

adjusting to the new culture, setting up a proper environment to live and work in, facing many new experiences and challenges, not being able to communicate while learning a new language, being the center of attention and trying to behave in an acceptable way while in a strange and foreign country. The Office accepted appellant's claim for a major depressive disorder and paid compensation for temporary total disability on the periodic rolls.

In 2007 a conflict in medical opinion arose on whether appellant continued to experience residuals of the 1987 work injury. Dr. Michael V. Stulberg, appellant's long-time psychiatrist, reported that he continued to suffer from a work-related and disabling major depressive disorder. Dr. Cheryn N. Grant, a second-opinion psychiatrist, disagreed. She diagnosed dysthymic disorder and personality disorders unrelated to work in the Peace Corps. To resolve the conflict, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. S. David Glass, a Board-certified psychiatrist.

On February 1, 2008 Dr. Glass performed a psychiatric evaluation. He reviewed appellant's medical records, including psychiatric evaluations from Dr. Stulberg and Dr. Grant. Dr. Glass related the history of appellant's present illness, past medical history and past social history. He described his findings on mental status examination and offered his clinical impression. Appellant took a Minnesota Multiphasic Personality Inventory (MMPI-2), the results of which Dr. Glass discussed. Based on the information available, Dr. Glass reported that the most appropriate diagnosis would be dysthymic disorder together with alcohol abuse, rule out alcohol dependence. He also diagnosed personality disorder not otherwise specified with avoidant, dependent, obsessive-compulsive and narcissistic features. "This is considered the primary diagnosis," Dr. Glass explained, "because personality psychodynamics would essentially be the reasons for [appellant's] level of isolation, anxiety, unhappiness and dysfunction."

Dr. Glass addressed the relationship of appellant's current psychiatric condition to his work in the Peace Corps:

"[Appellant's] current problems in living, psychiatric diagnoses and any psychiatric disability or need for treatment are not due or related to the 1987 work exposure. The initially accepted diagnosis of major depressive disorder could be reasonable with [appellant's] report of his symptoms in 1987. Since returning home, however, he has experienced problems in living and has continued to use alcohol -- with his ongoing difficulties in living once back in the U.S., a continuation of his preexisting (pre-Peace Corps) personality and other issues. As noted, [appellant's] clinical course over the following 20-some years would not be anticipated with the diagnosis of major depressive disorder and it is scientifically and clinically inappropriate to ascribe his current symptoms or problems in living to any stress generated by his African sojourn those many years ago. If Peace Corps exposure was substantially involved with [appellant's] symptoms/problems, distress from that situation would have essentially mitigated once he returned home.

"The etiology of a personality disorder diagnosis, as well as a Dysthymic Disorder, relates to constitutional and developmental factors: the vicissitudes of adult life do not cause Dysthymic Disorder, but unhappy events -- in [appellant's]

case because of personality issues -- may allow for the manifestation of increased unhappiness.”

* * *

“As can be appreciated from earlier statements, [appellant’s] emotional distress, if related to being in Africa, would have ceased upon leaving the Peace Corps. From the history, [his] problems related to his personality psychodynamics and alcohol abuse; as Dr. Grant notes, he would have his difficulties with himself whether in Africa or the U.S. and there is no causal relationship to his current psychiatric diagnoses or any need for treatment or any psychiatric disability, from his work exposure in 1987.”¹

In a decision dated March 17, 2008, the Office terminated appellant’s compensation effective that date.² It found that Dr. Glass’ opinion represented the weight of the medical evidence and established that appellant’s current condition was not due to his Peace Corps service.

Appellant requested reconsideration on March 31, 2008 and submitted the December 12, 2007 report of Dr. Anthony J. Monteverdi, appellant’s new treating psychiatrist. Dr. Monteverdi reported that appellant returned for the first time in six months for ongoing pharmacotherapy for his difficulties with recurrent major depressive disorder and chronic dysthymia. He noted: “Obviously, not seeing him in a major depressive episode, I think his previous psychiatrist records would be more useful in validating the severity of his depression.” Dr. Monteverdi stated that, while appellant did not report anything indicative of a major depressive episode, he did report ongoing chronic dysthymia. Appellant told Dr. Monteverdi that he was interested in going back on an antidepressant medication, and Dr. Monteverdi so prescribed.

In a decision dated April 25, 2008, the Office denied appellant’s request for reconsideration. It found that Dr. Monteverdi’s report was not relevant as it did not discuss whether the termination was in error and did not indicate whether appellant’s current condition was related to his work exposure in the Peace Corps.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Once the Office accepts a claim, it has the burden of proof to justify termination or modification of

¹ Dr. Glass offered the following comment: “I am not impressed that medication has been helpful for [appellant], and based on his report today, the lack of Wellbutrin has not seemed to make much of a change in his overall demeanor and symptomatology. Maintaining him on medication that hasn’t worked and on disability that has adversely affected his motivation to change makes no sense to this psychiatrist.”

² The Office issued a pretermination notice on May 17, 2007. An Office hearing representative set aside the initial termination on June 27, 2007 and remanded the case for the Office to resolve the medical conflict.

³ 5 U.S.C. § 8102(a).

compensation benefits.⁴ After it has determined that an employee has disability causally related to 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

Section 8123 of the 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.⁶ When 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.⁷

ANALYSIS -- ISSUE 1

To resolve the conflict between appellant's psychiatrist, Dr. Stulberg, and the Office's second-opinion psychiatrist, Dr. Grant, the Office properly referred appellant to an impartial medical specialist under section 8123 of the Act. It provided Dr. Glass, a Board-certified psychiatrist, with appellant's case record and a statement of accepted facts. Dr. Glass interviewed appellant and reviewed his history in depth. He reviewed previous psychiatric evaluations and the results of appellant's current mental status examination and personality inventory. Dr. Glass based his opinion on a proper factual and medical background.

Dr. Glass also supported his opinion with sound medical rationale. He explained that while the initial diagnosis of major depressive disorder could be reasonable with the symptoms reported in 1987, distress from appellant's work in the Peace Corps would have essentially mitigated once he returned home. Once back in the United States, the problems in living he experienced and his continued use of alcohol represented a continuation of his preexisting personality and other issues. Dr. Glass noted that a diagnosis of major depressive disorder would not anticipate appellant's clinical course over the following 20-some years. Indeed, he stated, it would be scientifically and clinically inappropriate to ascribe appellant's current symptoms or problems in living to any stress generated by his Peace Corps experience in 1987.

Dr. Glass explained his principal diagnosis of dysthymic disorder and the additional diagnosis of severe personality disorder. And he addressed the issue of causal relationship in a manner that appears thoughtful and logical. Because Dr. Glass based his opinion on a proper factual and medical background and because he supported his opinion with sound reasoning, the Board finds that his opinion is entitled to special weight in resolving the conflict. As this evidence establishes that appellant no longer suffers from the major depressive disorder he suffered in the Peace Corps in 1987, the Board finds that the Office has met its burden of proof

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁶ 5 U.S.C. § 8123(a).

⁷ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

to justify the termination of compensation for that emotional injury. The Board will affirm the Office's March 17, 2008 decision terminating appellant's compensation.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁸ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁹

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁰

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹¹ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹²

ANALYSIS -- ISSUE 2

Appellant made his March 31, 2008 request for reconsideration within 30 days of the Office's March 17, 2008 decision terminating compensation. The request is therefore timely. The question is whether the request meets at least one of the three standards for obtaining a merit review of the case.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law nor did he advance a relevant legal argument not previously considered by the Office. Instead, appellant submitted the December 12, 2007 report of Dr. Monteverdi, his new treating psychiatrist but this report does not constitute relevant and pertinent new evidence not previously considered by the Office. Dr. Monteverdi did not address the fundamental issue raised by the

⁸ 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.605 (1999).

¹⁰ *Id.* at § 10.606.

¹¹ *Id.* at § 10.607(a).

¹² *Id.* at § 10.608.

termination of appellant's compensation: whether appellant continues to suffer from the emotional injury he sustained in 1987. Dr. Monteverdi did not directly address Dr. Glass' report or dispute his rationale or show that further psychiatric evaluation was inconsistent with Dr. Glass' conclusion.

On appeal, appellant states that, contrary to Dr. Glass' opinion, he benefited greatly from his antidepressant medication. The extent to which he benefited is immaterial and not relevant to the termination of compensation for the 1987 injury. The Office did not terminate compensation because appellant no longer had any depressive symptoms or did not benefit from medication. It terminated compensation because the weight of the evidence established that the emotional injury he suffered in 1987 had resolved and that his current difficulties, including any depressive symptomatology, were not related to that distant work experience by causation.

Because appellant's request for reconsideration does not meet at least one of the three standards for obtaining a merit review of his case, the Board will affirm the Office's August 25, 2008 decision denying that request.

CONCLUSION

The Board finds that the Office properly terminated compensation for the major depressive disorder appellant suffered in the Peace Corps in 1987. The Board also finds that the Office properly denied a merit review of appellant's case.

ORDER

IT IS HEREBY ORDERED THAT the August 25 and March 17, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 13, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board