

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALAN H. KINOSHITA and U.S. POSTAL SERVICE,  
HILO MAIN POST OFFICE, Honolulu, Hawaii

*Docket No. 96-1088; Submitted on the Record;  
Issued September 17, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation as of February 4, 1996 on the grounds that his work-related conditions of major depression with paranoid features and an obsessive-compulsive disorder had ceased on or before that date.

The Office accepted a November 10, 1982 claim for depression and anxiety attacks,<sup>1</sup> a herniated nucleus pulposus at L3-L4 and lumbosacral strain resulting from an April 17, 1987 injury,<sup>2</sup> and an August 2, 1989 injury, accepted for an episode of stress, resolved, major depression with paranoid features and an obsessive compulsive personality disorder.<sup>3</sup> Appellant stopped work on August 18, 1989 and did not return.

The Office accepted the following incidents as compensable factors of employment. On November 10, 1982 a superintendent told appellant to "cool down" after appellant became upset when instructed to switch work tasks by his supervisor; appellant sustained depression and anxiety attacks as a result of this incident and did not work from February 22, 1983 to April 3, 1984. On April 17, 1987 appellant sustained a back injury while unloading containers, after which he worked limited duty for up to six hours per day. On July 11, 1987 a coworker stared at appellant and tried to intimidate him. In June 1989, while performing limited duty, making photocopies, other employees made remarks that they wanted easy work as well and that such work was usually reserved for persons with mental disabilities.

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<sup>1</sup> Claim No. A15-0031180, later doubled into Claim No. A13-824421.

<sup>2</sup> Claim No. A13-0824421.

<sup>3</sup> Claim No. A13-896980, later doubled with A13-824421. The record indicates that this claim was initially denied by May 3, 1990 decision vacated July 17, 1990.

Dr. John C. Mebane, an attending Board-certified psychiatrist and neurologist, submitted periodic reports from March 30, 1984 to September 9, 1994 noting appellant's continued anxiety, major depression, lumbosacral pain syndrome and irritability, and finding appellant totally disabled for work.<sup>4</sup>

In a July 17, 1995 report, Dr. Mohan Nair, a Board-certified psychiatrist and neurologist and second opinion physician, submitted a report of his June 1, 1995 examination of appellant and review of the medical record. Dr. Nair noted that from 1987 to 1991, appellant participated in competitive trap shooting, reloading shotgun shells, fixing golf clubs, driving to and from the trapshooting range two to three times per week, practice shooting and socializing for up to eight hours per day, and from 1991 onward, played golf three times a week. Dr. Nair stated that these activities were inconsistent with diagnoses of major depressive disorder, severe back pain, major depression or anxiety, or panic states from social settings. Dr. Nair diagnosed appellant with a delusional disorder, persecutory type, paranoid personality disorder, and mixed personality disorder with obsessive-compulsive features. He opined that these disorders were not due to work factors, noting that any employment-related aggravation of the disorders ceased as of August 1989 when appellant stopped work. Dr. Nair stated that as employing establishment supervisors were the objects of appellant's delusions and feelings of rage, appellant should not return to the employing establishment. He concluded that appellant was able to return to other gainful employment, and should receive anti-psychotic medication and supportive psychotherapy.

By notice dated September 21, 1995, the Office advised appellant that it proposed to terminate his wage-loss compensation and medical benefits on the grounds that, based on Dr. Nair's report, he was no longer disabled for work due to the accepted condition of major depression with paranoid features and obsessive compulsive personality disorder. In an attached memorandum, the Office accepted the condition of pain disorder as a consequence of his accepted back condition under Claim No. A13-824421 and authorized medical treatment for pain disorder.

In an October 21, 1995 report, Dr. Mebane noted reviewing Dr. Nair's report and medical reports dating to 1980. Dr. Mebane diagnosed a persecutory delusional disorder, recurrent major depression and obsessive-compulsive traits. Dr. Mebane opined that these disorders were aspects of appellant's basic personality, and that the delusional and paranoid personality disorders were aggravated by his federal employment. Dr. Mebane disagreed with Dr. Nair, finding that appellant continued to exhibit symptoms of major depression. Dr. Mebane also disagreed with Dr. Nair's finding that appellant had no work-related disability, opining that appellant's symptoms continued long after his removal from the employing establishment. Dr. Mebane opined that appellant's hobbies of golf and trapshooting were helpful at relieving stress, but that in his 15-year course of treatment, appellant did not exhibit a "high level of activity and interpersonal interactions" as Dr. Nair had found. Dr. Mebane concluded that

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<sup>4</sup> In a February 6, 1991 report, Dr. Kwong Yen Lum, a Board-certified psychiatrist and second opinion physician, reviewed the medical record, performed a psychiatric examination, and diagnosed a major depression with paranoid features, features of an obsessive-compulsive personality and a herniated L3-4 disc. Dr. Lum opined that appellant was totally disabled for work from August 17, 1989 onward.

appellant had a permanent, moderate psychiatric impairment, with difficulty in work and personal relationships.

On October 26, 1995 the Office found that Dr. Mebane's October 21, 1995 report created a conflict of medical opinion with Dr. Nair's July 17, 1995 report. To resolve this conflict, the Office referred appellant, the record and a statement of accepted facts to Dr. Samuel J. Paltin, a Board-certified psychiatrist and neurologist, to determine whether appellant's psychiatric condition was permanently aggravated by his federal employment, or whether such aggravation had ceased.<sup>5</sup> The Office relied on Dr. Paltin's report in its January 22, 1996 decision, terminating appellant's compensation benefits for major depression and obsessive-compulsive disorder.

In a January 2, 1996 report, Dr. Paltin reviewed the record and statement of accepted facts, obtained a social history and examined appellant. Dr. Paltin diagnosed a delusional disorder, persecutory type with depressive features, mild alcoholism, post-traumatic stress disorder by history, a paranoid personality disorder with obsessive-compulsive features and lumbar disc disease. Dr. Paltin stated that the incidents "accepted as compensable factors of employment, [were] not themselves the cause of the [appellant's] disability and diagnosis. ...[P]redisposing factors in his personality style, particularly the paranoid and obsessive-compulsive type problems, underlie the cause of the problems which then evolved." Dr. Paltin emphasized that "[n]o psychiatric diagnosis [was] directly attributable to [appellant's federal] employment ... the diagnosis is based on underlying personality features and a longitudinal course of a psychiatric disorder, delusional persecutory disorder, which is the major diagnosis and which began even before the [federal] employment. He noted that the progression of appellant's delusional disorder "was a coincidental fact of life, which probably would have occurred in any case, whether [appellant] was employed at [the employing establishment] or otherwise employed." Dr. Paltin explained that appellant's persistent, delusional misperceptions of the actions of his former supervisors and coworkers were unrelated to the accepted incidents. Dr. Paltin opined that appellant should not return to work at the employing establishment due to revenge fantasies against former supervisors and coworkers, noting that his vocational prospects were limited.

By decision dated January 22, 1996, the Office terminated appellant's compensation benefits for major depression and obsessive-compulsive disorder effective February 4, 1996, on the grounds that residuals of those disorders had ceased on or before that date. The Office found that the weight of the medical evidence rested with Dr. Paltin, characterizing his report as well rationalized and based on a complete and accurate history. The Office noted that appellant would continue to receive "monetary and medical benefits for his back condition, as well as psychiatric treatment for the condition of Pain Disorder, which has been accepted as a consequential injury to his orthopedic back injury which occurred on April 17, 1987."

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<sup>5</sup> In a November 17, 1995 report, Dr. Don Matsuura, an attending orthopedic surgeon, diagnosed lumbosacral pain and sciatica into the right leg due to the April 17, 1987 injury, and recommended a neurological evaluation. In a December 13, 1995 report, Dr. John L. Turner, a Board-certified neurosurgeon, treating appellant for chronic low back pain noted a history of injury, noted findings by CAT (computerized axial tomography) scan of an L3 disc bulge and enlargement of the L3 and L4 facet joints. He diagnosed right L4 radiculopathy.

The Board finds that the Office properly terminated appellant's compensation benefits for major depression with paranoid features and an obsessive-compulsive disorder as of February 4, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.<sup>6</sup>

In this case, the Office found a conflict of medical opinion between Dr. Mebane, appellant's psychiatrist, and Dr. Nair, a psychiatrist and second opinion physician for the government. Dr. Mebane opined that appellant's psychiatric condition was related to work factors even after appellant stopped work on August 17, 1989, while Dr. Nair found no causal relationship between appellant's psychiatric condition and the accepted work factors. To resolve this conflict, the Office referred appellant, the record and a statement of accepted facts to Dr. Paltin, a Board-certified psychiatrist and impartial medical examiner. The Office relied on Dr. Paltin's report in its January 22, 1996 decision terminating appellant's compensation benefits for major depression and obsessive-compulsive disorder.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion on such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>7</sup>

The Board finds that Dr. Paltin's opinion is entitled to the weight of the medical evidence, as it is based on a complete and accurate factual and medical history and is extensively supported by medical rationale. Dr. Paltin performed a detailed review of the medical record and statement of accepted facts, and conducted a thorough social history and psychiatric examination. Dr. Paltin explained how and why the accepted factors of employment did not cause or aggravate major depression with paranoid features or an obsessive-compulsive disorder after appellant stopped work at the employing establishment on August 18, 1989. Then, Dr. Paltin provided extensive medical rationale explaining the etiology of each of appellant's diagnosed disorders, and why the diagnoses were not related to the accepted, compensable factors of appellant's federal employment.

Thus, Dr. Paltin's report was a proper and sufficient basis on which to terminate appellant's compensation benefits for major depression with paranoid features and obsessive-compulsive disorder as of February 4, 1996.<sup>8</sup>

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<sup>6</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>7</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

<sup>8</sup> The Board notes that this decision and order does not affect appellant's compensation benefits for the accepted condition of pain disorder and the April 17, 1987 back injury.

The decision of the Office of Workers' Compensation Programs dated January 22, 1996 is hereby affirmed.

Dated, Washington, D.C.  
September 17, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member