

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

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R.C., Appellant )

and )

DEPARTMENT OF THE NAVY, SEWELLS )  
POINT BRANCH MEDICAL CLINIC, NAVAL )  
STATION, Norfolk, VA, Employer )

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**Docket No. 09-878  
Issued: July 27, 2009**

*Appearances:*  
*Appellant, pro se*  
*No appearance, for the Director*

Oral Argument June 10, 2009

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 13, 2009 appellant timely appealed the November 10, 2008 merit decision of the Office of Workers' Compensation Programs, which denied wage-loss compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant was disabled during the period July 1, 2007 through June 30, 2008 as a result of his employment-related emotional condition.

## **FACTUAL HISTORY**

Appellant, a 49-year-old medical officer-physician, has an accepted occupational disease claim for aggravation of major depressive disorder.<sup>1</sup> He last worked on June 25, 2004.<sup>2</sup> Effective September 15, 2004, appellant received a disability retirement annuity from the Office of Personnel Management (OPM). He would later elect to receive wage-loss compensation from the Office in lieu of the OPM benefits he had been receiving.<sup>3</sup> Appellant's election (Form CA-1105) was retroactive to September 15, 2004 and extended through June 30, 2007. The Office paid appellant wage-loss compensation for the above-noted period based on the opinion of Dr. Patrick D. Thrasher, a Board-certified psychiatrist and Office referral physician.<sup>4</sup>

Dr. Thrasher examined appellant on May 2, 2007 and diagnosed recurrent major depression, dysthymic disorder, attention deficit disorder and obsessive-compulsive personality traits. He explained that appellant's major depression was aggravated by his conditions at work, which included "the stress of the change in his job demands." Dr. Thrasher further stated that appellant was "not ever expected to return to his baseline capacity to function, providing primary care as a physician." He explained that appellant's ongoing disability continued to be related to his work factors because his work factors were the direct and clear cause for the deterioration in his functioning that led to his retirement. According to Dr. Thrasher, appellant had functioned reasonably well in his position until there was a greater than 25 percent increase in his workload accompanied by the threat of disciplinary action if unable to perform to the new expectations. He further explained that this trauma caused a fundamental change in appellant's outlook regarding the practice of medicine, from which appellant was not expected to recover. Dr. Thrasher stated that appellant "will never be able to return to full- or part-time work as a [m]edical [o]fficer with the Department of the Navy." He explained that appellant was unable to manage his fear and anxiety to a degree that would allow him to approach a patient with an open clear mind. Appellant was also unable to trust the employing establishment to treat him fairly. In conclusion, Dr. Thrasher stated that appellant was still suffering from residuals of his accepted work-related injury, which rendered him totally disabled to the present date. He also noted that

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<sup>1</sup> Appellant had preexisting recurrent major depressive disorder, dysthymia, adult attention deficit disorder and obsessive-compulsive personality traits. On October 12, 2003 the employing establishment issued a memorandum increasing the number of patients that civilian primary care providers, such as appellant, were expected to treat on a daily basis. The employing establishment also indicated that physicians unable to perform at the required level were subject to possible disciplinary action. The Office accepted the increased workload and threat of possible disciplinary action as a compensable employment factor.

<sup>2</sup> As June 25, 2004 was appellant's last date of occupational exposure, this date has been selected as the date of injury. When the claim was initially accepted on May 16, 2005, the noted date of injury was October 13, 1990; a date appellant provided on his Form CA-2. The date of injury was later changed to June 25, 2004 pursuant to appellant's request.

<sup>3</sup> A beneficiary may not receive wage-loss compensation concurrently with a federal retirement or survivor annuity. The beneficiary must elect the benefit he or she wishes to receive, and the election, once made, is revocable. *See* 5 U.S.C. § 8116(a) (2006); 20 C.F.R. § 10.421(a) (2008).

<sup>4</sup> The Office also reimbursed OPM for the monies it had paid appellant during the period September 15, 2004 through June 30, 2007.

appellant would likely need medication management for the remainder of his life and individual psychotherapy for at least several years and perhaps longer.

In a supplemental report dated June 28, 2007, Dr. Thrasher reiterated that appellant's preexisting major depression was exacerbated by conditions at work. He explained that appellant had been employed as a physician at the employing establishment's medical clinic since early 1996, and in October 2003 there was a demand that all physicians increase their workload substantially under threat of disciplinary action. This caused an extreme amount of stress as appellant was unable to meet the demands of the increased workload, causing him to become very fearful of making medical mistakes to the point that he began to view each patient as "the enemy." Dr. Thrasher further explained that this intense fear exacerbated the threat that appellant felt to his job security from possible disciplinary action for not meeting the increased demands, which in turn exacerbated his preexisting major depression. He stated that the "accepted work condition caused the exacerbation of [appellant's] preexisting depression, destroying any ability to continue to work as a primary care physician on a full- or part-time basis." In summary, Dr. Thrasher believed that appellant was still suffering from residuals of the accepted work-related injury, which had rendered him totally disabled since September 15, 2004.

As previously noted, the Office paid wage-loss compensation for the period September 15, 2004 through June 30, 2007 based on Dr. Thrasher's May 2 and June 28, 2007 reports. Benefits ceased as of June 30, 2007 because appellant did not elect to continue to receive wage-loss compensation benefits beyond that specific date. Per his request, appellant resumed receiving OPM benefits effective July 1, 2007.

On June 30, 2008 appellant submitted a claim for compensation (Form CA-7) for the period July 1, 2007 through June 30, 2008. The claim was accompanied by Form CA-1105, wherein appellant elected to receive benefits from the Office in lieu of the OPM benefits he had received for the period July 1, 2007 through June 30, 2008.

By letter dated August 7, 2008, the Office acknowledged receipt of appellant's recent Form CA-7 and advised him that the medical evidence of record was insufficient to support his claimed disability for the period July 1, 2007 through June 30, 2008. It explained that the latest medical evidence was Dr. Thrasher's June 28, 2007 report, which "did not support the present period of disability [appellant was] claiming."<sup>5</sup> Appellant was advised to submit a recent report from his physician explaining how the period of disability claimed was causally related to his June 25, 2004 employment injury. The Office afforded appellant 30 days within which to submit the requested medical information.

In a series of telephone conversations and written correspondence with various Office personnel, appellant expressed his belief that Dr. Thrasher's May 2 and June 28, 2007 reports were sufficient to establish his entitlement to wage-loss compensation for the period July 1, 2007 through June 30, 2008. Appellant noted that the Office had previously relied on Dr. Thrasher's opinion as a basis for awarding compensation through June 30, 2007. He also noted that

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<sup>5</sup> The record including 2007-08 billing statements reflecting ongoing individual psychotherapy with William Duane, Ph.D., however, there were no recent narrative medical reports other than Dr. Thrasher's May 2 and June 28, 2007 reports.

Dr. Thrasher had stated that his ongoing disability was employment related and that he would “never be able to return to full- or part-time work as a [m]edical [o]fficer with the [employing establishment].” Appellant argued that Dr. Thrasher’s opinion should be sufficient to document disability for at least a year following his evaluation, which would include the current period of disability ending June 30, 2008. The Office did not receive any additional medical evidence in response to its August 7, 2008 request.

In a decision dated November 10, 2008, the Office denied appellant’s claim for wage-loss compensation for the period July 1, 2007 through June 30, 2008. In denying the claim, it noted appellant’s argument that Dr. Thrasher’s reports supported his claim for wage-loss compensation. The Office also noted that it had requested a more recent report and appellant failed to submit the requested information. In conclusion, it found that the medical evidence of record failed to establish appellant’s disability for work due to the accepted medical condition.

### **LEGAL PRECEDENT**

A claimant has the burden of establishing the essential elements of his claim, including that the medical condition for which compensation is claimed is causally related to the claimed employment injury.<sup>6</sup> For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.<sup>7</sup> The evidence submitted must be reliable, probative and substantial.<sup>8</sup>

### **ANALYSIS**

Appellant argues that Dr. Thrasher’s May 2 and June 28, 2007 reports are sufficient to establish his entitlement to wage-loss compensation for temporary total disability for the period July 1, 2007 through June 30, 2008. The Board agrees. Dr. Thrasher unequivocally stated that appellant continued to suffer from residuals of his employment-related injury. He noted that the “accepted work condition caused the exacerbation of [appellant’s] preexisting depression, destroying any ability to continue to work as a primary care physician on full- or part-time basis.” According to Dr. Thrasher, appellant would “never be able to return to ... work as a [m]edical [o]fficer with the Department of the Navy.” Appellant would likely need medication management for the remainder of his life and individual psychotherapy for the foreseeable future. The Office had previously relied on Dr. Thrasher’s opinion to pay approximately 33 months of wage-loss compensation through June 30, 2007.

Neither the Office’s August 7, 2008 development letter nor the November 10, 2008 decision provided a critical analysis of Dr. Thrasher’s reports. In the August 7, 2008 correspondence, the Office merely stated that Dr. Thrasher’s opinion “did not support the present period of disability [appellant was] claiming.” The November 10, 2008 decision did not elaborate. The only discernable rationale for denying appellant’s claim for compensation was

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<sup>6</sup> 20 C.F.R. § 10.115(e); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003).

<sup>7</sup> 20 C.F.R. § 10.115(f).

<sup>8</sup> *Id.* at § 10.115.

that the Office asked for a more recent report and appellant did not comply. Appellant's failure to comply with the August 7, 2008 request does not justify the Office's apparent disregard for otherwise relevant and credible medical evidence. It is not at all clear why a June 28, 2007 report finding appellant totally disabled as of that date would be insufficient to support a claim for wage-loss compensation beginning July 1, 2007. This is the same medical evidence that justified payment of wage-loss compensation through June 30, 2007.

Rather than being placed on the Office's periodic compensation rolls, appellant previously chose to resume receipt of OPM benefits effective July 1, 2007. Had he instead been placed on the periodic compensation rolls, Dr. Thrasher's reports would have likely been sufficient for at least another year for purposes of justifying continuing compensation payments.<sup>9</sup> And the burden would have been on the Office to justify termination or modification of appellant's benefits.<sup>10</sup> Because appellant is not on the periodic compensation rolls he retains the burden of proving that his claimed disability on or after July 1, 2007 was causally related to his accepted employment injury.<sup>11</sup> However, the allocation of the burden of proof has nothing to do with the relevance and credibility of Dr. Thrasher's opinion as to appellant's ongoing employment-related disability. According to Dr. Thrasher, appellant was totally disabled at the time he examined him on May 2, 2007, and there was little or no prospect of appellant ever returning to work at the employing establishment in either a full-time or part-time capacity. There is no evidence that appellant resumed any type of gainful employment since his examination by Dr. Thrasher. Also, there is no medical evidence indicating that appellant is no longer disabled as a result of his accepted condition. Moreover, the Office has not provided a rational explanation for disregarding Dr. Thrasher's May 2 and June 28, 2007 reports. Accordingly, the Board finds that Dr. Thrasher's opinion is sufficient to establish entitlement to wage-loss compensation for the period July 1, 2007 through June 30, 2008.<sup>12</sup>

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<sup>9</sup> *Id.* at § 10.501(a)(1).

<sup>10</sup> *Id.* at §§ 10.540, 10.541.

<sup>11</sup> Appellant also argued that the Office's payment of benefits through June 30, 2007 is analogous to a situation where the Office accepts a claim for a specified or "closed" period of disability. In the closed period acceptance cases, the Board has held that the burden does not shift to the employee to show that he is still disabled after the accepted period. Instead, the burden remains with the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified. *See e.g., Elsie L. Price*, 54 ECAB 734, 739 (2003). In appellant's case, the Office ceased paying wage-loss compensation after June 30, 2007 not because the medical evidence no longer supported ongoing employment-related disability, but merely because appellant opted to receive OPM benefits. Appellant was not entitled to receive both wage-loss compensation and a federal retirement annuity. *See* 5 U.S.C. § 8116(a); 20 C.F.R. § 10.421(a). Unlike the closed period acceptance cases, the Office in this instance does not bear the burden of demonstrating the absence of employment-related disability on or after June 30, 2007.

<sup>12</sup> The Board's finding regarding the sufficiency of Dr. Thrasher's opinion has no prospective application. It is strictly limited to the period of disability ending June 30, 2008. Appellant's entitlement to wage-loss compensation beyond June 30, 2008 is not an issue currently before the Board.

**CONCLUSION**

The Board finds that appellant was temporarily totally disabled during the period July 1, 2007 through June 30, 2008 as a result of his employment-related emotional condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2008 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 27, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board