

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHEDRICK L. REID and DEPARTMENT OF JUSTICE,  
BUREAU OF PRISONS, Atlanta, GA

*Docket No. 99-334; Submitted on the Record;  
Issued October 5, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that he had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's disability compensation.

Under the Federal Employees' Compensation Act,<sup>1</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>2</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>3</sup>

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

<sup>3</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>4</sup> *Connie Johns*, 44 ECAB 560, 570 (1993).

In this case, appellant's notice of occupational disease, filed on September 13, 1988 was accepted by the Office for post-traumatic stress disorder (PTSD), based on appellant's work as a correctional officer dealing with the influx of Cuban detainees into the federal prison system in the early 1980s. Appellant was hospitalized in August 1983, but returned to work in mid-1984. He retired on disability on March 3, 1989.<sup>5</sup>

On March 4, 1998 the Office issued a notice of proposed termination of compensation, based on the second opinion evaluation of Dr. Michael C. Hilton, a Board-certified psychiatrist, who found that appellant's work-related mental condition had resolved completely. Appellant failed to respond to the notice and the Office issued a final decision dated May 15, 1998 terminating appellant's compensation, effective May 24, 1998.

On May 28, 1998 appellant informed the Office that he was entitled to vocational rehabilitation and submitted March 16 to 17, 1998 reports, from his long-term treating physician, Dr. E. Clifford Beal, a Board-certified psychiatrist. Appellant also submitted a return-to-work "permit" dated May 26, 1998 from Dr. Beal.

On July 15, 1998 appellant requested reconsideration on the grounds that the employing establishment could offer him no position meeting the guidelines suggested by Dr. Beal. On August 25, 1998 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant review of its prior decision.

Initially, the Board finds that the August 25, 1998 decision of the Office is null and void. The Board and the Office cannot have jurisdiction over the same issue in the same case at the same time.<sup>6</sup> Appellant's application for review of the May 15, 1998 decision terminating his compensation was docketed by the Board on July 17, 1998. On July 15, 1998 appellant requested reconsideration of this decision. Inasmuch as the issue of whether the Office properly terminated appellant's benefits is the same in both requests, the Office had no jurisdiction to issue the August 25, 1998 decision denying merit review of appellant's request. That decision is, therefore, deemed null and void.<sup>7</sup>

The Board also finds that the opinion of Dr. Hilton is sufficient to meet the Office's burden of proof in terminating appellant's compensation. He reviewed the statement of accepted facts and the medical records, noting his disagreement with the diagnosis of PTSD. Dr. Hilton recorded a detailed family and personal history and described appellant's psychiatric treatment and hospitalization since 1983 when he first saw Dr. Beal. Dr. Hilton administered the Minnesota Multiphasic Personality Inventory and reviewed Dr. Beal's psychiatric records through May 7, 1993, as well as reports from Dr. Chester O. Miller and Dr. Marvin A. Brantley, both Board-certified psychiatrists.

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<sup>5</sup> Appellant initially retired on disability, but elected benefits under the Act on March 19, 1990. Subsequently, the Office provided appellant with information on the amount of benefits due him and required him to resubmit an election form.

<sup>6</sup> 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

<sup>7</sup> *Cf. Douglas E. Billings*, 41 ECAB 880, 893 (1990) (finding that the Office had jurisdiction to issue a decision on a matter unrelated to the issue on appeal before the Board).

Dr. Hilton diagnosed major depressive episode, severe, with psychotic features, in 1983 and again in 1988, both related to appellant's employment. He noted that Drs. Beal and Brantley additionally diagnosed PTSD but appellant exhibited no signs or symptoms of this condition on September 15, 1997 when Dr. Hilton interviewed him.

Based upon his thorough evaluation, Dr. Hilton concluded that appellant still had some residual negative memories of his work at the federal penitentiary, but that his 1988 major depressive episode had "resolved completely." Dr. Hilton found appellant capable of returning to prison work without restrictions but agreed with Drs. Beal, Miller and Brantley that appellant should be placed in a position less stressful than that of corrections officer to avoid a recurrence of disability.

The Board has held that fear of a recurrence of disability upon a return to work cannot be the basis of continued disability compensation.<sup>8</sup>

Inasmuch as Dr. Hilton provided a comprehensive opinion supported by medical rationale that appellant's mental disorder caused by his employment had resolved, the Board finds that the Office met its burden of proof in terminating appellant's compensation.<sup>9</sup>

The May 15, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
October 5, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>8</sup> *Pat Lazzara*, 31 ECAB 1169 (1980).

<sup>9</sup> *See Cleopatra McDougal-Saddler*, 47 ECAB 480, 488 (1996) (finding that the reports of the Office referral physician established that appellant's degenerative pathology was not work related and were sufficient to meet the Office's burden of proof in terminating disability compensation).