reconsideration.

By decision dated July 27, 1995, the Office denied appellant's application for review because it was not filed within one year of the previous decision and because the evidence submitted in its support was insufficient to reopen the claim.

The Director subsequently filed a motion to remand urging that appellant had filed a timely request for reconsideration and that the Office must reconsider appellant's claim for a recurrence of his emotional condition in a merit decision. The Board issued an order granting remand pursuant to the Director's motion on April 23, 1997.¹

By decision dated July 17, 1997, the Office reviewed the merits of the case and determined that modification must be denied because the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that the evidence was insufficient to warrant modification of its April 28, 1994 decision, which denied appellant's claim that he sustained a recurrence of disability on or after December 23, 1992 causally related to his May 30, 1992 accepted injury.

The Board finds that this case is not in posture for a decision and must be remanded for further evidentiary development.

¹ See *George Laza*, Docket No. 96-65 (issued April 23, 1997).

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition for which he seeks compensation was causally related to the accepted employment injury.² As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment-related injury.

In this case, appellant was arrested and a criminal complaint was issued by the United States charging him with embezzlement of federal property on December 23, 1992. Appellant subsequently filed a notice of recurrence of disability alleging that he suffered a recurrence on December 23, 1992. In describing the circumstances leading to his alleged recurrence of disability, appellant indicated that he was accused of misappropriating postal funds on December 23, 1992 and that his arrest caused another nervous breakdown. Appellant repeated this assertion in an undated written statement.

Appellant's assertion of a recurrence of disability is supported by the May 10, 1993, January 11 and June 3, 1994, and March 15, 1995 reports of Dr. Santiago, appellant's treating physician and a psychiatrist, which indicated that he suffered a recurrence due to stress related to his accepted injury and due to his arrest for poor money handling which arose from that stress. In his report dated May 10, 1993, Dr. Santiago concluded that appellant was totally disabled from his usual job due to the great mental damage he suffered from the assault. He elaborated that appellant was susceptible to break emotionally under situations of severe mental stress. On January 11, 1994 Dr. Santiago stated that he examined appellant on December 27, 1992 and found him suffering from an exacerbation of his major depression with psychotic features. He concluded that appellant's level of mental functioning precluded his ability to even stand trial and stated that appellant's poor tolerance of stressful situations made it unlikely that he could control his behavior. On June 3, 1994 Dr. Santiago attributed appellant's breakdown to his continued employment as a window clerk. Finally, on March 15, 1995 Dr. Santiago stated that appellant could not perform his duties as a postal clerk working in the public because of severe anticipatory fears that his assailants would return and kill him. Dr. Santiago stated that appellant demonstrated severe depressive symptoms, strong suicidal ideation and work problems which worsened into a major depressive episode with psychotic features. He indicated that appellant may never work again. He stated that appellant should not have continued working as a postal clerk dealing with the public and handling money. Dr. Santiago concluded that appellant's "money handling difficulties at work and subsequent suspension and arrest were consequences of the assault of May 1992, and of the failure to reassign him to other duties." Dr. Santiago, however, never provided a medical explanation for his conclusion that appellant suffered a recurrence of disability sufficient to meet appellant's burden of proof.³ The Board finds that, while Dr. Santiago's reports are insufficiently rationalized, his uncontradicted reports are sufficient to require the Office to develop the record further.⁴

² See *Henry L. Kent*, 34 ECAB 361 (1982); *Dennis E. Twardzik*, 34 ECAB 536 (1983).

³ *Jose Hernandez*, 47 ECAB 288 (1996).

⁴ See *John J. Carlone*, 41 ECAB 354, 358 (1989) (finding that medical evidence submitted by appellant is

Consequently, on remand, the Office should refer appellant, a statement of accepted facts, and the entire record, to a Board-certified psychiatrist to specifically answer the question whether appellant sustained a recurrence of disability causally related to the initial injury involving the holdup at gun point. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The July 17, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

sufficient, absent any opposing medical evidence, to require further development of the record).