

**United States Department of Labor
Employees' Compensation Appeals Board**

DAVID E. DENTON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 05-415
Issued: June 5, 2006**

Appearances:
David E. Denton, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On December 8, 2004 appellant filed a timely appeal from a September 29, 2004 merit decision of the Office of Workers' Compensation Programs terminating his compensation and authorization for medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation effective August 13, 1998 on the grounds that he had no further disability due to his accepted employment injury; and (2) whether the Office properly terminated authorization for medical benefits.

FACTUAL HISTORY

This case is before the Board for the second time. In the first appeal, the Board set aside a February 4, 1999 decision denying appellant's claim for an emotional condition and remanded

the case for resolution of a conflict in medical opinion.¹ The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

On remand, the Office referred appellant to Dr. Glenn Weaver, a Board-certified psychiatrist, for an impartial medical examination. In a report dated April 23, 2001, Dr. Weaver discussed the work history and the results of psychological testing. He noted that appellant received an award from the Department of Veterans Affairs (DVA) for post-traumatic stress disorder (PTSD). Dr. Weaver indicated that he had reviewed the compensable employment factors and found that appellant “did experience stress, anxiety and depression as a result of what he considered to be pressures placed upon him to meet specific work goals.” He diagnosed chronic PTSD which he found was “aggravated by work-related responsibilities.” Dr. Weaver related:

“Prognosis is considered to be guarded. It is my opinion that he does require continued treatment as being presently provided at the Veterans Administration. It is my opinion that the psychiatric disorder which he has experienced -- post-traumatic stress disorder, is chronic, and unlikely to change. The acute manifestations which he experienced while employed have subsided and most likely do not require treatment. The prior service allowed disability does require continued treatment -- indefinite.”

The physician opined that appellant was unable to return to his usual employment.

On May 9, 2001 the Office accepted appellant’s claim for an aggravation of PTSD.

By letter dated May 9, 2001, the Office requested that Dr. Weaver clarify whether appellant’s disability from employment was due to his preexisting PTSD or the work-related aggravation. The Office further asked that the physician specify the date that the employment-related aggravation of PTSD ceased.

In a supplemental report dated June 1, 2001, Dr. Weaver reiterated that appellant’s “acute manifestation” of PTSD “which had been prompted by his work-related situation had subsided” but that he continued to have symptoms of his chronic PTSD. The physician stated, “I cannot give you a specific date as to when the aggravation caused by work factors ceased, but would suggest that this, most likely, tended to subside in a period of approximately six months after being absent from work.” Dr. Weaver further related:

“It is my opinion that his inability to perform his previous job or any other occupational duty is due to the underlying post-traumatic stress disorder. In addition, the memories of his work-related stress are still vivid in his mind and, most likely, would lead to recurrence of distress if he returned to a work situation.”

On May 29, 2001 appellant filed a claim for compensation on account of disability (Form CA-7) requesting compensation from February 12, 1999 to May 29, 2001. He indicated on the

¹ *David E. Denton*, Docket No. 99-2099 (issued February 6, 2001).

claim form that he had retired from the employing establishment on February 12, 1999 and worked intermittently since that time conducting private investigations.

A July 22, 1999 rating from the DVA dated July 22, 1999 indicated that appellant remained entitled to an award for a 30 percent disability due to PTSD.

On August 19, 2004 the Office informed appellant that it proposed to terminate his medical benefits and wage-loss compensation on the grounds that his employment-related aggravation of his PTSD ceased by August 13, 1998. The Office provided appellant 30 days to submit evidence or argument relevant to the proposed termination.

Appellant did not respond within the allotted time.

By decision dated September 29, 2004, the Office terminated appellant's compensation and authorization for medical benefits effective August 13, 1998 on the grounds that he had no further employment-related condition or disability.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁴ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁵ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

² *Gloria J. Godfrey*, 52 ECAB 486 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁴ 5 U.S.C. § 8123(a).

⁵ 20 C.F.R. § 10.321.

⁶ *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

ANALYSIS

On prior appeal the Board determined that a conflict in medical opinion existed on the issue of whether appellant sustained an emotional condition due to compensable employment factors and remanded the case for resolution of the conflict. The Office referred appellant to Dr. Weaver for an impartial medical examination. Based on Dr. Weaver's opinion, the Office accepted appellant's claim for an aggravation of PTSD. The Office terminated his entitlement to compensation effective August 13, 1998 on the grounds that the weight to the medical evidence, as represented by the opinion of Dr. Weaver, established that he had no further employment-related disability.

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁷ The Board finds that Dr. Weaver's opinion is well rationalized and based upon a proper factual and medical history and therefore entitled to special weight. In a report dated August 23, 2001, Dr. Weaver summarized appellant's history of injury and reviewed the results of psychological testing. He diagnosed chronic, preexisting PTSD which he found had been temporarily aggravated by compensable employment factors. Dr. Weaver opined that the "acute manifestation" of the aggravation of PTSD he experienced during his employment had subsided. In a supplemental report dated June 1, 2001, Dr. Weaver explained that the employment-related aggravation of appellant's PTSD ceased "approximately six months after being absent from work." He determined that appellant was disabled from his employment due to his "underlying" PTSD. Dr. Weaver further found that the "memories of his work-related stress are still vivid in his mind and, most likely, would lead to recurrence of distress if he returned to a work situation." The possibility of a future injury, however, does not form a basis for the payment of compensation under the Act.⁸ The opinion of Dr. Weaver, as the impartial medical examiner, constitutes the weight of the medical evidence. Consequently, the Office met its burden of proof to terminate appellant's compensation benefits as of August 13, 1998.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁹ 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.¹⁰

⁷ See *Willie M. Miller*, 53 ECAB 697 (2002).

⁸ *Manual Gill*, 52 ECAB 282 (2001).

⁹ *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹⁰ *Id.*

ANALYSIS -- ISSUE 2

The Office met its burden of proof to terminate authorization for medical treatment through the opinion of Dr. Weaver, the impartial medical examiner who found that appellant required continued treatment for his underlying, chronic PTSD but that his employment-related aggravation of PTSD had resolved. The Office, therefore, properly terminated appellant's entitlement to medical benefits.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and authorization for medical benefits effective August 13, 1998 on the grounds that he had no further condition or disability due to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2004 is affirmed.

Issued: June 5, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board