

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT L. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 03-1507; Submitted on the Record;
Issued March 15, 2004*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that his emotional condition was no longer related to compensable factors of his employment; and (2) whether the Office properly denied compensation for the period September 27 to December 31, 2001.

On April 13, 1998 appellant, then a 46-year-old station manager, filed an occupational disease claim alleging that he developed an emotional condition due to stress from a petition filed against him by employees in March 1998. The petition alleged that appellant ran his operation through harassment, intimidation and threats of discipline. Appellant alleged that in June 1996 a mail carrier assigned to his station threatened to commit a violent act in the workplace and owned several guns. The Office found that both of these factors were compensable factors of employment under the Federal Employees' Compensation Act.¹

In reports dated from June 1 to October 12, 1998, appellant's treating physician, Dr. Antoine Jean-Pierre, a Board-certified psychiatrist, opined that appellant was disabled due to a depressive reaction and an adjustment disorder with mixed features, causally related to being threatened and vilified due to false reports by employees to management.

A January 11, 1999 fitness-for-duty examination found that appellant was capable of work within the employing establishment as long as he was not required to supervise others in a highly stressful situation.

On February 10, 1999 the Office accepted that appellant sustained a "depressive/adjustment reaction," due to the 1996 threat by a mail handler and the 1998 petition signed by 30 employees. Appellant was advised to complete CA-7 forms if he lost pay due to his injury.

¹ Multiple other allegations were found to be noncompensable under the Act.

By report dated June 7, 1999, Dr. Jean-Pierre advised that appellant's condition would not allow him to return to work. In July 6 and 29, 1999 reports, Dr. Jean-Pierre noted that appellant had returned to work and had experienced a resurgence of his difficulties which put him in crisis, and opined that appellant required aggressive treatment for about 90 days before he could return to work. By report dated October 1, 1999, Dr. Jean-Pierre indicated that appellant was making limited progress and was not, at that point, recovered sufficiently to resume work.

On November 2, 1999 Dr. Jean-Pierre approved a prospective job offer for appellant as being commensurate with his psychological limitations. He reiterated that appellant was able to resume work by report dated December 1, 1999.

Appellant attempted to return to work on January 10, 2000 but was placed on administrative leave due to the employing establishment's zero tolerance policy. It was noted that appellant had stated to another physician that he would like to kill his coworkers, but it was also noted that appellant refused the offer of suitable work.

By report dated July 7, 2000, Dr. Jean-Pierre diagnosed appellant with a major depressive reaction and an anxiety disorder with panic attacks, noted that he could work eight hours per day, but that he could not perform his usual job. He indicated that appellant would function much better in a detached environment or reassignment.

In a report dated November 7, 2000, Dr. Jean-Pierre concluded that it was unrealistic to expect appellant to fulfill the difficult assignments enumerated in an employing establishment job description without going through the same turmoil as before.

Appellant was paid administrative leave from January 10, 2000 to February 2, 2001. He returned to work on February 5, 2001 performing administrative duties without supervision of subordinates.

By report dated May 9, 2001, Dr. Jean-Pierre noted that appellant was seen claiming that he could not function in his present job assignment. He opined that appellant could return to regular full-time duty. On May 10, 2001 Dr. Jean-Pierre indicated that appellant could not return to his position of station manager. In a May 21, 2001 narrative report, he clarified that appellant could return to a full-time position designed to upgrade his skills with the proper training, and that appellant's restrictions were not permanent. He advised that appellant could eventually return to his position as station manager.

On May 29, 2001 the employing establishment offered appellant a limited-duty position without supervision or management duties.

On May 31, 2001 the Office advised appellant that he had been offered a suitable position as a modified station manager, that it remained available to him and that he had 30 days from the date of that letter to accept the position or to provide an explanation as to reason for his refusal, and it advised him of the provisions of 5 U.S.C. § 8106(c).

Appellant accepted the position on June 10, 2001.

On June 22, 2001 appellant noted that he was having increasing difficulties with the new job and contended that it was not suitable. He claimed that the position of modified station manager did not take into consideration both his physical and mental restrictions. On June 22, 2001 Dr. Jean-Pierre certified that appellant had been ill from Friday, June 15 through June 22, 2001 and could not attend to his duties. He noted, however, that appellant could return to work on June 25, 2001.

By letter dated July 2, 2001, Dr. Jean-Pierre indicated that, after working a week in his modified assignment, appellant became overwhelmed and stressed, such that he needed two weeks of sick leave. On July 20, 2001 Dr. Jean-Pierre recommended further leave until August 10, 2001.

On July 16, 2001 appellant advised Dr. Jean-Pierre of the positions he felt he could perform, which Dr. Jean-Pierre submitted to the Office on July 18, 2001. On August 14, 2001 Dr. Jean-Pierre advised the employing establishment that it appeared that appellant has not satisfactorily recovered to resume employment at that time.

On an August 27, 2001 Form CA-20 attending physician's report Dr. Jean-Pierre diagnosed adjustment disorder with mixed features and a depressive reaction and checked yes to the question of whether it was caused or aggravated by an employment activity. He indicated that appellant was totally disabled for the period June 25 through August 27, 2001, and that appellant was advised that he could return to work on September 27, 2001.

On October 1, 2001 appellant filed a Form CA-7 claim for compensation for the period September 27 through October 27, 2001. In support he submitted an October 1, 2001 Form CA-20 attending physician's report from Dr. Jean-Pierre who diagnosed adjustment disorder with mixed features and a depressive reaction, and who checked yes to the question of whether it was caused or aggravated by an employment activity. Dr. Jean-Pierre stated that appellant continued to function in a hostile environment and indicated that appellant was totally disabled for the period September 27 through October 27, 2001 and could return to work on October 27, 2001.

By report dated November 2, 2001, Dr. Jean-Pierre noted that appellant was released to return to work on June 8, 2001 but stated that the work was not suitable for him and that his limitations were not observed.

On December 24, 2001 appellant filed a Form CA-7 claim for compensation for the period October 1 through December 31, 2001 and submitted a December 24, 2001 Form CA-20 attending physician's report. Dr. Jean-Pierre reiterated his earlier conclusions and checked yes to the question of whether appellant's condition was caused or aggravated by an employment activity. Dr. Jean-Pierre indicated that appellant was totally disabled for the period September 27 through December 24, 2001, and that he was not advised when he could return to work.

On January 10, 2002 Dr. Jean-Pierre advised the employing establishment that appellant could return to work in such a capacity as an operations program analyst or a staff position

requiring no restriction or limitation. He recommended avoidance of the clerk craft or street management assignments to avoid recurrences and complications.

On January 17, 2002 the Office advised appellant that he needed medical evidence to establish disability for work for the period October 1 through December 31, 2001.

On February 6, 2002 the employing establishment proposed to remove appellant for being absent without leave and for failure to follow instructions. The employing establishment noted that appellant called in sick on June 15, 2001 and did not return to work, and that he did not report for a scheduled investigative interview on October 5, 2001 as ordered.

In a letter dated February 18, 2002, Dr. Jean-Pierre noted as follows:

“This letter is to clarify the events taken place from June and for which [appellant] could not have attended to work. He was in a situation where he was sent to the street or clerking, or being placed in a corner, which result in daily frustration, severe headaches, again, increased blood pressure and diaphoresis. [Appellant] reached a point where he was troubled every day by these symptoms and subsequently did stay home and notify the [employing establishment] for his inability to perform.”

* * *

“In September [appellant] did receive modification for an investigative interview.... Since he was ‘convinced’ that was the last straw and whatever happens he was designed to be dismissed. So he abstained; another investigative interview was scheduled producing the same effect and he was finally told that he would be dismissed from the [employing establishment].

“This assignment of fears and threats has not facilitated a climate in which [appellant] could have returned and worked.”

The Office determined that a second opinion examination was required and referred appellant, together with a statement of accepted facts and specific questions to be addressed, to Dr. Melvin L. Goldin, a Board-certified psychiatrist.

By report dated March 21, 2002, Dr. Goldin reviewed appellant’s factual and medical history, noted his present complaints, reported the results of a mental status examination and diagnosed adjustment disorder with work inhibition and a narcissistic personality disorder. He noted that appellant’s adjustment disorder was manifest by emotional and behavioral symptoms in response to an identifiable stressor, *i.e.*, the sanctions at work, occurring shortly after this onset of stressor. Dr. Goldin noted that appellant’s symptoms were clinically significant, as evidenced by marked distress in excess of what would be expected from exposure to the stressor and significant impairment in occupational functioning. He noted that the stressor, in appellant’s perception, had not terminated, and continued beyond the usual six months limit for an adjustment disorder. He noted that appellant’s diagnosed psychological disorder was not causally related to compensable factors of his employment because a preponderance of his symptomatology related to his underlying personality disorder, which by definition was a fixed

characterologic mode of interaction. Dr. Goldin noted that appellant's fragility in the face of criticism, even that which was to be expected, long predated his federal employment. He stated that the aggravation of appellant's emotional condition had become permanent as appellant nursed his sense of entitlement/anger at betrayal. Dr. Goldin opined that the position of modified station manager was not suitable for appellant's condition because he saw it as very much beneath him, but noted that appellant's condition was not work related. He completed a work capacity evaluation noting that appellant could not work eight hours per day due to a fixed characterologic dysfunction from which he was unable to appropriately manage criticism or supervision.

By letter dated June 4, 2002, the Office advised appellant that it proposed to terminate his compensation as the weight of the medical evidence of record supported that his emotional condition was no longer related to his federal employment. The Office found that the report from Dr. Goldin constituted the weight of the medical evidence and established that appellant's condition was preexisting and not related to his employment. Appellant did not respond to the termination notification.

Nothing further was received from appellant.

By decision dated July 24, 2002, the Office terminated appellant's compensation, finding that Dr. Goldin's second opinion report established that appellant's emotional condition was not due to compensable factors of his employment.

By decision dated July 24, 2002, the Office also denied appellant's request for compensation for the periods September 27 to October 27, 2001 and October 1 to December 31, 2001, finding that the weight of the medical evidence did not support that he was disabled.

The Board finds that the Office did not properly terminate appellant's compensation due to a conflict in medical opinion evidence.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² 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.³ In this case, the Office has not met its burden to terminate compensation, as there exists a conflict in medical opinion evidence.

The Office accepted that appellant sustained a depressive reaction and an adjustment disorder due to being threatened in 1996 and the 1998 petition by coworkers and managers. Dr. Jean-Pierre related appellant's emotional reactions to the accepted factors. However, he continued to opine that appellant's ongoing depressive reaction was due to repeated harassment, ostracism and threats at work in his subsequent reports through July 7, 2000 when he noted that

² *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Jeff M. Burns*, 51 ECAB 241 (1999).

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

appellant could not perform his usual job. On August 27, 2001 Dr. Jean-Pierre diagnosed adjustment disorder with mixed features and a depressive reaction as continuing and being aggravated by his employment, including experiencing continuing threats and being considered dangerous. In October and again on December 24, 2001, Dr. Jean-Pierre opined that appellant continued with depression and an adjustment disorder with mixed features, causally related to being demeaned and being falsely accused of being dangerous.

On March 21, 2002 the second opinion specialist, Dr. Goldin, diagnosed adjustment disorder with work inhibition and a narcissistic personality disorder. He opined that appellant's emotional condition was never related to factors of his federal employment, but was, rather, due to an underlying personality disorder. Dr. Jean-Pierre found that appellant's ongoing adjustment disorder was causally related to multiple factors, including compensable factors of his federal employment. Dr. Goldin opined that appellant's emotional condition was not causally related to the compensable factors of his employment, because a preponderance of his symptomatology related to his personality disorder, which was a fixed characterologic mode of interaction. Dr. Goldin found that appellant's emotional problems and personality disorder had predated his employing establishment employment. The Board finds a conflict in medical opinion evidence on the issue of whether there is a causal relationship of appellant's accepted emotional condition to the compensable factors of his federal employment. As a conflict in medical evidence still exists in this case, the Office did not meet its burden of proof to terminate appellant's compensation benefits.

The Board also finds that the Office properly denied compensation for wage loss for the period September 27 to December 31, 2001.

Where an appellant is required to submit Form CA-7 to claim compensation for a defined period, he bears the burden of proof to submit sufficient medical evidence to demonstrate such disability. Appellant did not submit sufficient medical evidence in this case. He submitted two Form CA-20 reports, dated October 1 and December 24, 2001, on which Dr. Jean-Pierre merely noted his continuing diagnoses, indicated that the periods of disability, and checked "yes," indicating that the diagnoses were work related.

The Board has held that a form report merely checked "yes" to the question of causal relation is conclusory and has little probative value, where there is no explanation or rationale supporting the opinion on causal relationship between the diagnosed condition and the employment-related injury.⁴ As the form reports submitted lacked any explanation or clarification regarding cause and effect regarding the claimed periods of employment, they have very little probative value and are insufficient to establish appellant's periods of disability claimed.

In response to an Office request for an additional medical narrative Dr. Jean-Pierre submitted the February 18, 2002 report which was not well rationalized in explaining appellant's disability for the claimed period. Dr. Jean-Pierre reported appellant's complaints of daily frustration, severe headaches, increased blood pressure and diaphoresis, which were not accepted conditions, and addressed problems with work, such as being on the street, clerking, or being

⁴ See *Ruth S. Johnson*, 46 ECAB 237 (1994); *William C. Thomas*, 45 ECAB 591 (1994); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

placed in a corner, which were not accepted as compensable factors of employment. Dr. Jean-Pierre merely stated that appellant was troubled by these symptoms and had to stay home, due to his inability to perform his duties. He did not provide any explanation of why or rationale as to how appellant's claimed period of disabilities related to the accepted factors of his employment. He identified no specific dates or periods of disability, and merely mentioned the September investigational interview, from which appellant abstained. Dr. Jean-Pierre failed to provide any explanation as to why appellant was disabled for work for the specific periods claimed due to residuals of the accepted emotional conditions.

As none of the reports appellant submitted identified his claimed periods of disability and discussed their relationship with accepted factors of his employment, they are insufficient to establish his disability for periods September 27 to October 27, 2001 and from October 1 to December 31, 2001.

Consequently, the July 24, 2002 decision of the Office of Workers' Compensation Programs terminating compensation is hereby reversed. The July 24, 2002 decision denying compensation for the periods from September 27 to October 27, 2001 and, from October 1 to December 31, 2001, is hereby affirmed.

Dated, Washington, DC
March 15, 2004

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member