

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 00-2702; Submitted on the Record;
Issued September 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective July 5, 2000 on the grounds that he no longer had disability due to his employment injury after that date.

The Board finds that the Office properly terminated appellant's compensation effective July 5, 2000 on the grounds that he no longer had disability due to his employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

In May 1994, appellant, then a 36-year-old letter carrier, filed a claim alleging that he sustained an emotional condition due to circumstances related to his exposure to tuberculosis at work. The Office accepted that appellant sustained employment-related post-traumatic stress syndrome. The Office accepted several employment factors as causing the condition. It accepted that appellant was exposed to the tuberculosis virus by a coworker who eventually died from the disease; that he tested positive for the virus, but negative for having the disease; that he

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Id.*

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

was teased by some of his coworkers; that one of them sprayed a can of disinfectant spray before talking to him; and that some coworkers wore masks when dealing with him. Appellant received compensation for various periods of disability.⁵

By decision dated July 5, 2000, the Office terminated appellant's compensation effective that date on the grounds that he had no disability due to his employment injury after that date. The Office based its termination on the opinions of Dr. Robert Beavers, a Board-certified psychiatrist who served as an impartial medical specialist and Dr. William L. Sutker, a Board-certified internist specializing in infectious diseases who served as an Office referral physician.

Given that appellant's emotional condition was related to his exposure to the tuberculosis virus, the Office appropriately referred appellant to Dr. Sutker for an evaluation with respect to this matter. The January 7, 2000 report reveals that appellant did not have any physical complications related to tuberculosis at that time. In his report, Dr. Sutker stated that examination and testing showed that appellant did not have any active disease, symptoms or complications related to tuberculosis. He indicated that the medication appellant took was ample to cure any indolent disease he might have had as a result of his exposure to the tuberculosis virus. Dr. Sutker stated that appellant did not have any physical disability related to tuberculosis.⁶

With respect to whether appellant continued to have a disabling employment-related emotional condition, the Office properly determined that there was a conflict in the medical opinion between Dr. Keith H. Johansen, a Board-certified psychiatrist who served as an Office referral physician and Dr. Raymond F. Finn, a clinical psychologist. In a report dated January 3, 2000, Dr. Johansen diagnosed major depressive disorder and personality disorder. He indicated that appellant did not exhibit any evidence of his post-traumatic stress disorder and that he could return to his regular work. In contrast, Dr. Finn stated, in undated reports received by the Office on January 31, 2000, that appellant continued to exhibit post-traumatic stress syndrome related to his exposure to the tuberculosis virus at work. He indicated that appellant continued to be disabled due to this condition.

In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Beavers for an impartial medical examination and an opinion on the matter.⁷ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

⁵ Appellant was terminated from the employing establishment in June 1993 for reasons unrelated to his medical condition.

⁶ The record does not contain any reports of attending physicians indicating that appellant had any physical disability related to tuberculosis.

⁷ Section 8123(a) of the Act provides 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." 5 U.S.C. 8123(a).

the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

The Board finds that the weight of the medical evidence with respect to appellant's emotional condition is represented by the thorough, well-rationalized opinion of Dr. Beavers, the impartial medical specialist selected to resolve the conflict in the medical opinion. The opinion of Dr. Beavers establishes that appellant ceased to have an employment-related emotional condition.

In his April 25, 2000 report, Dr. Beavers reported the findings of his examination of appellant. He noted that appellant's mood was normal and that there was no evidence of unusual thoughts or mood disorder. Dr. Beavers indicated that appellant did not exhibit any significant degree of depression and that this circumstance was probably due to his taking anti-depressants. He stated that he saw nothing in appellant's mental status which would indicate that he is disabled and noted that appellant could return to his regular work.⁹ Dr. Beavers indicated that appellant's depression was probably related to his perception that he was poorly treated by the employing establishment and the Department of Labor with respect to his compensation claim.¹⁰

The Board has carefully reviewed the opinion of Dr. Beavers 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. Beavers' 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 and provided a thorough factual and medical history.¹¹ Dr. Beavers provided medical rationale for his opinion by explaining that there was no objective evidence that appellant had an employment-related emotional condition. Dr. Beavers further indicated that appellant's emotional condition was due to factors which were not compensable.

For these reasons, the Office properly terminated appellant's compensation effective July 5, 2000 on the grounds that he no longer had disability due to his employment injury after that date.

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ He indicated that perhaps appellant should not be returned to the same work site.

¹⁰ It has not been established that appellant's interaction with the employing establishment and the Department of Labor with respect to his compensation claim constitutes a compensable employment factor; see *George A. Ross*, 43 ECAB 346, 353 (1991); *Virgil M. Hilton*, 37 ECAB 806, 811 (1986) (finding that the processing of compensation claims generally is not compensable).

¹¹ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

The July 5, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 7, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member