

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DENNIS D. PETRACK and U.S. POSTAL SERVICE,  
POST OFFICE, Akron, OH

*Docket No. 02-1215; Submitted on the Record;  
Issued May 19, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated his workers' compensation benefits based on accepted employment-related psychiatric conditions.

The Office accepted that on November 19, 1993 appellant, then a 38-year-old supervisor, sustained major depression and an adjustment reaction, causally related to demonstrated harassment, sabotage and false accusations against him in retaliation for his helping several female employees pursue sexual harassment claims against his supervisor.<sup>1</sup> He stopped work and received compensation for total disability beginning November 20, 1993.

On October 28, 1994 appellant was referred by the Office for a second opinion psychiatric evaluation by Dr. Michael Kachmer, a Board-certified psychiatrist, who opined that appellant was suffering from major depression as a direct result of the stresses that he experienced at the employing establishment. Dr. Kachmer opined that appellant would be able to function in some type of gainful employment not involving the employing establishment.

During an interview with an employing establishment inspector on January 30, 1995 appellant stated that he did volunteer work for the Sheriff's Department and also acted as a volunteer building monitor for the Young Men Christian Association. The amount of time spent per week was estimated to be 5 to 10 hours for each organization. Appellant also stated that he had completed an emergency medical technician course and was currently taking courses in medical terminology and anatomy and physiology at Stark Technical College.

On February 28, 1995 and thereafter Dr. Robert Lesowitz, a Board-certified psychiatrist, opined that appellant would need an extension from work until at least October.

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<sup>1</sup> The sexual harassment claims were upheld, the offending supervisor was discharged, appellant's allegations were proven and his Equal Employment Opportunity (EEO) claim was ultimately decided in his favor.

In order to resolve a conflict in medical opinion between Drs. Kachmer and Lesowitz as to whether appellant was able to return to work, the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. H. Bjornstad, a Board-certified psychiatrist, for an impartial medical examination. On June 26, 1995 Dr. Bjornstad examined appellant and by report of that date, he reviewed appellant's history and noted that appellant began volunteer work in November or December 1994. He described the results of appellant's mental status examination and diagnosed major depressive disorder, single episode, severe but without psychotic features. Dr. Bjornstad opined that appellant was not able to function on any sustained basis in any employment situation and recommended continued psychiatric treatment and antidepressant medication. He opined that appellant's involvement in volunteer work and taking college courses constituted a form of occupational therapy.

In 1996 the Office referred appellant for a second opinion examination by Dr. Jonathan Dunn, a Board-certified psychiatrist. By report dated July 17, 1996, Dr. Dunn opined that appellant clearly manifested residual signs of his major depressive disorder and that continued treatment was indicated. However, he opined that appellant's current symptoms were related to his frustration over the slowness of the process by which his EEO claim was being evaluated. Dr. Dunn opined that appellant's residual depressive symptoms would disable him from performing a job within the employing establishment. He further opined that appellant would be unable to tolerate employment outside the employing establishment until the current matter with the EEO suit was settled.

In order to resolve a second conflict in medical opinion between the opinions of Drs. Dunn and Bjornstad as to the cause of appellant's continuing psychiatric condition and disability, the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Suresh Patel, a Board-certified psychiatrist, for an impartial medical examination. By report dated December 9, 1996, Dr. Patel noted that he examined appellant on November 14, 1996, he reviewed appellant's history and treatment, described the results of his mental status examination and diagnosed appellant's condition as major depression without psychotic features, anxiety disorder with obsessive compulsive symptoms and paranoia. He opined that appellant was not considered emotionally stable or ready to go back to work and be gainfully employed. Dr. Patel indicated that appellant's condition was "a result of what happened at his workplace, which rendered him disabled." He recommended continued psychiatric treatment.

In response to an Office request for clarification, Dr. Patel opined in a letter dated January 31, 1997 that appellant's depression "is not just solely because of his EEO complaints or problems he had in obtaining information regarding his case or obtaining information from the other offices."

By letter dated June 2, 1997, the employing establishment advised appellant that he was being offered a position as a postmaster. Appellant was provided with a job description and was requested to obtain his physician's approval or rejection of the proposed job.

By letter dated June 3, 1997, Dr. Lesowitz noted that appellant was presently in psychotherapy and taking psychotropic medication. He opined that appellant probably would be

able to perform work duties, but stated that, if the job was begun before resolution of appellant's EEO case, the added stress might make his emotional situation worse. Dr. Lesowitz opined that it was important for appellant to resolve his EEO problems before undertaking a new position with the employing establishment.

By letter dated June 24, 1997, the employing establishment advised appellant that the proposed job offer was rescinded since Dr. Lesowitz opined that he was unable to return to work.

The record reflects that Dr. Lesowitz retired in July 1997. In September 1997 appellant came under the care of Dr. Todd M. Ivan, a psychiatrist. By report dated January 22, 1998, Dr. Ivan stated that appellant continued to have residuals of major depression with anxious features and a paranoid personality disorder. He opined that appellant could work two to four hours per day, but was uncertain whether he could return to the employing establishment.

By report dated April 22, 1998, Dr. Arnold M. Rosenblatt, a Board-certified internist, advised that appellant had suffered an anterior myocardial infarction on March 24, 1998.

By report dated May 28, 1998, Dr. Ivan advised that appellant was unable to work more than two to three hours per day at that time.

By letter dated November 5, 1998, Dr. Ivan noted that appellant wanted to return to work with the employing establishment in the position of postmaster which had been previously offered to him. He noted that appellant believed that his depression and anxiety was well controlled with current medications. Dr. Ivan noted that appellant was taking Coumadin to help with anticoagulation in the aftermath of his heart attack. He noted that appellant felt it would be less stressful to return to work than to continue to suffer from the financial difficulties imposed by lack of work. Dr. Ivan indicated that previous psychiatric evaluations found that appellant's return to work would be possible if and only if outstanding complaints filed with the EEO were resolved. He stated that he concurred with this view and he recommended an independent psychiatric evaluation of appellant's ability to return to work.

By letter dated May 6, 1999, Dr. Ivan repeated that he felt uncomfortable releasing appellant to return to work at the employing establishment. He recommended to appellant that he pursue other jobs as well as vocational rehabilitation. Dr. Ivan noted that an independent psychiatric evaluation be conducted to definitively answer whether appellant "could return to the [employing establishment] or should be directed toward different employment once psychological symptoms have lessened." He listed appellant's current medications as Paxil, Klonopin, Resperdal and Trazadone.

On March 17, 2000 appellant filed a claim alleging that he sustained chest pain (a heart attack) causally related to emotional distress due to his employment and Office claim. On April 5, 2000 the Office rejected appellant's claim for employment-related myocardial infarction finding that he had not worked since March 18, 1993.

On April 6, 2000 Dr. Ivan completed a work restriction evaluation Form (OWCP-5) indicating that he believed appellant could work eight hours per day. He stated that appellant had the intellectual and physical ability to perform his prior duties but that emotional factors would prove a potential distraction with productivity -- specifically appellant's unanswered EEO

and Merit System Protection Board (MSPB) complaints would distract him from his job duties and possibly cause a reemergence of depression and anxiety. Dr. Ivan noted that appellant was still taking psychotropic medication and that there was a potential for sedation.

By report dated September 27, 2000, Dr. Ivan indicated that he had examined appellant on September 21, 2000 and “found him to be alert, oriented to time, place and person, calm in demeanor and free from depressive symptoms.” He noted that appellant reported no difficulties with mood, anxiety or agitation and had no evidence of cognitive decline. Dr. Ivan opined that appellant was reasonably insightful and showed good judgment at that time, noting that earlier in the year appellant had weaned himself from antidepressant medications and had suffered no ill effects. He indicated that he was releasing appellant to return to work with the employing establishment and recommended that appellant be allowed to return in some capacity other than as a supervisor. Dr. Ivan noted that appellant felt he would do well as a postmaster in a rural branch of the employing establishment or as an associate office supervisor.

By letter dated October 13, 2000, the Office provided Dr. Ivan with a copy of a position description (supervisor, distribution operations) and requested that he opine whether appellant was capable of performing the duties of this position on the basis of his current mental condition. Dr. Ivan was also asked to advise whether he believed appellant continued to require treatment, given the lack of active symptomatology.

By letter dated October 31, 2000, Dr. Ravinder Brar, a psychiatrist, stated that appellant had been transferred to her care since Dr. Ivan was no longer with the clinic. She stated that she had reviewed the position description for “supervisor -- distribution operations” and opined that “at the present time, [appellant] is capable of performing the duties of his job on the basis of his current mental condition.” Dr. Brar noted that Dr. Ivan testified in an MSPB hearing in 2000 that appellant “does not have any psychiatric symptoms and ... is in need of true justice.” She further stated that “at the present time, [appellant] is lacking active symptomatology to require any further treatment.”

By letter dated March 23, 2001, the Office advised appellant that it proposed to terminate his compensation for wage-loss and medical benefits on the basis that the medical evidence of record established that he was able to return to the job he held when injured and had no residuals of his accepted psychiatric condition. The Office provided appellant with a copy of Dr. Brar’s October 31, 2000 report and advised that, if he disagreed with the proposed action, he had 30 days within which to submit additional evidence or argument.

By letter dated March 24, 2001, appellant stated that, since being released by his physician, he was not placed back to work by the employing establishment at the job and on the tour he expected, that the employing establishment did not know how to process claims and that he had suffered much anxiety with depression due to the actions of the employing establishment. Appellant stated that he had continued to see his physician and remained on his anti-anxiety medication. No additional medical evidence was submitted.

By decision dated April 24, 2001, the Office terminated appellant’s wage-loss compensation and medical benefits effective April 24, 2001. The Office found that the weight of the medical opinion evidence rested with Dr. Brar.

Appellant disagreed with the April 24, 2001 decision and requested an oral hearing before an Office hearing representative. A hearing was held on November 27, 2001 at which appellant testified. Appellant also provided a copy of the EEO decision dated March 22, 2000, which ordered the employing establishment to comply with the administrative law judge's July 27, 1999 order to provide appellant with a Tour change and pay appellant \$5,000.00 in compensatory damages and reasonable attorney's fees. He provided additional medical evidence from Drs. Brar and Rosenblatt.

In a March 27, 2001 report, Dr. Brar indicated that the EEO order had not been implemented and appellant was not offered a position in another town, and that until that happened, he would continue to experience depression, anxiety and insomnia due to the "O[ffice] claim." Dr. Brar noted that appellant had resumed taking two additional psychotropic medications two months earlier and was symptomatic with insomnia, helplessness and hopelessness.

A November 19, 2001 report from appellant's psychiatric social worker, cosigned by the supervising clinical psychologist, Dr. Barrett, related his distress to financial problems subsequent to eight years of ongoing problems and litigation with his employer.

A November 26, 2001 report from Dr. Rosenblatt stated that appellant "suffers from serious depression and anxiety in a large part due to his job problems." He indicated that he had referred appellant to Dr. Lesowitz in 1993 for psychiatric follow-up for major depression and that the psychiatric social worker appellant had been seeing felt that his personal and marital problems were related to the significant stress relating to his ongoing financial problems and litigation with his former employer.

By decision dated February 21, 2002, the hearing representative affirmed the April 24, 2001 decision.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> 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>3</sup> Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.<sup>4</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-

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<sup>2</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>3</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>4</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

related condition that require further medical treatment.<sup>5</sup> The Office has not met its burden to terminate appellant's wage-loss or medical benefits in this case.

Appellant's claim was accepted by the Office for major depression and an anxiety disorder causally related to factors of his federal employment. As noted, appellant was examined by numerous psychiatric specialists who found residuals of the accepted condition which disabled appellant from 1994 onwards.

In 1997 the employing establishment offered appellant a position as a postmaster. An opinion was obtained from Dr. Lesowitz, who noted that appellant could probably perform the duties of the position, but that it should begin after the resolution of his EEO complaints to avoid undue stress. Dr. Lesowitz retired in July 1997 and Dr. Ivan assumed his patient caseload. Dr. Ivan opined that appellant could return to work two to four hours per day but he was uncertain about working at the employing establishment.

On March 24, 1998 appellant sustained a heart attack. Thereafter Dr. Ivan opined that appellant could return to work two to three hours per day. On November 5, 1998 Dr. Ivan opined that appellant could return to work if the EEO complaints were resolved. On May 6, 1999 he opined that appellant could return to work at the employing establishment once his psychological symptoms had lessened. On April 5, 2000 Dr. Ivan stated that appellant could work eight hours per day, but noted that EEO and MSPB complaints would distract him. Appellant was continued on medication for his accepted psychiatric condition.

On September 27, 2000 Dr. Ivan indicated that he was releasing appellant to return to work with the employing establishment and he recommended a position in some other capacity than plant supervisor. He opined that appellant could successfully be a postmaster in a rural branch of the employing establishment. However, Dr. Ivan ceased treating appellant soon thereafter.

On October 31, 2000 Dr. Brar, who apparently took over after Dr. Ivan left the clinic, reviewed appellant's records in response to the request of the Office. She indicated that the records did not reveal any psychiatric symptoms and noted that appellant was capable of performing the duties of the attached position description on the basis of his current mental condition. Dr. Brar provided only a brief report consisting of two statements and a quote from Dr. Ivan, based upon a record review. These statements touched on the duties appellant would be required to perform. Dr. Brar provided no indication that she had ever examined appellant to obtain a new or updated evaluation of his medical condition, its residuals or the nature of appellant's treatment at the clinic over the prior two years. The Board has explained that the weight of medical opinion evidence is determined by 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 analysis manifested and the medical rationale expressed in support of the opinion.<sup>6</sup> The opinion of a physician on causal relation must be one of reasonable medical

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<sup>5</sup> See *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

<sup>6</sup> *Anna C. Leanza*, 48 ECAB 115 (1996).

certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background.<sup>7</sup> The Board finds that Dr. Brar's October 31, 2000 report is of diminished probative value, as she did not examine appellant.<sup>8</sup> Rather, her opinion was based upon a record review only and because it contained no findings from any examination of appellant to provide a basis for her opinion on causal relationship. Dr. Brar merely concluded, without explanation or medical rationale, that appellant was capable of performing his job duties and that he lacked symptomatology to require any further treatment. The Board has frequently explained that conclusory statements, without further accompanying medical explanation or rationale, are of diminished probative value. The reports of Dr. Brar are insufficient to meet the Office's burden of proof to terminate appellant's compensation and medical benefits<sup>9</sup>

Accordingly, the decisions of the Office of Workers' Compensation Programs dated February 21, 2002 and April 24, 2001 are hereby reversed.

Dated, Washington, DC  
May 19, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Connie Johns*, 44 ECAB 560 (1993).

<sup>8</sup> *See Dean E. Pierce*, 40 ECAB 1249 (1989). The medical opinion of a physician who has had the opportunity to personally examine a claimant has greater probative value than the opinion of a physician who has not performed a personal examination.

<sup>9</sup> *Ruth S. Johnson*, 46 ECAB 237 (1994); *William C. Thomas*, 45 ECAB 591 (1994).