

August 8, 2000 he never took more than two days off from work and that his open caseload went from 600 to 1,100 cases. Appellant returned to work 25 hours a week on February 11, 1991. In a February 13, 1991 report, Dr. David Tarver, a clinical psychologist with the Veterans Administration, noted that appellant had experienced increasing physical and mental stress since returning to work and recommended that appellant stop work for a while.¹ In an April 9, 1991 report, Dr. Tarver, stated that appellant was admitted to the Intensive Day Program for post-traumatic stress problems on January 4, 1991 after reporting increasing distress and acute symptoms of anxiety, depression and post-traumatic stress disorder. According to Dr. Tarver, appellant said that his recent deterioration in overall functioning was related to his inability to manage increasing work demands. He diagnosed appellant with post-traumatic stress disorder, a single episode of major depression and obsessive compulsive and avoidant personality traits. On May 6, 1991 the Office accepted appellant's claim for post-traumatic stress disorder and a single episode of major depression.

In a June 20, 1991 report, Dr. Douglas Roszell, an attending Board-certified psychiatrist, noted that while working with appellant it became clear that he had labile hypertension which appeared to be temporarily related to stressors at the workplace. He stated that appellant's blood pressure elevations had paralleled his other symptoms of psychological distress and had been effectively treated with lorazepam. Dr. Roszell noted that on two occasions he had tapered the medication and discontinued it, but a short time later appellant's symptoms returned.

In a June 18, 1991 letter, appellant requested to be reassigned to a workers' compensation assistant position where he would not have to deal directly with injured workers. In a July 26, 1991 report, Dr. Roszell indicated that appellant was working 16 hours a week as a claims examiner while in group psychotherapy but he could not return to that position full time.² In an August 26, 1991 report, Dr. Roszell reviewed the workers' compensation assistant position and approved it for appellant's psychological functioning. In a September 25, 1991 decision, the Office adjusted appellant's wage-benefits to reflect his actual earnings as a workers' compensation assistant.

In an April 15, 1993 report Dr. John Hamm, an attending Board-certified psychiatrist, diagnosed post-traumatic stress disorder, in remission but with residual symptoms. He opined that appellant should not return to the claims examiner position, even though his symptoms were in remission and his coping skills had improved, because there was a high probability that he would have a recurrence. In a June 27, 1995 report, Dr. Hamm noted that appellant was tolerating his modified job well and containing his stress better. He added that appellant had ongoing symptoms of post-traumatic stress disorder and that he was high strung but was coping well, in part because of his cognitive and relaxation techniques and a less stressful job. Dr. Hamm diagnosed chronic post-traumatic stress disorder and with current symptomology between mild and minimal and major depression in remission but with residual symptoms.

¹ Appellant was a veteran of two tours of Viet Nam where he was exposed to substantial hostile fire and had a nonwork-related condition of post-traumatic stress disorder

² The record indicates that appellant returned to work for eight hours a day on Tuesdays and Thursdays on limited duty.

Dr. Hamm concluded that appellant had not improved since 1993 and he continued to show symptoms of chronic PTSD and minimal signs of depression.

In a November 25, 1996 memorandum to the employing establishment, appellant identified those aspects of a revised job description for the workers' compensation assistant position that he felt he could not perform due to his medical condition. He noted that they were similar to the duties required by the claims examiner job, including reviewing and adjudicating less difficult traumatic claims, sending development letters, conferring with claims examiners and others on difficult cases, and having personal contact with injured workers, doctors, insurance companies and attorneys.

The employing establishment requested an opinion from Dr. Hamm as to whether appellant could perform a revised workers' compensation assistant job. In a July 25, 1997 report, Dr. Hamm reviewed the new position description and opined that appellant could not perform the activities he had identified in his November 25, 1996 memorandum. In a January 4, 1998 report, Dr. Hamm noted that appellant had been doing fairly well in his restricted-duty status but that he continued to be disabled for the performance of the full duties of a claims examiner. He added that appellant should not work with hostile workers or injured workers with stress claims. In a May 22, 2000 report, Dr. Hamm suggested that appellant was still disabled from his date-of-injury position due to his post-traumatic stress disorder and chronic anxiety disorder, and had taken steps to reduce stress such as taking a bus to work instead of driving, moving to a rural area, and becoming more involved socially with his family and his church. Dr. Hamm stated that appellant continued to have symptoms of chronic post-traumatic stress disorder characterized by intrusive thoughts, occasional dream disturbance and general anxiety.

In a March 19, 2002 letter, the Office referred appellant for a second opinion examination. In a May 28, 2002 report, Dr. Brian Grant, a Board-certified psychiatrist, addressed his interview of appellant and noted a Minnesota Multiphasic Personality Inventory was obtained. Dr. Grant reviewed appellant's history of injury and prior medical treatment, and reviewed the reports of Dr. Hamm. On mental status examination appellant was oriented to time, place and person with no hallucinations or delusions. Dr. Grant noted that it was unlikely that appellant's preexisting post-traumatic stress disorder, in and of itself, would have caused his symptoms as described in the record "were it not for the combination of the type of work he was doing, along with his personality." He noted that, as of his examination of appellant, the effects of employment factors were not causing an increase in symptoms since he had changed jobs and that appellant was likely at a stable baseline irrespective of work with the possibility that a change in work might cause an exacerbation of symptoms. Dr. Grant noted that appellant's depression was in remission and added that it would not be appropriate to return appellant to a claims examiner position as the position involved situations that were stressful to him and that it was unrealistic to expect his supervisor to accommodate appellant's subjective sense of distress and single out certain cases or control his work flow. Dr. Grant diagnosed post-traumatic stress disorder, impartial remission and major depression improved with ongoing treatment. He recommended that appellant continue with medication and periodic psychotherapy.

In a November 6, 2002 letter, the Office proposed terminating appellant's partial wage-loss benefits finding that the weight of the medical evidence was with Dr. Grant who found that

appellant's residual disability was not related to his work and that Dr. Hamm's last report, showed little or no evidence of symptoms. In an August 20, 2003 decision, the Office finalized the proposed termination effective that date.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,³ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

In terminating appellant's compensation effective August 20, 2003, the Office determined that the weight of the medical evidence regarding his continuing employment-related disability rested with the opinion of Dr. Grant, a Board-certified psychiatrist who served as an Office referral physician. The burden of proof is on the Office to establish through rationalized medical evidence that appellant's disability after August 20, 2003 was no longer employment related. Dr. Grant's report does not meet that burden. The May 28, 2002 report from Dr. Grant did not state that appellant no longer had residuals from the accepted work-related aggravation of his post-traumatic stress disorder and depression. He diagnosed the post-traumatic stress disorder as in partial remission but improved with ongoing psychiatric treatment. Dr. Grant did not say that appellant's accepted conditions had resolved; nor did he find that appellant's residuals were not work related. Dr. Grant noted that appellant's ongoing post-traumatic stress disorder was affected by the combination of "the type of work he was doing" and his personality. Dr. Grant noted that it would not be appropriate to return appellant to a claims examiner position as the position involved situations that were stressful to appellant and it was unrealistic to expect his supervisor to be able to discern among the hundreds of cases which ones will be harmful to appellant. He approved of appellant's modified duty as appropriate to his psychiatric functioning.

The Office relied on the report of Dr. Grant to terminating appellant's compensation. The Board finds that the report of Dr. Grant does not support such a termination. Therefore, the Office improperly terminated appellant's compensation effective August 20, 2003.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

CONCLUSION

The Office has not met its burden of proof to terminate appellant's partial wage-loss compensation effective August 20, 2003.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2003 decision by the Office of Workers' Compensation Programs is reversed.

Issued: January 8, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member