

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL WADY and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, NJ

*Docket No. 97-1875; Submitted on the Record;
Issued January 12, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of August 18, 1996.

On November 13, 1989 appellant, a 45-year-old plumber, filed a claim for benefits, alleging that he had sustained an emotional condition in the performance of duty and that he became aware that this condition was caused or aggravated by his employment on October 11, 1989.

In a report dated March 27, 1990, Dr. David C. Summers, Board-certified in psychiatry and neurology and appellant's treating psychiatrist, stated that appellant was suffering from a disabling mental disorder known as schizophrenic disorder, a condition with elements of both schizophrenia and bipolar disorder. Dr. Summers advised that appellant also showed symptoms of panic disorder and of somatic reactions to both internal and external stress. Appellant related complaints of harassment, unwarranted pressure, criticism and verbal abuse on the part of his supervisor. Dr. Summers opined that appellant's judgment was affected by his schizophrenic disorder condition, which was caused partly by a disordered brain chemistry but was also reactive to external stresses. He concluded that a person with appellant's condition was often unable to cope with interpersonal situations, which he could no longer understand and that he was likely to be treated impatiently by supervisors who did not know how to handle him even though they might be aware he had a problem.

The Office accepted the claim for temporary aggravation of a schizophrenic disorder. Appellant did not return to work with the employing establishment and he was placed on the periodic rolls. The Office paid appellant total disability compensation for appropriate periods.

In a report dated July 30, 1995, Dr. Summers advised that appellant continued to suffer from schizoaffective disorder, depressive type and agoraphobia without history of panic

disorder. Dr. Summers essentially reiterated and expanded on his earlier findings and conclusions and stated:

“The essential nature of his occupational disability is that his perceptions of certain people [authority figures] are grossly out of line with reality. As a result his behavior at work is inappropriate and unproductive. Constructive communication at work is impossible. The unreality includes profound distrust such as ‘They are out to get rid of me,’ ‘They never believe me’ and ‘They have been told by higher ups to write me up....’ [Appellant] still believes all these things with delusional conviction. Constant anger, irritability, irascibility and feelings of hopelessness prevail when he envisions being in a work situation.... Until there is substantial improvement in his ability to perceive reality in his relationships with people he can be of no value to any employer.”

In order to clarify the current state of appellant’s psychiatric condition, the Office scheduled a second opinion examination for appellant with Dr. Eric B. Gewolb, a Board-certified psychiatrist, for October 2, 1995, to determine whether appellant was still disabled by residuals from his accepted employment condition. In a report dated October 20, 1995, Dr. Gewolb stated:

“It is my opinion that the current medical findings no longer establish ongoing residuals of the accepted work-related condition of temporary aggravation of the schizoaffective disorder/depression. I believe that the work experience did effect [sic] his current psychiatric condition by accelerating the underlying disease process.

“His symptoms, which have become chronic in nature include delusional, paranoid thinking, along with extreme dysphoria and mood swings. His lifestyle is quite schizoid. He has no friends, never married and has very few interests or other social contacts. His fear and suspicions of people in general and impaired perceptions are illustrated in his bizarre, overexaggerated responses to [psychological tests]. In other words, if his current condition was only attributable to his employment his condition would have improved significantly during his absence from work. Therefore, NO treatment exists that would facilitate his recovery from work-related condition. (Emphasis in the original.) In other words, this is now not a work-related condition. However, he is unable to perform the duties of [a] plumber or any other position at the [employing establishment].”

The Office determined that there was a conflict in the medical evidence condition between Dr. Gewolb and appellant’s treating physician, Dr. Summers, regarding whether appellant still experienced residuals from his accepted psychiatric condition and referred appellant for a referee examination with Dr. Stuart Rosenthal, Board-certified in psychiatry and neurology.

In a report dated May 13, 1996, Dr. Rosenthal stated:

“In my opinion current medical findings do not establish ongoing residuals of the accepted work-related condition of temporary aggravation of schizoaffective disorder/depression. While the experience at work probably accelerated an underlying mental disorder, [appellant’s] presentation strongly indicates a pattern of gross exaggeration of his original symptoms and current cognitive functioning in the presence of the external incentive to obtain financial compensation. There is a marked discrepancy between his claimed disability and the objective findings.... In view of the extensive duration of his claimed disability, the previously established presence of schizoaffective disorder/depression and the current findings, it is doubtful that [appellant] would benefit from vocational rehabilitation.... It is inconceivable that the current medical findings could be attributable to his employment at the [employing establishment].”

On May 28, 1996 the Office issued a notice of proposed termination of compensation to appellant. In the memorandum accompanying the notice of proposed termination, the Office found that the case had been referred to an independent medical examiner, Dr. Rosenthal, who opined that appellant no longer had residuals from his accepted psychiatric condition and that the weight of the medical evidence rested with his opinion.

In response, appellant submitted a June 9, 1996 letter from Dr. Summers in which he stated, “[Appellant], who has been my patient for a number of years, hopes you will give further consideration to his conviction that he is still suffering damaging aftereffects [sic] of experiences he had while working [with the employing establishment].”

By decision dated July 24, 1996, the Office terminated appellant’s compensation effective August 18, 1996.

By letter dated August 8, 1996, appellant’s attorney requested a hearing, which was held on May 22, 1997. In support of his request, appellant submitted progress reports on appellant’s condition from Dr. Summers in which he discussed findings on examination. In these reports dated November 25 and December 2, 4, 5, 9, 11, 16 and 17, 1996, Dr. Summers essentially reiterated his earlier findings and conclusions, although he also provides new diagnoses of post-traumatic stress disorder, obsessive compulsive disorder, psychological symptom and anxiety and affecting medical disorder.

By decision dated February 18, 1997, an Office hearing representative affirmed the previous decision.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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.²

In the present case, the Office based its decision to terminate appellant's compensation as of August 18, 1996 on Dr. Rosenthal's referee medical opinion. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.³ After reviewing appellant's medical records, the statement of accepted facts and indicating findings on examination, Dr. Rosenthal opined that appellant had no ongoing residuals from the accepted work-related condition of temporary aggravation of schizoaffective disorder/depression. He acknowledged that appellant's work experiences probably accelerated an underlying mental disorder, but opined that his examination revealed a pattern of gross exaggeration of appellant's original symptoms, with an obvious discrepancy between his claimed disability and the objective findings. Dr. Rosenthal concluded that appellant's current findings were not attributable to factors of appellant's federal employment.

The Board finds that Dr. Rosenthal's opinion is sufficiently probative and well rationalized to merit the special weight accorded a referee medical examiner. Therefore, the Office properly relied on Dr. Rosenthal's opinion that appellant's accepted psychiatric condition, temporary aggravation of schizophrenic disorder, had resolved. Therefore, the Office's finding that his opinion represented the weight of the medical evidence in its July 24, 1996 termination decision was correct.

Following the Office's termination of compensation, the burden to establish entitlement to compensation shifted to appellant. Causal relationship must be established by rationalized medical opinion evidence. The medical evidence appellant submitted following the Office's July 24, 1996 termination decision was not sufficient to meet this burden. The reports submitted by Dr. Summers did not provide a rationalized, probative opinion that appellant continued to suffer residual disability from his accepted psychiatric condition. Dr. Summers' reports merely restate his findings and conclusions in previous reports and he diagnosed additional psychiatric conditions, which had never been accepted by the Office and for which he did not provide sufficient medical documentation. Thus, his opinion is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.⁴

As there is no reasoned medical evidence addressing and explaining why his current claimed conditions and disability were caused by his original, accepted condition, appellant has not met his burden of proof in establishing that he continues to suffer residuals from his employment-related psychological conditions. The Board, therefore, affirms the February 18,

² *Id.*

³ *Aubrey Belnavis*, 37 ECAB 206 (1985); 5 U.S.C. § 8123(a).

⁴ *William C. Thomas*, 45 ECAB 591 (1994).

1997 decision of the hearing representative affirming the July 24, 1996 decision terminating benefits.

The decision of the Office of Workers' Compensation Programs dated February 18, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 12, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member