

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL G. McDANIEL and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA

*Docket No. 00-1176; Oral Argument Held April 4, 2002;
Issued September 25, 2002*

Appearances: *Samuel McDaniel, pro se; Jim C. Gordon, Jr., Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's employment-related condition had resolved by June 1, 1992.

The Office accepted that appellant sustained adjustment disorder and temporary aggravation of paranoid personality disorder causally related to his federal employment. By decision dated March 26, 1997, the Office determined that appellant's condition had resolved by June 1, 1992. The Office found that the weight of the evidence was represented by a second opinion psychiatrist, Dr. Reynaldo Abejuela. In a decision dated February 24, 2000, an Office hearing representative affirmed the March 26, 1997 decision.

The Board finds that the Office met its burden of proof to terminate compensation as of June 1, 1992.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

In this case, the Office accepted as a compensable work factor an October 4, 1991 incident involving verbal abuse by a supervisor. In a report dated August 18, 1994, Dr. Robert Gallway, a psychologist, provided a history and results on examination. Dr. Gallway diagnosed adjustment disorder with mixed disturbance of mood and conduct, chronic type; he did not,

¹ *Patricia A. Keller, 45 ECAB 278 (1993).*

however, provide a reasoned medical opinion on causal relationship between an emotional condition and the accepted compensable work factor.

The Office referred appellant's medical records and a statement of accepted facts to Dr. Abejuela, a psychiatrist. In a report dated February 1, 1996, he provided a history and results on examination, diagnosing adjustment disorder with mixed emotional features, resolved. In a September 19, 1996 decision, an Office hearing representative found that Dr. Abejuela was not sufficiently rationalized on the issues presented. In a report dated November 11, 1996, he opined that appellant's condition did not arise out of his federal employment. By report dated January 3, 1997, Dr. Abejuela stated that appellant's preexisting paranoid personality was aggravated by the October 4, 1991 incident.

In a report dated March 12, 1997, Dr. Abejuela opined that the October 4, 1991 employment incident had temporarily aggravated appellant's underlying paranoid personality disorder. He explained that the aggravation would not have continued more than six months after the incident. With respect to the adjustment disorder, he reviewed the medical evidence and opined that paranoid personality disorder had resolved six months after appellant's disability began in November 1991. Dr. Abejuela noted that adjustment disorders usually last approximately six months and indicated that the medical records supported such a finding in this case.

The Board finds that Dr. Abejuela represents the weight of the medical evidence. He provided a reasoned medical opinion that the employment-related adjustment disorder and temporary aggravation of paranoid personality disorder had resolved within six months after November 1991. The record does not contain a reasoned medical opinion supporting a continuing emotional condition causally related to the accepted compensable work factor. Accordingly, the Board finds that the Office met its burden of proof in terminating compensation on June 1, 1992.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability that continued after termination of compensation benefits.²

Appellant has not submitted sufficient evidence to establish a continuing employment-related emotional condition after June 1, 1992. He has alleged additional work factors, such as sexual harassment, but did not submit any probative evidence substantiating additional compensable factors. The record does not contain any findings from the Equal Employment Opportunity Commission on harassment, probative witness statements or other pertinent evidence establishing a claim based on harassment. The Board finds no probative evidence establishing entitlement to compensation after June 1, 1992.

² *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

The decision of the Office of Workers' Compensation Programs dated February 24, 2000 is affirmed.

Dated, Washington, DC
September 25, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member