

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THEODORE PARKER and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, PA

*Docket No. 97-592; Oral Argument Held June 9, 1999;  
Issued September 13, 1999*

Appearances: *Mr. Theodore Parker, pro se; Sheldon G. Turley, Jr., Esq.,  
for the Director, Office of Workers' Compensation Programs.*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation effective July 12, 1994.

On September 17, 1987 appellant, then a 33-year-old city carrier, filed a notice of occupational disease alleging that he suffered an emotional condition as a result of his federal employment. Appellant stopped working on September 16, 1987. On February 7, 1989 the Office accepted the claim for depression, anxiety and paranoid personality disorder. Appellant subsequently received compensation for temporary total disability.

On March 16, 1988 Dr. James D. Nelson, appellant's treating physician and a Board-certified psychiatrist and neurologist, diagnosed severe post-traumatic stress reaction related to appellant's employment. He found that appellant was totally disabled from work.

On February 14, 1993 Dr. Perry A. Berman, a Board-certified psychiatrist and neurologist, provided a second opinion examination at the request of the Office. He reviewed appellant's employment history and the facts of his injury. Dr. Berman noted appellant's symptoms. He diagnosed a paranoid personality disorder and passive-aggressive personality disorder. Dr. Berman indicated that he attempted to contact the employing establishment supervisors involved in appellant's discrimination complaint. He stated that he talked to several employees of the employing establishment and concluded that doubt was cast on the validity of the Equal Employment Opportunity Commission decision finding that appellant was discriminated against. Dr. Berman indicated that appellant's paranoid thinking was unrelated to any discrimination. He opined that appellant had no psychiatric disability from any injury or occupational event. Dr. Berman stated that appellant's disability resulted from a preexisting paranoid condition and that it was not occupationally related. On August 17, 1993 Dr. Ange

Puig, a psychologist, diagnosed anxiety, anger and depression around the incidence of appellant's job separation from the employing establishment. He recommended that appellant not return to work.

On September 9, 1993 Dr. Puig indicated that appellant presented a history of behaviors suggestive of a post-traumatic aftermath and avoidant personality features. He opined that appellant could not be rehabilitated.

On September 16, 1993 the Office wrote a letter to Dr. Jack Krauss, a Board-certified psychiatrist and neurologist, informing him that the Office had found that a conflict existed between the opinions of Drs. Nelson and Berman and referred appellant to him for an impartial medical examination.<sup>1</sup> On October 23, 1993 Dr. Krauss indicated that he examined appellant on October 21, 1993. Dr. Krauss indicated that he reviewed appellant's medical records and his history of injury. He stated that on examination appellant revealed no evidence of depression or anxiety. Dr. Krauss stated that appellant's basic premise for not working was that he was angry and unpredictable. He stated that appellant's perceived inability to work had been globally reinforced by the many doctors that treated him. Dr. Krauss diagnosed a paranoid personality disorder. He stated that there were no objective findings to demonstrate a current psychiatric condition. Dr. Krauss stated that appellant's "current condition is due solely to his reaction to discrimination at the [employing establishment] for which he was ultimately reinstated. More precisely, his current stance and attitude is his reaction to his *perception* of discrimination at the [employing establishment] and is not accurately described as a 'condition.'" (Emphasis in the original). He further stated that appellant had "no medical disability caused by discrimination which would prevent him from returning to [the] date-of-injury job or parcel post driver. Any disability which prevents him from working is rooted in his character and not the result of trauma from discrimination."

On May 16, 1994 the Office issued a "Notice of Proposed Termination of Compensation" on the basis that the weight of the medical evidence established that appellant's condition had resolved.

By decision dated July 12, 1994, the Office terminated appellant's compensation because the evidence failed to demonstrate a continuing disability causally related to the injury. In an accompanying memorandum, the Office found that the weight of the medical evidence rested with the opinions of Drs. Berman and Krauss.

On July 20, 1994 appellant requested an oral hearing before an Office hearing representative.

On July 29, 1994 Dr. Nelson reviewed appellant's history and conducted an examination. He indicated that appellant's symptoms of post-traumatic stress disorder subsided considerably. Dr. Nelson indicated that the symptoms included recurrent thoughts and dreams of the event, diminished enjoyment in recreational activities, hyperalertness and problems with memory and

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<sup>1</sup> See record at page 706.

concentration. He diagnosed post-traumatic stress disorder, treated and improved, and a paranoid personality.

On November 15, 1994 Dr. David Gorenberg evaluated appellant over a two-week period and opined that appellant was totally disabled by his psychiatric disorder with regard to employment. He stated that appellant suffered from severe chronic post-traumatic stress disorder and a paranoid personality disorder. Dr. Gorenberg indicated that the employment relatedness of appellant's symptoms had been documented.

On January 18, 1995 Dr. Puig diagnosed post-traumatic stress disorder and a paranoid personality disorder.

On March 23, 1995 Dr. Puig opined that appellant continued to suffer from a post-traumatic stress disorder and stated that he had tendencies toward paranoid personality features. He stated that he had no reason to doubt that the employing establishment incident was a primary or significant factor in appellant's condition.

By decision dated April 18, 1995, finalized April 24, 1995, the Office hearing representative affirmed the Office's July 12, 1994 decision terminating benefits. The Office hearing representative indicated that Dr. Berman's opinion was entitled to little weight because he tried to establish "fact." He further found that the opinions of Dr. Gorenberg dated November 15, 1994 and the opinion of Dr. Puig dated March 23, 1995 were entitled to little weight because they failed to contain medical rationale. The hearing representative also discredited Dr. Nelson's July 29, 1994 report because he only opined that there was the possibility of future injury. The hearing representative then determined that the weight of the medical evidence established that appellant's disability had ceased effective July 12, 1994.

On August 3, 1995 Dr. Melvin Rogers, a clinical psychologist, opined that appellant's disability was caused by the overwhelming stress he experienced at the employing establishment. He stated that appellant continued to suffer from post-traumatic stress disorder and that he had tendencies toward paranoid personality features. Dr. Rogers stated that appellant's symptoms of recurring memories of stressful events, intense anxiety, depression, hyperalertness and defensiveness rendered him disabled from all gainful employment.

On August 3, 1995 Dr. Eric W. Fine, a Board-certified psychiatrist and neurologist, reported the results of his examination on August 1, 1995. He reviewed appellant's symptoms and the history of his illness and treatment. Dr. Fine stated that appellant suffered from a chronic post-traumatic stress disorder caused by his job at the employing establishment. He concluded that appellant was totally disabled from all employment.

On August 8, 1995 appellant requested reconsideration.

By decision dated August 31, 1995, the Office reviewed the merits of the case and denied modification because the evidence submitted in support of the application was insufficient. In an accompanying memorandum, the Office found that both the reports of Drs. Rogers and Fine were entitled to little weight as they failed to contain medical rationale for their conclusions. The Office gave the weight of the medical evidence to the opinion of Dr. Krauss.

On September 5, 1995 appellant requested reconsideration.

On October 20, 1995 Dr. Fine diagnosed chronic post-traumatic stress disorder directly caused by appellant's experiences and intense stress while he was working at the employing establishment. He noted that his opinion was supported by numerous other physicians and by the progression of appellant's symptomology. Dr. Fine indicated that psychiatric diagnoses were made based on the history provided and that he had examined appellant several times.

By decision dated January 25, 1996, the Office reviewed the merits of the case and denied modification because the evidence submitted in support of the application was insufficient. In an accompanying memorandum, the Office indicated that Dr. Fine's October 20, 1995 opinion still failed to contain adequate medical rationale. It stated that the weight of the medical opinion evidence rested with Dr. Krauss.

On February 20, 1996 Dr. Fine indicated that appellant was the victim of extreme discrimination and racism which led to severe anxiety, persistent nightmares and paranoid feelings. He stated that these experiences induced such stress that appellant developed acute and chronic post-traumatic stress disorder. Dr. Fine stated that appellant was totally disabled from all employment.

On February 22, 1996 appellant requested reconsideration.

By decision dated May 7, 1996, the Office reviewed the merits of the case and denied modification because the evidence submitted in support of the application was insufficient. In an accompanying memorandum, the Office indicated that Dr. Fine's February 20, 1996 opinion was not based on a proper factual background and was not well rationalized. It indicated that the weight of the medical evidence remained with the opinion of Dr. Krauss.

On May 12, 1996 appellant again requested reconsideration.

On August 23, 1996 Dr. Fine indicated that appellant was disabled with severe psychiatric symptoms that were caused by his exposure to major stressors at work. These stressors involved intense harassment by his supervisor. Dr. Fine indicated that appellant was repeatedly insulted and that he became anxious, distressed and unable to work. He stated that the assaults became frequent and that appellant became depressed and upset. Dr. Fine diagnosed chronic post-traumatic stress syndrome based on appellant's symptoms.

By decision dated November 5, 1996, the Office reviewed the merits of the case and denied modification because the evidence submitted in support of the application was insufficient. In an accompanying memorandum, the Office found that the weight of the medical evidence continued to rest with the opinion of Dr. Krauss.

The Board finds that the Office did not meet its burden to terminate appellant's benefits effective July 12, 1994.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> After it has been determined that a claimant has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to the employment.<sup>2</sup>

In the present case, the Office based its decisions to terminate appellant's compensation on the opinion of Dr. Krauss. Although his opinion supports a finding that appellant's continuing employment-related disability has ceased, he failed to provide adequate medical rationale to support his conclusions. Dr. Krauss examined appellant on October 21, 1993 and indicated that he had reviewed appellant's medical records. He diagnosed appellant as having a paranoid personality disorder. Dr. Krauss stated that, "[T]here were no objective findings to demonstrate a current psychiatric condition." He, however, failed to explain the medical evidence he relied on in reaching this conclusion. Dr. Krauss further stated, "[H]is current condition is due solely to his reaction to discrimination at the [employing establishment] for which he was ultimately reinstated. More precisely, his current stance and attitude is his reaction to his *perception* of discrimination...." (Emphasis in the original.) His confusing statement also fails to contain any medical explanation for this conclusion. Finally, Dr. Krauss asserted that "[H]e has no medical disability caused by discrimination ... [a]ny disability which prevents him from working is rooted in his character and not the result of trauma from discrimination." Again, Dr. Krauss failed to provide any medical rationale for his assertion. Because his opinion is devoid of any medical rationale explaining his conclusions, it is not sufficient to meet the Office's burden to terminate appellant's benefits.<sup>3</sup> Moreover, the Office did not inform appellant that Dr. Krauss' status had changed from a referee physician under section 8123(a) of the Federal Employees' Compensation Act and did not provide him an opportunity to introduce new evidence to supplant the evidence discredited by the hearing representative.

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<sup>1</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

<sup>2</sup> *Id.*

<sup>3</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Richard E. Konnen*, 47 ECAB 388 (1996).

The decisions of the Office of Workers' Compensation Programs dated November 5, May 7 and January 25, 1996 are reversed.

Dated, Washington, D.C.  
September 13, 1999

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

Michael J. Walsh, Chairman, dissenting:

The majority opinion reverses the Office of Workers' Compensation Programs' decisions on the basis that the report of the referral physician, Dr. Jack Krauss, a Board-certified psychiatrist and neurologist, is unrationalized and therefore the Office failed in its burden to prove that appellant's disability ceased effective July 12, 1994.<sup>1</sup>

I find the Office met its burden to terminate compensation in its July 12, 1994 decision and was correct in relying on the October 23, 1993 report of Dr. Krauss to do so. In his report, Dr. Krauss states:

"Prior to the interview [with appellant] I reviewed a voluminous file of his medical records which include several other independent medical evaluations and reports from other psychiatrists, psychologists and therapists whom he has seen over the 10 years of his work inhibition status. The records include a variety of treatment modalities including biofeedback, behavior modification, psychotherapy, medication and generalized emotional support."

Dr. Krauss found appellant oriented, alert, cooperative, calm and amiable and he presented "*no evidence of depression or anxiety.*" (Emphasis added). He stated:

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<sup>1</sup> Although Dr. Krauss was labeled an impartial medical specialist, by the Office and in the majority opinion, he was in fact an Office second opinion specialist, who served in that capacity when the Office discounted the report of Dr. Perry A. Berman, who served as predecessor to Dr. Krauss.

“[Appellant’s] basic premise for not being able to work is that he is angry, which makes him unpredictable. It is not that he can[no]t work -- he can concentrate, is aware and can fully understand directions, but he feels he should n[o]t have to be called upon to work.”

Dr. Krauss found no psychiatric diagnosis and diagnosed paranoid personality disorder.

In answers to questions posed by the Office, Dr. Krauss stated, “[t]here are no objective findings to demonstrate a current psychiatric condition.... He has no medical disability caused by discrimination which would prevent him from returning to [the] date-of-injury job or parcel post driver. Any disability which prevents him from working is rooted in his character and not the result of trauma from discrimination.”

Dr. Krauss examined appellant, reviewed previous medical documents and opinions and gave a cogent explanation of why, in his opinion, appellant was no longer disabled.

A report dated July 29, 1994 was submitted subsequent to termination by Dr. James D. Nelson, appellant’s treating physician and a Board-certified psychiatrist and neurologist, in which he had treated appellant in 1987, 1988 and 1993 and finally on July 26, 1994. Dr. Nelson found that appellant’s symptoms had subsided considerably.

Dr. Nelson stated that on the occasion of his examination appellant was a well-developed, well-nourished 43-year-old male, acceptably groomed, ambulatory, oriented, alert and verbal. Dr. Nelson found no evidence of increase in psychomotor activity or of psychomotor retardation. He found his cognitive functions were unimpaired, that he had normal intellectual endowment and no evidence of intellectual deterioration or retardation. Also no evidence of formal thought disorder. He stated:

“While he did not spontaneously verbalize his thoughts, it was my impression at the time I saw him that the content of his thinking had to do with the negative or positive effect that my report would have upon his continuing to receive his disability pension. While I saw him as paranoid, I did not find any evidence of formed or fixed delusional structures.”

Dr. Nelson diagnosed post-traumatic stress disorder, treated and improved and paranoid personality. This report is not totally dissimilar from Dr. Krauss.’

Other reports by Dr. David Gorenberg dated November 15, 1994 and Ange Puig, Ph.D., a licensed psychologist, dated March 23, 1995, are without rationale or substance.

I find that based on the report of Dr. Krauss, supported by the report of the treating physician, Dr. Nelson, the Office met its burden to terminate appellant’s compensation.

Once the Office met its burden, the burden shifted to appellant to demonstrate his entitlement to compensation on and after July 12, 1994.<sup>12</sup>

Subsequent reports dated August 3, 1995 by Melvin Rogers, Ph.D. and Dr. Eric W. Fine, a Board-certified psychiatrist of professional rank, dated October 20, 1995, February 20 and August 23, 1996, create a conflict with the opinion of Dr. Krauss. Both practitioners, who are treating appellant, assert that appellant continues with a work-connected psychiatric condition. Under these circumstances, I would remand the case for review by an impartial medical specialist. The Office decision of November 5, 1996 should be affirmed as to the termination and the case remanded for further development as provided herein.

Michael J. Walsh  
Chairman

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<sup>2</sup> *Talmadge Miller*, 47 ECAB 673 (1996).