

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNIAL COBB and U.S. POSTAL SERVICE,  
POST OFFICE, Nashville, TN

*Docket No. 98-1496; Submitted on the Record;  
Issued January 21, 2000*

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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 met its burden of proof to terminate appellant's compensation effective November 10, 1996 on the grounds that he had no disability due to his September 22, 1993 employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective November 10, 1996 on the grounds that he had no disability due to his September 22, 1993 employment injury after that date.

On September 22, 1993 appellant, then a 41-year-old mail carrier, sustained a puncture wound to his right thumb when he reached into a mailbox and was stuck by a hypodermic syringe. The Office also accepted that appellant sustained a depressive reaction to the puncture wound. Appellant initially returned to work after the injury, but he stopped work in December 1993 and began to receive compensation for periods of temporary total disability. In October 1993, appellant was placed in a nonduty, nonpay status for threatening his supervisor and, between January and March 1994, he was incarcerated after he was convicted of making threats against several superiors. In 1995, appellant began to participate in vocational rehabilitation efforts and several counselors indicated that appellant displayed limited motivation to cooperate with these efforts. By decision dated October 31, 1996, the Office terminated appellant's compensation effective November 10, 1996 on the grounds that he had no disability due to his September 22, 1993 employment injury after that date. The Office based its termination on the opinion of Dr. James W. Varner, a Board-certified psychiatrist to whom it referred appellant for a second opinion. By decision dated January 26, 1998 and finalized January 29, 1998, an Office hearing representative affirmed the Office's October 31, 1996 decision.

Under the Federal Employees' Compensation Act,<sup>1</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Varner, the Office referral physician. The opinion of Dr. Varner establishes that appellant had no disability due to his September 22, 1993 employment injury after November 10, 1996.<sup>5</sup>

In his report dated August 29, 1996, Dr. Varner detailed appellant's factual and medical history and described the findings of his examination and evaluation, which was performed on that date. Dr. Varner indicated appellant was tested for infectious diseases after the September 22, 1993 injury and consistently exhibited negative results. He noted that some of appellant's activities during vocational rehabilitation were inconsistent with his claimed condition.<sup>6</sup> Dr. Varner diagnosed depressive disorder and possible malingering and indicated that appellant's current problems were most likely due to his loss of self-esteem after being convicted and imprisoned for threatening his supervisors. He noted that he could not rule out the possibility that appellant was malingering due to "[t]he inconsistency between his subjective symptoms and any objective data such as the vocational rehabilitation evaluation or the psychological testing, the strong secondary gains, which include his not currently having to work, monetary gains from being on disability and also his psychological gain of being 'victorious' over his employer."<sup>7</sup>

At the Office's request, Dr. Varner provided clarification of his opinion in a report dated September 23, 1996. Dr. Varner stated:

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<sup>2</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> The Office had previously referred appellant to Dr. Terry G. Peacher, a Board-certified psychiatrist, who, in a report dated April 27, 1995, indicated that appellant had a major depression which was precipitated by the September 22, 1993 employment injury and noted that he might be able to return to work which did not involve mailboxes. This report, however, does not provide any opinion on appellant's disability status around the time his compensation was terminated in late 1996. In a report dated May 24, 1996, Dr. Peacher noted that appellant continued to avoid working with boxes. He recommended that appellant continue with vocational rehabilitation efforts and indicated that he might be able to work as a meter reader. Dr. Peacher did not, however, provide a clear opinion that appellant continued to have employment-related disability.

<sup>6</sup> For example, the record contains vocational reports which indicate that appellant expressed a fear of working with boxes, but nevertheless volunteered to work with boxes and did so without apparent problems.

<sup>7</sup> Dr. Varner recommended that appellant undergo phobic desensitization therapy before returning to work.

“In the interview I conducted with [appellant], he continued to identify symptoms which would be consistent with a depressive disorder. However, review of his objective medical records, the validity of his [Minnesota Multiphasic Personality Inventory] and his mental status examination, which was obtained as part of my evaluation of [appellant], did not support or substantiate an objective basis for current symptoms of depression. In fact, the inconsistency would suggest that there is quite likely symptom magnification and therefore would bring into doubt the accuracy of his subjective reports of symptoms.

“Consequently, based upon the information available to me at this time, I have no objective basis to support a current diagnosis of depressive reaction. Without objective data upon which to base a current diagnosis, I would not feel comfortable in stating that [appellant] currently is experiencing a depressive disorder. Therefore, I would have to reach the conclusion that his depressive reaction has resolved.”

The Board has carefully reviewed the opinion of Dr. Varner and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Varner’s opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Varner provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant’s condition which comported with this analysis.<sup>8</sup> Dr. Varner provided medical rationale for his opinion by explaining that the findings on examination and testing did not support the existence of a continuing employment-related reaction disorder. He further explained that appellant’s continuing problems were either due to a nonwork-related emotional problem or malingering.

In support of his claim for continuing employment-related disability, appellant submitted an August 31, 1996 report of Dr. Jerry Holland, an attending Board-certified psychiatrist. In his report, Dr. Holland indicated that appellant was currently being treated for a “diagnosis of major depression, with psychotic features, post-traumatic stress disorder and specific phobia (mailboxes).” He noted that appellant was being treated with individual and group psychotherapy and with medication. Dr. Holland indicated that appellant could not return to work but noted that a program which required him to leave his home and interact with people might be beneficial. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain a clear opinion that appellant had continuing disability

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<sup>8</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

due to his September 22, 1993 accepted injury.<sup>9</sup> Nor does the report contain a rationalized medical opinion explaining how appellant's claimed disability was employment related.<sup>10</sup> Dr. Holland's opinion is of limited probative value for the reason that it is not based on a complete factual and medical history.<sup>11</sup>

The decision of the Office of Workers' Compensation Programs dated January 26, 1998 and finalized January 29, 1998 is affirmed.

Dated, Washington, D.C.  
January 21, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>9</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>10</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

<sup>11</sup> See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).