

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE V. CAMPION and U.S. POSTAL SERVICE,
POSTAL INSPECTION SERVICE, Detroit, MI

*Docket No. 97-2856; Submitted on the Record;
Issued October 1, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 23, 1996.

On November 30, 1983 appellant, then a 48-year-old postal inspector, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his depression was due to factors of his employment.¹ The Office accepted appellant's claim on February 26, 1985.² Appellant retired on disability effective November 30, 1984. On February 21, 1986 the Office terminated appellant's compensation.³ Subsequently, the Office vacated the February 21, 1986 decision and reinstated appellant's compensation benefits in a decision dated March 17, 1986.⁴

¹ On a claim for compensation on account of occupational disease (Form CA-4), appellant indicated that on September 21, 1983 he first realized his depression was work related when he was hospitalized for suicidal depression. In an attending physician's Form CA-20 dated March 13, 1985, Dr. Randall J. Moskowitz, a Board-certified psychiatrist and neurologist, indicated the date of injury as September 21, 1983 when appellant became depressed and suicidal due to stress from work and his work assignment. In a letter dated May 16, 1996, the Office advised appellant that his date of injury was October 11, 1983.

² The Office's acceptance letter advised appellant that his claim had been approved, without identifying accepted employment factors, and that he stopped work on November 30, 1983 and that disability ceased on or about November 30, 1984. In a letter dated March 13, 1986, the Office noted that appellant's claim had been accepted for dysthymic disorder (depressive neurosis) "causally related to factors of his employment as a postal inspector." The Office also noted that appellant had received compensation for total disability for the period November 30, 1984 to February 15, 1986.

³ In the attached memorandum, the Office noted that appellant had been paid compensation from November 30, 1984 to the present. The Office also noted that appellant had "sustained personal injury in the performance of his assigned duties on June 1, 1980. The injury sustained was dysthymic disorder (depressive neurosis)." In addition, the Office noted that appellant's condition was "causally related to factors of his employment as a postal inspector" without identifying the employment factors.

⁴ In reversing the prior Office decision, the Office relied upon the March 6, 1986 report by Dr. Moskowitz,

By decision dated July 23, 1996, the Office terminated appellant's compensation benefits. Appellant requested a hearing which was held on March 26, 1997. The hearing representative, in a decision dated June 6, 1997, affirmed the Office's decision dated July 23, 1996.

The Board finds that the Office has not met its burden of proof to terminate compensation due to an unresolved conflict in the medical evidence.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation. After the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁵ The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁶

In this case, the Office accepted that appellant sustained employment-related depression and paid disability compensation to appellant. The Office terminated compensation based on the September 11, 1995 and February 1, 1996 reports by Dr. Richard T. Bradley, a second opinion Board-certified psychiatrist and internist. The Board finds that there is a conflict in medical opinions between Dr. Bradley, the Office's referral physician and Dr. Christopher Pinhey, appellant's treating psychologist, regarding appellant's depression and whether the aggravation by his employment had ceased.

Dr. Bradley, in his February 1, 1996 addendum to his September 11, 1995 report,⁷ opined that the aggravation of appellant's work-related accepted condition had ended on March 13, 1985 based upon Dr. Moskovitz's report.⁸ By contrast, Dr. Pinhey, in his July 12, 1996 report, opined that appellant was totally disabled due to his depression which was due to his federal employment. Further, Dr. Pinhey referred to Dr. Moskovitz's March 6, 1986 report and indicated that he erroneously opined that appellant was no longer totally disabled due to his

appellant's attending Board-certified psychiatrist and neurologist. In his report, Dr. Moskovitz indicated that his prior opinion that appellant had recovered from his disability had been erroneous.

⁵ *Carl D. Johnson*, 46 ECAB (1995).

⁶ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

⁷ Dr. Bradley issued his February 1, 1996 addendum to his September 11, 1995 report in response to the Office's January 25, 1996 letter requesting clarification.

⁸ In duty status reports (Forms CA-17) dated November 21 and 26, 1985, Dr. Moskovitz indicated that appellant was totally disabled from September 22, 1983 to November 6, 1984 and partially disabled from November 6, 1984 to November 21, 1985. Dr. Moskovitz also indicated that appellant could return to his regular work as of November 21, 1985 since his major depression had resolved.

depression. Thus, Dr. Pinhey's opinion supports continued work-related disability related to appellant's depression while Dr. Bradley finds that the aggravation of appellant's depression had resolved as of March 13, 1985.

Section 8123(a) of the Federal Employees' Compensation Act⁹ provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.¹⁰ The Board finds that because the Office relied on Dr. Bradley's opinion to terminate appellant's compensation without having resolved the existing conflict, the Office has failed to meet its burden of proof in terminating compensation on the grounds that disability had ceased.¹¹

Appellant's counsel contends that the statement of accepted facts issued by the Office contains erroneous and misleading information. A review of the record indicates that there is merit to this contention. While the record contains the Office's letter accepting appellant's condition, it does not indicate which employment factors were accepted as aggravating or contributing to appellant's depression. The Office should ensure that the statement of accepted facts is accurate regarding whether appellant sought psychiatric treatment in 1988 by Dr. Guy Robinson.

⁹ 5 U.S.C. § 8123(a).

¹⁰ *Shirley L. Steib*, 46 ECAB (1994).

¹¹ *See Craig M. Crenshaw, Jr.*, 40 ECAB 919, 923 (1989).

The decision of the Office of Workers' Compensation Programs dated June 6, 1997 is reversed.

Dated, Washington, D.C.
October 1, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member