

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of OSVALDO GOMEZ-PALACIOS and DEPARTMENT OF JUSTICE,  
BUREAU OF PRISONS, FEDERAL DETENTION CENTER, Miami, FL

*Docket No. 00-527; Submitted on the Record;  
Issued March 23, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a recurrence of disability on or about April 15, 1998 as a result of his 1995 employment injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits for the accepted conditions of depression and anxiety.

In 1995 appellant, then a 49-year-old health services administrator, developed an emotional condition while in the performance of his duties. He stopped work on August 21, 1995. The Office accepted his claim for depression and anxiety and paid benefits.

On August 4, 1998 the Office advised appellant that it had received information indicating that he might have sustained a recurrence of disability. The Office explained the nature of a recurrence and described the evidence necessary to support such a claim, including a physician's opinion, with supporting rationale, regarding the causal relationship between the condition treated and the original injury.

On August 31, 1998 appellant filed a claim asserting that he sustained a recurrence of disability on April 15, 1998 as a result of his 1995 employment injury. In an attached statement he described the circumstances of the recurrence. He explained that he had returned to his date-of-injury position in September 1997 but had become so despondent due to the anxiety and stress caused by his duties as a health services administrator that he was forced to stop working again on April 15, 1998.

In a decision dated October 23, 1998, the Office denied appellant's claim of recurrence. The Office found that the initial evidence of record was insufficient to establish the relationship between the injury and the medical condition because all the evidence indicated that the aggravation of the depression condition resulted from additional work exposure after August 21, 1995. The Office noted that the evidence appellant submitted demonstrated that he might have suffered a new occupational disease that possibly resulted from the described work

exposure beyond August 21, 1995.<sup>1</sup> The Office found that medical treatment at its expense was not authorized and that prior authorization, if any, was thereby terminated.

In a report dated September 22, 1998, Dr. Angel R. Diaz, a Board-certified psychiatrist, stated that appellant had been his patient since April 29, 1996. Dr. Diaz noted that appellant had suffered an episode of severe depression on August 21, 1995 and as a result stopped working and was diagnosed with major depressive disorder, recurrent type. Appellant returned to his original position on a full-time basis in September 1997. Although he was very enthusiastic about returning to his original position, appellant began to feel overwhelmed by the excessive demands of his job. On August 15, 1998 appellant was very despondent and severely depressed with uncontrolled crying, passive suicidal ideas, restlessness and agitation to the point that hospitalization was considered. He found it necessary to remove appellant from the environment that was affecting him and so ordered a medical leave of absence. Dr. Diaz addressed the issue of causal relationship as follows:

“To a certain degree of psychiatric certainty, it is my opinion that his present psychiatric condition is causally related to the stressors that originate from his job at the [employing establishment]. His April 15, 1998 episode is an exacerbation of his psychiatric condition that has been present since August 21, 1995.

“Prior to August 21, 1995, [appellant] had so significant psychiatric impairment that prevented him from occupational activity. He also did not have past significant psychiatric history nor problems with substances or alcohol. He was able to function at a social and occupational accepted level.

“It is also my opinion that his present psychiatric symptoms preclude him from returning to his previous position as a health service administrator with the [employing establishment].”

Appellant submitted medical progress notes from Dr. Diaz and requested an oral hearing before an Office hearing representative. On March 25, 1999 he reported that following appellant’s return to his position in September 1997 the pressures and stress related to his job position apparently precipitated his crisis in April 1998.

Following the hearing, which was held on April 28, 1999, appellant submitted additional evidence. In a report dated May 12, 1999, Dr. Diaz stated as follows:

“This is a follow-up letter in regard to the above-captioned individual. I want to make clear and it is my opinion, that the condition of [m]ajor [d]epression since May of 1995 and subsequent episodes, including relapses of his condition in October of 1996 and April 15, 1998, are causally related to the stress environment from his work at the [employing establishment].

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<sup>1</sup> On December 7, 1998 appellant filed a Form CA-2, notice of occupational disease and claim for compensation, asserting that his profound depression and anxiety was a result of his federal employment.

“The initial episode has been continuously present since 1995 through present and has been characterized by periods of remission and exacerbation.”

In a decision dated August 10, 1999, the Office hearing representative affirmed the October 23, 1998 decision, denying appellant’s claim for a recurrence of disability. The hearing representative noted that a recurrence is defined as a work stoppage that occurs after an employee has returned to work following a period of disability and is the spontaneous return of the symptoms of a previous injury or occupational disease without intervening cause, even though the same part of the body may be affected. The hearing representative also noted that Dr. Diaz did not explain how and why appellant’s accepted work injury in 1995 caused continuing disability beginning April 15, 1995 especially after he released appellant to return to full-time duty in October 1996.

With respect to appellant’s claim of consequential injury, the hearing representative found that Dr. Diaz provided no reasoned opinion concerning the relationship between the disability beginning April 15, 1998 and the original or a second injury. He stated that the relapse of appellant’s condition was related to the stress environment at work.

The hearing representative advised that the claim for disability beginning April 1998 was more properly one of an occupational illness due to work activities since January 1998. As appellant filed a claim for an occupational disease and submitted a statement of employment factors he felt caused his condition, the hearing representative instructed the Office to create a new case that should be adjudicated.

The Board finds that the evidence is insufficient to establish that appellant sustained a recurrence of disability on or about April 15, 1998 as a result of his 1995 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.<sup>2</sup>

It is clear from the reports, of Dr. Diaz that after returning to the date-of-injury position on a full-time basis in September 1997, appellant began to feel overwhelmed by the excessive demands of his job. He attributed the exacerbation of appellant’s psychiatric condition to these pressures and stresses, suggesting a new occupational disease or illness following appellant’s return to work as opposed to a spontaneous return of symptoms from the 1995 employment injury. Because Dr. Diaz offered no opinion to support a spontaneous return of symptoms and offered no explanation of how the 1995 employment injury caused disability for work on or about April 15, 1998, the Office properly denied appellant’s claim of recurrence.<sup>3</sup> The Board

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<sup>2</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>3</sup> The Office’s procedure manual states that in some occupational disease cases where the diagnosis remains the same but disability increases, the claimant may submit Form CA-2a, notice of recurrence of disability and claim for compensation, rather than filing a new claim. For instance, a claimant with carpal tunnel syndrome who has

will, therefore, affirm the Office's August 10, 1999 decision on the issue of recurrence of disability.

The Board also finds that the Office improperly terminated appellant's medical benefits for the accepted conditions of depression and anxiety.

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.<sup>4</sup> 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>5</sup> The Office's procedure manual provides that, having accepted a claim and initiated payments, the Office may not terminate compensation without a positive demonstration, by the weight of evidence, that entitlement to benefits has ceased.<sup>6</sup> The inadequacy or absence of a report in support of continuing benefits is not sufficient to support termination and benefits should not be suspended for that reason.<sup>7</sup>

In its October 23, 1998 decision, the Office found that medical treatment at Office expense was not authorized and that prior authorization, if any, was thereby terminated. On August 10, 1999 the hearing representative affirmed this decision without directly addressing the issue of medical benefits.

The Office has obtained no probative medical opinion evidence to establish that appellant no longer suffers residuals of his accepted 1995 employment injury. A return to work at no wage loss is not proof that the accepted medical conditions ceased or that further treatment is not required. To the contrary, Dr. Diaz continues to support that the initial episode of major depression has been continuously present since 1995. While appellant's new claim for an occupational disease or illness raises the issue of whether subsequent additional exposure to compensable employment factors has aggravated his accepted medical conditions, the claim itself provides no basis for the Office to terminate medical benefits.

Because the Office has failed to make a positive demonstration, by the weight of evidence, that entitlement to medical benefits for the accepted conditions has ceased, it has not

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returned to work, but whose repetitive work activities result in the need for surgery, need not be required to file a new claim. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b (January 1995). Regardless of whether appellant was in fact required to file a new claim in this case the record shows that he has done so and the hearing representative has now instructed the Office to create a new case for adjudication.

<sup>4</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>5</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

<sup>7</sup> *Id.* at Chapter 2.812.7(c)(1).

met its burden of proof. The Board will, therefore, reverse the Office's August 10, 1999 decision, on the issue of continuing medical benefits.

The August 10, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed in part and reversed in part.

Dated, Washington, DC  
March 23, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member