

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM WHITE (OSBORN) and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, VA

*Docket No. 01-74; Submitted on the Record;
Issued February 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective June 9, 1999.

On January 28, 1994 appellant, then a 50-year-old mailhandler stated that he was subjected to a physical assault causing him to be terribly afraid for his life in the course of his federal employment duties. He stopped work on February 1, 1994. The Office accepted appellant's claim for major depression, chronic, with anxiety and paranoid ideation and aggravation paranoid personality disorder, severe. Appellant was placed on the periodic rolls and paid appropriate compensation benefits.¹

The record contains reports from appellant's treating physician, Dr. Stephen Rojcewicz, a Board-certified psychiatrist. He diagnosed severe major depression, anxiety disorder, post-traumatic stress disorder and stated that appellant was totally and permanently disabled, unable to secure and follow a substantially gainful occupation by reason of disability which was likely to be permanent.

By letter dated January 13, 1997, the Office referred appellant along with a statement of accepted facts and a copy of the case record to Dr. Majorie A. Harellick, a Board-certified psychiatrist and neurologist, for a second opinion evaluation as to the nature and extent of appellant's work-related disability.

In a February 24, 1997 report, Dr. Harellick noted appellant's history of injury and treatment and diagnosed: (1) DSM-IV 301.0 paranoid personality disorder; (2) DSM-IV 309.81 post-traumatic stress disorder, chronic; (3) DSM-IV 296.22 major depressive disorder, moderate. She further opined that she believed the "touching incident" was perceived by appellant as a move from verbal to physical abuse and caused an intensification of his paranoia, a fear for his

¹ The record reflects that appellant filed a previous claim for an emotional condition in 1990, which was denied.

future safety and ensuing symptoms of post-traumatic stress disorder. Dr. Harellick opined that she believed there was a causal relationship between the emotional condition found on examination and his disability. She stated further that appellant continued to suffer from the emotional effects of the “touching incident” and continued to require medical treatment for the effects of his work-related condition. Dr. Harellick noted that appellant continued to require anti-anxiety and antidepressant medication and supportive psychotherapy and opined that the absence of pressure to return to work at the employing establishment would remove considerable stress and diminish his symptoms. She found that appellant was permanently and totally disabled for all work at the employing establishment, noting that at present his paranoia and his difficulties in cognition, concentration, memory and judgment resulting from his emotional disorder rendered him disabled for any job.

By letter dated November 19, 1997, the Office advised appellant of an examination with a specialist, Dr. Lawrence Brain, a Board-certified psychiatrist and neurologist.²

In a December 18, 1997 report, Dr. Brain, noted appellant’s history of injury and treatment, including treatment in the past for a psychiatric disorder and the statement of accepted facts. He observed that, with regard to the specific incident, appellant claimed that a black male employee pushed him into his Power Ox and that this occurred without provocation and that appellant was of the opinion that other employees put this man up to provoking him. Dr. Brain stated that appellant also complained that several of the supervisors were harassing him and they piled work on him, held him to higher standards, yelled at him and held him to minute details, while other employees were allowed to slack off and do little. He indicated that appellant claimed two women witnessed the events but then refused to say anything “for the fear of losing their jobs.” Dr. Brain stated that appellant stopped work the following week because of stress describing that he had difficulty concentrating and working for fear of being assaulted and since February 1994, appellant has not had any contact with the employees of the employing establishment. He noted that appellant had a long period of psychiatric treatment commencing in about 1986 and continued through the present time. Dr. Brain opined that appellant had a lifetime of contentious and difficult relationships with authority figures and attributed much of his difficulties in life to others. Appellant increasingly developed paranoid delusional conceptualizations, which pervaded all aspects of his life. He noted that, while most of these ideas were focused on his employment, it also influenced his perceptions of his experience in the military service and with his family. Dr. Brain pointed out the diagnosis of an adjustment disorder and a pattern of anxiety, difficulty functioning, a marked suspiciousness, complaints about the work environment and being intolerant of work extended for a significant period of time prior to the event of January 28, 1994. He opined that it was difficult to discern what was the difference in the character of the symptoms, after January 28, 1994 as compared to before and that the claimant essentially repeated the same complaints existing all the way back through at least 1990.

Dr. Brain also noted that while appellant’s treating physicians defined him as suffering from a major depressive disorder, he was not treated with an antidepressant until 1995. In

² The record reflects that this was also a second opinion examination as explained by the November 17, 1997 memorandum.

addition, he noted that no mention in the record existed of psychotic thinking, although appellant was previously treated with an antipsychotic medication at the Veterans Administration Hospital. Dr. Brain determined that appellant was suffering from a paranoid personality disorder over an extended period of time and perceived the world around him as threatening. This condition existed before the alleged events of January 28, 1994 through to the present time. Dr. Brain noted that the statement of accepted facts concluded that appellant was "touched" by another employee, although appellant claimed he was assaulted. Dr. Brain stated that appellant's symptoms were consistent with symptoms he experienced prior to the employment incident and noted that it was clear that he found the work situation intolerable. Dr. Brain noted that despite three years of absence from the workforce, appellant's level of complaints remained, but through his lack of cooperation it was difficult to evaluate his true level of functional ability at this time. He opined that it would be inappropriate for appellant to return to employment at the employing establishment.

Dr. Brain diagnosed generalized anxiety disorder (DSM IV: 300.02); paranoid personality disorder (DSM IV: 301.00). He stated that this was a preexisting condition and not causally related to the touching incident of January 28, 1994. Dr. Brain opined that, while there may have been a subsequent exacerbation of his difficulties including anxiety as a result of the alleged event, the principle contributing factor was his underlying personality disorder, which persisted through the present time. He stated that it is likely that the conclusions of appellant were predicated on distortions of perception based on his personality disorder. Dr. Brain found that appellant's condition was not causally related to the event of January 28, 1994, although he continued to suffer from emotional disorder at the time of examination. He stated that appellant should not be considered for reemployment but was a candidate for disability retirement as appellant represented a potential threat to other employees if he returned to work. Dr. Brain opined that it was unclear to him why appellant had not been more aggressively treated with psychopharmacology, although he noted that paranoid disorders were notoriously difficult to treat.

On February 25, 1998 the Office issued a proposed notice of termination of compensation. The Office advised appellant that his compensation for wage loss and medical benefits was being terminated because he no longer had any continuing injury-related disability. The Office found that the weight of the medical evidence was represented by the opinion of Dr. Brain. Appellant was given 30 days to submit additional evidence or argument.

By letter dated March 20, 1998, appellant requested that the proposed termination be withdrawn. He disagreed with Dr. Brain's opinion and requested a medical referee examination, claiming a conflict existed. Appellant also argued that the physicians noted that his preexisting condition was aggravated and or exacerbated.

In a March 20, 1998 report, Dr. Rojcewicz stated that appellant suffered from preexisting medication conditions, prior to the January 24, 1994 incident, however, although preexisting, they were aggravated by the January 24, 1994 incident. He further opined that the focus of the anxiety was directly and proximately related to the incident and appellant was afraid for his safety. Dr. Rojcewicz stated that appellant's distress was greatly aggravated by the January 24, 1994 incident. He noted that subsequent to that incident, appellant was unable to work and

suffered further deterioration in social functioning. Dr. Rojcewicz explained that appellant continued to be unable to work because of the aggravation of preexisting disorders.

In a March 29, 1999 decision, reissued on June 9, 1999,³ the Office finalized its proposed termination of benefits, effective June 19, 1999. The Office found that Dr. Brain's opinion remained the weight of the medical evidence.

In a June 3, 1999 report, Dr. Rojcewicz, again stated that appellant was totally disabled for work in January 1998 and has remained totally disabled for work for the period January 1998 to the present. He stated that appellant became totally disabled following a work-related incident on January 28, 1994 and continues to be totally disabled. Dr. Rojcewicz opined that appellant has never recovered his ability to work and he was disabled due to medical conditions. Dr. Rojcewicz diagnosed generalized anxiety disorder and paranoid personality disorder that were aggravated by the work-related incident.

On February 2, 2000 appellant requested reconsideration and enclosed additional evidence.

In a report dated January 28, 2000, Dr. Rojcewicz indicated that appellant had a severe worsening of the preexisting symptoms of anxiety, lability of affect, irritability, marked mental preoccupations, difficulty in concentration and suspiciousness. He also developed new symptoms of anxiety, with the most intense new symptom being a marked fear for his safety if he returned to the work site. Appellant became afraid for his life and worried that coworkers would assault him again. Dr. Rojcewicz stated the additional new symptoms included intrusive memories of the alleged assault, initial insomnia, wakening in middle of night, distressing dreams about the assault and efforts to avoid the employing establishment facilities. Appellant developed all the classic symptoms of post-traumatic stress disorder. Dr. Rojcewicz added that, following the work incident, there developed symptoms of depression that had not been prominent previously. Prior to this date, appellant was suspicious and paranoid, but was able to work on most occasions. Dr. Rojcewicz added that, following the work incident, appellant became more fearful, suspicious, and more distrustful of people. Although appellant briefly tried returning to work, he became so suspicious and hypervigilant, he had to leave work and has not been able to work since, because of severe psychiatric symptoms. Appellant continued to demonstrate the following symptoms: anxiety, lability of affect, irritability, marked mental preoccupations, difficulty in concentration, suspiciousness, hypervigilance, insomnia, distressing dreams and intrusive memories about the work incident, efforts to avoid the employing establishment's facilities, sadness, decreased interest in activities, fatigue, lack of energy and a restricted range of affect. Dr. Rojcewicz opined that appellant continued to be unable to work because of an aggravation of preexisting emotional disorders and from a major depressive disorder.

In a decision dated August 26, 2000, the Office hearing representative affirmed the Office's June 9, 1999 termination of benefits.

³ It appears that appellant did not receive the first decision.

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation benefits effective June 9, 1999.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ 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.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.⁸

In this case, the Office accepted that appellant sustained major depression, chronic, with anxiety and paranoid ideation and aggravation paranoid personality disorder, severe.

The Office based its decision to terminate appellant's compensation on the report of Dr. Brain, to whom the Office referred appellant for an examination and second opinion. Dr. Brain, opined that it was difficult to discern the difference in character of the symptoms prior to the incident and after the incident, as appellant had essentially the same complaints existing back to 1990. He commented that despite three years of absence from the employing establishment, appellant's complaints continued. Dr. Brain concluded that appellant could not return to the employing establishment as he represented a threat to the other workers. However, it was his opinion that appellant had a generalized anxiety disorder and paranoid personality disorder, which were preexisting conditions not causally related to the touching incident of January 28, 1994. He explained that, while there may have been an exacerbation of his difficulties, including anxiety, the principle contributing factor was his underlying personality disorder which persisted through the time of his examination. Dr. Brain proffered that while appellant would benefit from further medical treatment, it was not the result of any work-related circumstance.

⁴ *Lawrence D. Price*, 47 ECAB 120 (1995).

⁵ *Id.*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *Id.*

⁸ See *Connie Johns*, 44 ECAB 560 (1993).

Dr. Rojcewicz, appellant's treating physician, found that appellant had severe major depression, anxiety disorder, and post-traumatic stress disorder. He further opined that appellant remained totally and permanently disabled and unable to secure and follow a substantially gainful occupation.

The Board finds that a conflict exists in the medical opinion evidence between appellant's physician, Dr. Rojcewicz, who attributed appellant's current continuing condition to his employment injury, and Dr. Brain, the Office referral physician, who found that appellant did not have any further employment-related condition or disability as of June 9, 1999. Since this is an unresolved conflict in the medical evidence on whether appellant was able to return to his preinjury duties, the Office did not meet its burden of proof in establishing that appellant's disability due to the employment injury had ceased.

The August 26, 2000 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
February 21, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member