

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY R. MILLER and DEPARTMENT OF JUSTICE, FEDERAL BUREAU  
OF INVESTIGATION, FBI ACADEMY, Quantico, VA

*Docket No. 02-1639; Submitted on the Record;  
Issued October 4, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective December 4, 2001.

On October 20, 1983 appellant, then a 54-year-old photography instructor, filed a claim for acute severe depression which he attributed to verbal abuse and harassment by his supervisor at work. The Office accepted appellant's claim for major depressive episode with anxiety and began payment of appropriate compensation effective October 26, 1983.

In a December 4, 2001 decision, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence established that appellant's employment-related disability had ceased.

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

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>

In a May 6, 1983 report, Dr. John B. Davies, a Board-certified psychiatrist, indicated that he began treating appellant on January 11, 1983. Dr. Davies stated that appellant had been suffering from a severe depression since December 1982 with many of the characteristics of depression. He noted that appellant had been off work by his recommendation but had been ordered by the employing establishment to return to work. Dr. Davies stated that to order

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<sup>1</sup> Jason C. Armstrong, 40 ECAB 907 (1989).

appellant to return to work in the same environment, under the same staff, and under the same conditions that caused his depression would be detrimental to his mental health.

In a September 2, 1983 report, Dr. Bernard A. Nigro, a Board-certified psychiatrist, stated that appellant was experiencing a chronic depression with associated generalized anxiety and associated somatic manifestations. Dr. Nigro commented that, based on appellant's symptomatology and the fact that his symptoms worsened when he returned to work in May 1983, it appeared that appellant was not functional to the point of being able to perform his job.

In an August 28, 1984 report, Dr. Alan Sager, a Board-certified psychiatrist, stated that appellant's symptomatology was consistent with the diagnosis of depression. Dr. Sager diagnosed major depressive episode with anxiety. He related appellant's condition to work, particularly the number of reprimands that appellant received from his supervisors and his demotion, resulting in a significant and sustained blow to appellant's self-esteem with the subsequent formation of a major depressive episode.

In an August 28, 2001 report, the Office requested an updated report on appellant from Dr. Davies. In a September 17, 2001 report, Dr. Davies noted that he treated appellant from January 11, 1983 until he moved in June 1986. He followed appellant's case with periodic reports through 1992. Dr. Davies noted that he last examined appellant in 1995 prior to his retirement in 1996. He stated that his answers to the Office's questions were based on his knowledge of appellant's case, the situation that caused his problem, and his response to therapy. Dr. Davies indicated that the diagnosis remained major depressive episode with anxiety. He commented that appellant's symptoms were controlled as long as he remained away from his former job. Dr. Davies stated that appellant's diagnosis was the result of his work-related situation and was not affected by the 19-year interval since the onset of his condition. He declared that the diagnosis was directly related to appellant's working situation. Dr. Davies indicated that appellant was subject to full return of symptoms if he was required to return to his former work situation. He stated that appellant remained totally and permanently disabled. Dr. Davies commented that any change in appellant's current retirement situation would likely precipitate a major collapse of his mental condition.

The Office referred appellant to Dr. Raymond A. Johnson, a Board-certified psychiatrist, for an examination and second opinion. In an October 8, 2001 report, Dr. Johnson related appellant's history. He noted that appellant denied any current symptoms of depression and anxiety. Dr. Johnson indicated that appellant was worried about losing his compensation payments. He found no formal thought disorder, no looseness of association and no delusions or hallucinations. Dr. Johnson reported that a Minnesota Multiphasic Personality Inventory (MMPI) showed no evidence of any psychological or personality disorder. He diagnosed major depression in remission. Dr. Johnson stated that appellant offered no complaints compatible with the symptoms of major depression or any other psychological disorder. He indicated that appellant had no symptoms of major depression. Dr. Johnson concluded that appellant did not continue to suffer from a major depressive episode. He stated that appellant was not capable of returning to unrestricted work. Dr. Johnson noted that appellant was quite fearful of returning to work at the employing establishment, that the employing establishment had an almost unlimited ability to harm him and would use it. He stated that appellant would therefore not be able to resume his former occupation but could function in a normally structured, average stress

environment with nominal supervision. Dr. Johnson commented that, with the resolution of appellant's depression, there were no further treatment recommendations.

Dr. Johnson provided a current report on appellant's condition, based on a current examination. He concluded that appellant's employment-related depression had resolved, pointing out that the MMPI showed no psychological or personality disorder. Dr. Johnson only noted that appellant had a fear of his former employing establishment. He stated, however, that appellant could return to work in an average stress environment. Appellant's fear of returning to work at the employing establishment is essentially a fear of future injury.<sup>2</sup> The possibility of a future injury, however, does not constitute an injury under the Federal Employees' Compensation Act.<sup>3</sup> Similarly, a physician's statement that exposure to employment factors would cause a recurrence of symptoms in the future is not a sufficient basis on which to establish a claim as the fear of a recurrence of a condition if a claimant returns to work does not constitute a basis for compensation.<sup>4</sup> Dr. Davies stated that appellant still had depression and commented that he remained totally disabled. His opinion, however, was based on examinations that had not been updated in six years. Dr. Davies' most recent report, therefore, has reduced probative value when compared to Dr. Johnson's report.<sup>5</sup> Dr. Johnson's report provided a sufficient basis for the Office's decision to terminate appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated December 4, 2001 is hereby affirmed.

Dated, Washington, DC  
October 4, 2002

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> See *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>3</sup> See *Joseph G. Cutrafello*, 46 ECAB 285 (1994).

<sup>4</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>5</sup> See *Samuel Senkow*, 50 ECAB 370 (1999).