

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS J. KOGLER and U.S. POSTAL SERVICE,  
POST OFFICE, Ronkonkoma, NY

*Docket No. 99-532; Submitted on the Record;  
Issued October 6, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation on March 28, 1997 for his accepted emotional condition.

The Office accepted that compensable factors of appellant's employment precipitated an adjustment disorder with a depressed and anxious mood. The Office determined that appellant was entitled to compensation for total disability beginning October 13, 1989, when he stopped work and began payment of such compensation after appellant's period of paid leave ended. By decision dated March 28, 1997, the Office, pursuant to a notice of proposed termination of compensation issued on November 21, 1996, terminated appellant's compensation on the basis that appellant had no residuals or disability related to his accepted condition. Appellant requested a hearing and submitted additional medical evidence. By decision dated August 31, 1998, an Office hearing representative found that the weight of the medical evidence established that appellant's employment-related condition had ceased.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that 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>1</sup>

The Board finds that the Office met its burden of proof to terminate appellant's compensation.

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<sup>1</sup> *Linda C. Ball*, 43 ECAB 533 (1992).

There was a conflict of medical opinion on the questions of whether appellant's employment-related condition had ended and whether he continued to be disabled by this condition. In a report dated September 17, 1993, Dr. E.E. Riley, a clinical psychologist, stated:

“[T]he diagnosis for [appellant] remains Organic Mood Disorder (depressed type). Disorders of this type encompass a wide range of psychopathological syndromes and organic etiologies; no single course characterizes them all. The course is also extremely variable. It may be steadily or irregularly progressive, episodic, static, or rapidly or gradually resolving. Irritability and outbursts of temper, sometimes with physical aggression may occur. I believe that the previous diagnosis of adjustment disorder as pertains to [appellant] remains significant, and is an additional complication. I believe the circumstances at the time precipitated his suicide attempt and that this coupled with his organic problems, accelerated his work difficulties. Although it is not possible to predict how [appellant] might be today if he had not sustained his brain injury, I believe the stress [appellant] encountered while working contributed directly to his not being able to continue to work.

“I continue to believe, since there appears to be no evidence to the contrary, that [appellant] not being able to work is the result of a combination of events and that he remains unable to work now or ever in the future.”

In a report dated July 1, 1993, Dr. Joseph J. Altieri, a Board-certified psychiatrist to whom the Office referred appellant for a second opinion evaluation, diagnosed dysthymic disorder, dependent personality traits and borderline intellectual functioning. Dr. Altieri stated:

“In my opinion there is no clear medical evidence that [appellant] has an ongoing condition adjustment disorder related to this work-related incident of [December 1, 1982]. I believe his symptoms of depression are more consistent with that of a dysthymic disorder that is an ongoing mild chronic depression, as there is no evidence for a major depressive episode. In addition, a diagnosis of adjustment disorder is primarily used when there is a reaction to a situation where it is expected that the patient will recover within a reasonable period of time. Clearly this is not the case, and hence, an ongoing diagnosis of adjustment disorder, in my opinion, is not valid. I do not believe that his current psychiatric condition is related to any factors at the [employing establishment]. In addition, I do not believe that his medical/psychiatric condition is totally or partially disabling on the basis of my interview with him. I believe that he would be capable of performing the requirements of his position as stated on the record.”

To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,<sup>2</sup> referred appellant, the case record and a statement of

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<sup>2</sup> 5 U.S.C. § 8123(a) states in pertinent part “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”

accepted facts to Dr. Barton Podnos, a Board-certified psychiatrist. In a report dated April 11, 1995, Dr. Podnos stated:

“A significant head injury occurred at age 10 which affected this patient’s cognitive and other brain function as evidenced in part by difficulties with coordination. Whether or not the borderline intellect shown by psychological testing is due to this accident as well, cannot be ascertained. In any case, he lead a rather marginal life with some successes. He was able to function in the Army at some level for two years and to function at least at the custodial level with the post office when given the opportunity. When more was demanded of him, he was unable to adapt and felt greatly stressed. At this point, his performance deteriorated, and he currently focuses on this most recent portion of his difficulties. He has been in therapy, which has included psychotherapy and medication, which has not significantly improved his state. We see more anxiety than depression at this time. He is currently functioning at an extremely low level -- being, essentially, totally dependent on his disability income and his wife’s performance. This has placed a strain on the marriage. I note that Dr. Riley has indicated that he cannot work. Others have disagreed with this, and I would think that it might help him recover some self-esteem if he could function at the level of a custodial job. I think he would have to realize that this was probably his highest level of functioning historically. Apparently this idea is not acceptable to him. I agree with previous suggestions that in order to work he would need ongoing psychotherapy, as well as possible use of antidepressants and anti-anxiety agents. The workplace would also have to be a sympathetic and supportive one with a rather clear cut job description well within his ability.

“In terms of diagnosis, I would disagree with continuing the diagnosis of [a]djustment [d]isorder with depressed mood and anxious mood in that an adjustment disorder generally has a more brief duration. I would agree with the diagnosis of [o]rganic [m]ood [d]isorder secondary to the head injury. Additionally, we suggest that there are strong dependent personality traits and borderline intellectual functioning.

“To answer the specific questions put forward by the Department of Labor, I do not believe there is medical evidence to establish ongoing psychological or psychiatric condition causally related to factors of employment of December 1, 1982. He does have some partially disabling condition related to the [o]rganic [m]ood [d]isorder, his intellectual functioning, and his personality structure but could at least maintain himself at some job.”

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>3</sup> In the present case, the report of Dr. Podnos,

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<sup>3</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

obtained to resolve a conflict of medical opinion, was based on a proper background and contained rationale for the conclusion that appellant was no longer suffering from the accepted condition of adjustment disorder with depressed and anxious mood. The report of Dr. Podnos constitutes the weight of the medical evidence and is sufficient to meet the Office's burden of proof to terminate appellant's compensation on March 28, 1997.

After the Office issued its notice of proposed termination of compensation, appellant submitted a December 19, 1996 report from Dr. Samuel S. McClure, a psychiatrist. Dr. McClure stated that appellant "appears to be suffering from a post-traumatic stress disorder related to his demotion and termination." As reassignment to another position and actual termination of employment are not considered compensable factors of employment under the Act,<sup>4</sup> the report of Dr. McClure lends no support to appellant's claim of a continuing employment-related condition. The report submitted at the June 23, 1998 hearing are of little probative value: the August 17, 1998 report from Dr. McClure does not address causal relation, and the report of Dr. John T. Grady, a clinical psychologist, states that appellant has post-traumatic stress disorder secondary to his postal employment, but does not provide any rationale for this statement or any description of the employment factors to which the doctor attributes appellant's condition.

The decision of the Office of Workers' Compensation Programs dated August 31, 1998 is affirmed.

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

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> *Jeffrey S. Miller*, 41 ECAB 707 (1990) (reassignment of duties); *Sharon K. Watkins*, 45 ECAB 290 (1994) (termination of employment).