

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD KOFSKY and DEPARTMENT OF THE ARMY,
ARMY SURGEON GENERAL, Falls Church, VA

*Docket No. 01-2024; Submitted on the Record;
Issued June 13, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective September 18, 2000.

On May 5, 1997 appellant, then a 57-year-old military personnel technician, filed a notice of occupational disease, claiming that his emotional condition was caused by his federal employment. The Office accepted appellant's claim on August 29, 1997 for post-traumatic stress disorder by aggravation, somatoform disorder and major depression by aggravation. It was found that appellant was repeatedly verbally abused by his supervisor, disciplined by his supervisor in public and in front of others and that the supervisor repeatedly pointed her index finger and shook it in appellant's face while verbally abusing him. These events were accepted by the Office as compensable factors of employment and appellant was paid appropriate compensation benefits.

In a report dated December 29, 1997, appellant's treating physician, Dr. Manuel E. Febo, a Board-certified psychiatrist, stated that appellant continued to suffer from chronic post-traumatic stress disorder, undifferentiated somatoform disorder and major depressive episodes. He stated that appellant's psychological symptoms were directly related to his work stress in the spring of 1995. Appellant indicated that appellant had been under psychiatric care for several years and would need to continue treatment indefinitely. In a July 20, 1998 report, Dr. Febo stated that appellant continued to suffer from repeated episodes of anxiety and depression. He indicated that appellant continued to feel persecuted by the government and blamed the government for many of his personal problems.

In a second opinion report dated February 20, 1998, Dr. Lawrence A. Brain, a Board-certified psychiatrist, diagnosed appellant with recurrent major depressive disorder, generalized

anxiety disorder and somatoform disorder. He found that appellant had a long history of depression and stated:

“It is further my conclusion that [the] conditions of his [appellant’s] employment aggravated his preexisting conditions of depression, anxiety and somatoform disorder culminating in his total temporary disability. It is now some ten months following his stopping work and [appellant] continues to have numerous complaints although it is my judgment that the current complaints are primarily resultant from his underlying personality problems. It is my opinion that the aggravating factors of his prior employment have ceased and therefore the aggravated psychiatric conditions must be considered to have returned to their previous state.”

In a June 22, 1998 report from Faith G. Lewis, a clinical social worker, stated that appellant had dissociative disorder, acute generalized anxiety disorder and depression. She thought that appellant had been “retraumatized” at his punitive work environment into early patterns of feelings of worthlessness, panic and severe depression. In a second report dated February 22, 1999, Ms. Lewis stated that appellant’s condition interfered with his work and would continue to do so for several months. She recommended that appellant attend psychotherapy until at least December 1999. In a report dated December 6, 1999, Ms. Lewis stated that appellant was still highly anxious about returning to work.

The Office also received a July 25, 1999 report from Dr. Lanning E. Moldauer, a consulting psychologist, who interviewed appellant and concluded that he was manifestly unmotivated or positively motivated to resist any notion that he should return to work at all. He opined that appellant was hypochondriacally focused upon his symptoms and was a very difficult client to work with. Dr. Moldauer stated that appellant was potentially capable, however, of working in a variety of administrative or clerical positions as he had done so for more than 20 years.

On August 16, 2000 the Office issued a notice of proposed termination of appellant’s compensation benefits, finding that the weight of the medical evidence established that appellant no longer had a continuing disability related to the May 1, 1995 accepted employment injury. On September 18, 2000 the Office terminated his compensation benefits effective September 18, 2000. Appellant requested an oral hearing and submitted additional medical evidence at the hearing on January 31, 2001.

By decision dated June 13, 2001, the hearing representative affirmed the Office’s September 18, 2000 termination decision, but found a conflict based on the new medical evidence submitted.¹

The Board finds that the Office properly terminated appellant’s compensation benefits effective September 18, 2000.

¹ The hearing representative remanded the case to the Office to refer appellant to an impartial medical examiner and issue a *de novo* decision. Appellant appealed to the Board before a decision was issued. The Board only has jurisdiction to consider the termination issue in the Office’s September 18, 2000 decision. 20 C.F.R. § 501.2(c).

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.⁴ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁵ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.⁶

The Board finds that, at the time of the September 18, 2000 termination, the weight of the medical evidence rested with the well-rationalized opinion of Dr. Brain who analyzed the statement of accepted facts and the medical evidence of record, including the evidence from appellant's attending physician, Dr. Febo. Dr. Brain described appellant's factual and medical history, acknowledging that appellant had been repeatedly verbally abused by his supervisor in public and in front of other employees. He discussed appellant's personal history, noting that appellant had childhood and marital problems and stated that he also had a 20-year history of recurrent depressive episodes for which he had continuously received treatment. Dr. Brain noted that appellant's stressful work environment aggravated his preexisting depression, anxiety and somatoform disorder, but concluded that the conditions of appellant's employment temporarily aggravated his preexisting conditions and that his current complaints were primarily a result of his underlying personality problems. He stated that the aggravating factors of his prior employment had ceased and that appellant's aggravated psychiatric conditions had returned to their previous state. Dr. Brain's report is well rationalized in that he thoroughly discussed appellant's medical and psychological history and after examining appellant and the medical evidence of record, concluded that appellant's employment conditions only temporarily aggravated his preexisting emotional condition.

The medical reports of record from Dr. Febo, on the other hand, do not contain sufficient medical rationale to support the notion that appellant continued to suffer from the effects of his May 1, 1995 accepted employment injury. In his December 29, 1997 report, Dr. Febo stated that appellant had been under psychiatric care for several years and would need to continue treatment indefinitely. He stated that appellant had been on antidepressant medication and would most likely need to continue taking the medications for life. Dr. Febo noted that appellant's psychological problems were directly related to his work stress in the spring of 1995, but the Board notes that, at the time of Dr. Febo's report, the Office had already accepted that appellant's psychological symptoms were related to factors of his employment. His statements do not demonstrate that appellant continued to be disabled due to the accepted employment factors after his condition was accepted. He only generally stated in his reports that he continued

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁴ *Id.*

⁵ *Virginia Davis-Banks*, 44 ECAB 389 (1993).

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

to suffer from several emotional conditions due to several factors, admitting that they were largely in part due to his childhood history. Dr. Febo did not clearly differentiate between appellant's preexisting emotional problems and factors of appellant's employment. Dr. Brain, on the other hand, specifically discussed the employment factors and opined that they only temporarily aggravated appellant's preexisting condition. In his July 20, 1998 report, Dr. Febo again acknowledged other factors attributing to appellant's emotional condition, including financial difficulties, recent marital problems and lack of sleep as well as other physical conditions. The Board finds that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Brain, as he provided a complete factual and medical history, specifically addressed the accepted factors of employment and based on the medical evidence of record, concluded that the accepted employment condition temporarily aggravated appellant's preexisting emotional condition.

The Board finds that at the time of the termination, the weight of the medical evidence rested with Dr. Brain and the Office properly terminated appellant's compensation benefits effective September 18, 2000.

The June 13, 2001 and September 18, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 13, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member