

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NICHOLAS A. MOLINO and U.S. POSTAL SERVICE,
BAY RIDGE POST OFFICE, Brooklyn, NY

*Docket No. 99-2475; Submitted on the Record;
Issued January 26, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's April 12, 1999 request for reconsideration; and if so, (2) whether the Office met its burden of proof in terminating appellant's compensation effective March 29, 1998.

In a decision dated December 30, 1998, a hearing representative found that the Office had properly terminated appellant's compensation benefits. The hearing representative found that the referee medical specialist provided a detailed discussion of the statement of accepted facts and medical evidence and provided rationale to establish that appellant's work-related aggravation had ceased.

On April 12, 1999 appellant requested that his case be reopened "on appeal or reconsideration." He requested copies of his review rights and reconsideration procedures. Appellant attached a copy of a letter from the hearing representative, who advised him to contact the district Office for copies of information from his file and to follow the instructions provided with the December 30, 1998 decision if he wanted a review of that decision.

In a decision dated May 3, 1999, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that the Office properly denied appellant's April 12, 1999 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations¹ provides that an application for reconsideration, including all supporting documents, must (1) be submitted in writing and (2) set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that where the request is timely but fails to meet at least one of the standards described in section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.²

Appellant's April 12, 1999 request for reconsideration failed to set forth arguments or provide evidence showing that the Office erroneously applied or interpreted a specific point of law, advancing a relevant legal argument not previously considered by the Office, or constituting relevant and pertinent new evidence not previously considered by the Office. Because his request failed to meet at least one of the standards described in section 10.606(b)(2), the Office properly denied his request.

The Board also finds that the Office met its burden of proof in terminating appellant's compensation.

It is well established that once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ 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.⁴

The Office accepted that appellant sustained an aggravation of a preexisting personality disorder while in the performance of his duties. A conflict in medical opinion arose, however, between an Office referral physician, Dr. Edward A. Herrera, and appellant's attending physician, Dr. Anthony F. Yacona. Dr. Herrera reported that any aggravation of appellant's preexisting personality disorder had ceased by the date of examination, September 22, 1995, and that appellant's current emotional condition was due to factors unrelated to his federal employment. Dr. Yacona reported on September 27, 1996 that appellant's psychiatric disorder was directly due to the treatment he received while an employee at the employing establishment and that the continuation and exacerbation of this disorder over the past several years was again directly due to his treatment by the employing establishment. He added that the employing establishment continued to be abusive toward appellant, manipulate him and communicate with him in a quasi-threatening way, causing him ongoing emotional upsets.

¹ 20 C.F.R. § 10.606(b).

² *Id.* at section 10.608(b).

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

To resolve the conflict between Drs. Herrera and Yacona, the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Joel V. Klass, a Board-certified psychiatrist.

In a report dated September 25, 1997, Dr. Klass related appellant's history and complaints and his findings on examination. After reviewing the medical record, Dr. Klass explained how appellant's chronic personality disorder interacted with people at work. He reported that an aggravation of his preexisting personality disorder was justified but that it was unlikely, so long after his initial stressful experiences, that appellant's current behaviors were directly related to his work experience. It was more likely that appellant's current functioning was basically dependent on his preexisting personality disorder and that appellant would choose to ascribe all current difficulties to those remote experiences rather than acknowledge his difficulty in handling any normal unfairness.

Dr. Klass found no ongoing psychiatric condition medically related to the work-related incidents as described. He explained that appellant's personality disorder predated the described work incidents and that the incidents at work were a precipitant but not a basic cause of his maladaptive personality disorder. Dr. Klass opined that the aggravation of appellant's personality disorder subsided when he left the employment setting in which he viewed his supervisors as abusive. He found no factors of employment currently causing appellant's condition. Although it was likely that appellant would be totally disabled if required to resume his previous job, this disability would be caused by his vulnerability in handling even a normal working environment.

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.⁵

The Board finds that Dr. Klass' opinion is well rationalized and based on a proper factual background. He performed a thorough examination of appellant and provided reasoning or explanations to support his opinions. Dr. Klass' opinion is therefore accorded special weight in resolving the conflict between Drs. Herrera and Yacona and is found to represent the weight of the medical opinion evidence. As the weight of the medical opinion evidence supports that residuals of the accepted aggravation had ceased, the Office has met its burden of proof to justify the termination of appellant's compensation benefits effective March 29, 1998.

On February 10, 1998 Dr. Yacona reported that appellant clearly remained disabled and continued to have symptoms of his original psychiatric disturbance, which clearly remained very severe in its intensity. He also testified at an oral hearing on October 22, 1998 that he knew Dr. Klass had done a thorough evaluation. Dr. Yacona disagreed, however, with Dr. Klass' diagnosis, in particular the characterization of the severity of the disorder and the nature of it. He also felt that there was a continual reagravation of appellant's condition as a result of bureaucratic dealings with the employing establishment and its injury compensation unit.

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Dr. Yacona testified that the incidents that occurred in 1987 had a lasting effect that was compounded, aggravated and perpetuated by these other factors.

Because Dr. Yacona was one of the physicians who created the conflict in this case, his additional reports and testimony, though useful in sharpening his medical opinion, ultimately serve only to reinforce the conflict that the Office selected Dr. Klass to resolve. His additional reports and testimony are insufficient to overcome the special weight accorded the opinion of the referee medical specialist.⁶

The May 3, 1999 and December 30, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
January 26, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ See *John M. Tornello*, 35 ECAB 234 (1983).