

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

M.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Livonia, MI, Employer**

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**Docket No. 11-918
Issued: January 19, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 22, 2011 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated August 30, 2010. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he had disability caused by residuals of his accepted acute stress disorder and post-traumatic stress disorder conditions following the termination of compensation benefits on March 9, 2009.

FACTUAL HISTORY

This is the second appeal before the Board. Appellant, then a 30-year-old city carrier, was physically assaulted by his supervisor on July 5, 1997. He filed a claim for benefits, which OWCP

¹ 5 U.S.C. § 8101 *et seq.*

accepted for acute stress disorder and post-traumatic stress disorder. Appellant has not returned to work since the date of injury. OWCP paid compensation for temporary total disability. By decision dated June 28, 2000, it reduced appellant's compensation on the grounds that he was no longer totally disabled for work due to the effects of his July 5, 1997 employment injury and that the evidence of record showed that the position of construction painter represented his wage-earning capacity. By nonmerit decision dated November 16, 2000, OWCP denied reconsideration of the June 28, 2000 decision. In an April 10, 2002 decision,² the Board affirmed the June 28 and November 16, 2000 OWCP decisions. The complete facts of this case are set forth in the Board's April 10, 2002 decision and are herein incorporated by reference.

In order to determine appellant's current condition and ascertain whether he still suffered residuals from his accepted conditions, OWCP referred appellant for a second opinion examination with Dr. Saul Z. Forman, a Board-certified psychiatrist. In a November 5, 2008 report, Dr. Forman reviewed the medical history and the statement of accepted facts and stated findings on examination. He stated that appellant was not currently experiencing symptoms or problems from any previously diagnosed condition; in addition, appellant told Dr. Forman that he did not believe he needed mental health care. Appellant stated that his most recent treatments were in 2000, that he did not currently take any medication for physical or mental health problems, and that he had not been treated by a physician since 2001. While Dr. Forman noted a past history of traumatic stress disorder, acute stress disorder, and character disorder, he opined that these conditions were currently in remission and had resolved; this opinion was based on appellant's present behavior and his recent history of not requiring healthcare. He stated that he was no longer disabled and had no work restrictions stemming from his date-of-injury job as a letter carrier. Dr. Forman recommended that appellant did not need any continued care.

On December 18, 2008 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Forman's referral opinion, established that his accepted acute stress disorder and post-traumatic stress disorder conditions had ceased and that he had no work-related residuals stemming from these conditions.

By decision dated March 9, 2009, OWCP terminated appellant's compensation for medical benefits, finding that Dr. Forman's opinion that represented the weight of the medical evidence.

By letter dated March 25, 2009, appellant requested an oral hearing.

By decision dated June 26, 2009, OWCP's hearing representative affirmed the March 9, 2009 termination decision.

In a letter dated June 1, 2010, appellant requested reconsideration. He contended that OWCP erred in its March 9, 2009 decision by ignoring the findings of decisions rendered by the Equal Employment Opportunity (EEO) Commission, dated November 3, 2003, September 19, 2005 and March 24, 2006. Appellant submitted copies of these determinations, which

² Docket No. 01-877 (issued April 10, 2002).

adjudicated complaints he had filed against the employing establishment. All of these claims were denied.

By decision dated August 30, 2010, OWCP denied modification of the March 9, 2009 and June 26, 2009 decisions.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ Following a proper termination of compensation benefits, the burden of proof shifts back to claimant to establish continuing employment-related disability.⁴

ANALYSIS

OWCP, in its March 9, 2009 decision, relied on the November 5, 2008 report of Dr. Forman, OWCP's referral examiner, to find that appellant's accepted acute stress disorder and post-traumatic stress disorder conditions had ceased and that he no longer had any residuals from these conditions. The Board's jurisdiction is limited to decisions of OWCP issued no more than 180 days prior to notice of appeal to the Board, therefore the Board does not have jurisdiction to review the June 26, 2009 decision affirming the termination of appellant's compensation benefits, as of March 9, 2009.⁵ The only issue before the Board is whether appellant has established continuing disability after March 9, 2009.

Following the termination of compensation benefits, appellant did not submit any additional medical evidence supporting that he had any continuing disability caused by residuals of the accepted employment conditions. Thus OWCP properly found in its August 30, 2010 decision that he failed to submit evidence sufficient to establish continuing disability.⁶

Appellant did submit arguments and copies of EEO decisions to the record alleging that he should be reinstated by the employing establishment, and that it had discriminated against him by terminating his employment. These documents are not relevant to the Board's disposition. The EEO decisions are not medical reports. The only issue arising under FECA is whether appellant has established, with medical evidence, that he had continuing disability after March 9, 2009.

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *John F. Glynn*, 53 ECAB 562 (2002).

⁵ 20 C.F.R. § 501.3(e).

⁶ The Board notes that appellant submitted additional evidence to the record following the August 30, 2010 decision. The Board's jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501.2(c)(1).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish continuing disability.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 19, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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