United States Department of Labor
Employees' Compensation Appeals Board

M.T., Appellant	)	
and	)	
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, TROUTDALE AIRPORT, Troutdale, OR, Employer	)	**Docket No. 07-1234** **Issued: November 14, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 4, 2007 appellant filed an appeal of a December 19, 2006 decision of the Office of Workers' Compensation Programs terminating his compensation and a March 7, 2007 decision denying his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective December 23, 2006 on the grounds that his accepted work-related condition had ceased; and (2) whether the Office properly denied appellant's request for a hearing.

FACTUAL HISTORY

The Office accepted that on or before November 1, 1979 appellant, then a 34-year-old air traffic controller, sustained post-traumatic stress disorder in the performance of duty.[1] Appellant received wage-loss compensation on the daily and periodic rolls.[2]

Appellant was treated by Dr. Thaddeus C. Achord, an attending psychiatrist, who submitted reports from October 1980 through May 1989, diagnosing chronic post-traumatic stress disorder and acute paranoid disorder. Dr. Achord noted appellant's nightmares about plane crashes and delusions that he was under surveillance from aircraft flying over his farm.[3]

Appellant then came under the care of Dr. Warner B. Swarner, an attending Board-certified psychiatrist and neurologist. In reports from December 1991 to February 2005, Dr. Swarner noted that appellant had nightmares about airline crashes and experienced flashbacks when he saw news coverage of aviation disasters. He also noted that appellant experienced paranoia and anxiety about the government, survivalist neighbors, ill relatives and the hardships of running a horse farm. Dr. Swarner found appellant totally disabled for work due to post-traumatic stress disorder, paranoid delusional disorder, paranoid personality disorder and violent ideation. He explained that these conditions persisted despite medication and psychotherapy and continued to be work related. Dr. Swarner opined that appellant could not return to work in any position requiring interpersonal contact or emotional challenges.

The Office obtained a second opinion from Dr. Charles Bellville, a Board-certified psychiatrist. In an April 1, 2005 report, Dr. Bellville opined that appellant had paranoid personality disorder and not post-traumatic stress disorder. He noted that, on examination, appellant did not report nightmares or flashbacks related to his work as an air traffic controller. Dr. Bellville also diagnosed dysthymia and generalized anxiety disorder. He found appellant able to perform work with limited interpersonal interactions.

Dr. Swarner submitted additional reports from August 2, 2005 to April 4, 2006 noting his disagreement with Dr. Bellville's diagnoses. He asserted that appellant had dissociative flashbacks characteristic of post-traumatic stress disorder.

The Office found a conflict of medical opinion between Dr. Swarner, for appellant, and Dr. Bellville, for the government. To resolve this conflict, the Office referred appellant, the medical record and a statement of accepted facts, to Dr. Eric E. Goranson, a Board-certified psychiatrist and neurologist, for an impartial medical opinion.

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[1] On March 7, 1979 appellant fell down stairs at work, sustaining unspecified minor injuries. Also on March 7, 1979, his friend and fellow air traffic controller died in a plane crash. Appellant stopped work on March 7, 1979 and returned to full duty on May 4, 1979.

[2] Effective January 19, 1986, the Office reduced appellant's wage loss-compensation based on his ability to earn wages in the selected position of stock clerk. After additional development, the Office reversed the wage-earning capacity determination on October 23, 1990 and restored appellant's compensation to the total disability level.

[3] The Office obtained a July 29, 1988 second opinion report from Dr. Thomas T. Bennett, a Board-certified psychiatrist, who opined that appellant remained disabled for work due to paranoia and delusions.

In a July 20, 2006 report, Dr. Goranson provided a detailed review of the medical record and statement of accepted facts. On examination, he found appellant preoccupied with family illnesses, survivalist neighbors, trespassers and the hardships of farm life. Appellant also noted nightmares about being in the control tower and a friend who died in a plane crash. He noted that he no longer believed he was being harassed by aircraft, as he learned he was on an airport approach path. Dr. Goranson noted that appellant did not exhibit delusions, hallucinations, depression or anxiety. He diagnosed paranoid and histrionic personality disorders, noting that appellant did not have post-traumatic stress disorder. Dr. Goranson explained that personality disorders were due to genetic and developmental factors, not external events. He opined that appellant had no occupationally-related emotional condition. Dr. Goranson commented that appellant was poor candidate to return to work as his personality disorders made interpersonal relations difficult and because he was comfortable with his isolated lifestyle.

Dr. Swarner submitted additional reports from August to October 2006, asserting that appellant continued to have nightmares and flashbacks about work incidents and experienced anxiety when hearing airplanes overhead. He also noted appellant's continued stress regarding the health of his horses.

By notice dated November 17, 2006, the Office advised appellant that it proposed to terminate his wage-loss and medical compensation benefits on the grounds that the accepted condition had ceased, based on Dr. Goranson's opinion. Appellant was afforded 30 days to submit additional evidence or argument.

In a December 4, 2006 letter, Dr. Swarner stated his disagreement with Dr. Bellville and Dr. Goranson. He asserted that the post-traumatic stress disorder was work related as it did not develop until after appellant began federal employment.

By decision dated December 9, 2006, the Office terminated appellant's wage loss and medical compensation benefits effective December 23, 2006 on the grounds that his accepted condition had ceased. The Office found that, the weight of the medical evidence rested with Dr. Goranson, the impartial medical examiner, who provided a well-rationalized report based on a complete factual and medical history explaining that the accepted post-traumatic stress disorder had ceased without residuals.

In a letter postmarked on January 19, 2007, appellant requested an oral hearing. He submitted a December 13, 2006 letter and chart notes from Dr. Swarner opining that appellant's paranoia had escalated and the termination was thus improper.

By decision dated March 7, 2007, the Office denied appellant's request for a hearing on the grounds that it was not timely filed. The Office found that the hearing request was postmarked on January 19, 2007, more than 30 days after the Office issues its December 9, 2006 decision. The Office further denied appellant's request for a hearing on the grounds that the issue involved could be addressed equally well by submitting a valid request for reconsideration with new evidence establishing that he continued to have residuals of the accepted November 1, 1979 condition.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[4] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[5]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[6] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[7]

Section 8123 of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.[8] In situations where 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.[9]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained post-traumatic stress syndrome on or before November 1, 1979. Appellant was followed by Drs. Achord and Swarner, both attending Board-certified psychiatrists. Dr. Swarner submitted reports from December 1991 to February 2005 finding that the accepted post-traumatic stress syndrome was still present and disabling. Dr. Bellville, a Board-certified psychiatrist and neurologist, submitted an April 1, 2005 second opinion report opining that appellant had personality disorders and not post-traumatic stress syndrome. He indicated that appellant could perform work in a solitary setting.

The Office found a conflict of medical opinion between Dr. Bellville, for the government, and Dr. Swarner, for appellant. The Office referred appellant to Dr. Goranson, a Board-certified psychologist and neurologist, for an impartial medical examination. Dr. Goranson submitted a July 20, 2006 report explaining that appellant no longer exhibited any sign of the accepted post-traumatic stress disorder.

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[4] *Bernadine P. Taylor*, 54 ECAB 342 (2003).

[5] *Id*.

[6] *Roger G. Payne*, 55 ECAB 535 (2004).

[7] *Pamela K. Guesford*, 53 ECAB 726 (2002).

[8] 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000).

[9] *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

Based on this report, the Office issued a notice of proposed termination on November 17, 2006. In response, appellant submitted a December 4, 2006 letter from Dr. Swarner opining that he still had post-traumatic stress disorder. The Office then terminated appellant's compensation by a December 9, 2006 decision on the grounds that the medical evidence established that the accepted post-traumatic stress disorder had resolved without residuals.

The Board finds that Dr. Goranson's opinion as impartial medical examiner is sufficient to represent the weight of the medical evidence as it is detailed, well rationalized and based on a complete factual and medical history.[10] Dr. Goranson thoroughly reviewed the medical record and statement of accepted facts. He provided detailed rationale explaining that appellant's symptoms were all indicative of histrionic and paranoid personality disorders, not the accepted post-traumatic stress disorder. Dr. Goranson emphasized that appellant no longer had any work-related residuals and that therefore the accepted condition no longer disabled him for work. Thus, he provided sufficient rationale, based on a complete and accurate medical history, to establish that the accepted post-traumatic stress disorder had ceased.

Following the submission of Dr. Goranson's opinion, appellant submitted a letter from Dr. Swarner disagreeing with the proposed termination of benefits. Dr. Swarner was on one side of the conflict resolved by Dr. Goranson. Therefore, the additional letter is insufficient to overcome the weight accorded to Dr. Goranson as impartial medical examiner or to create a new conflict.[11] Thus, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that "a claimant for compensation not satisfied with a decision of the Secretary … is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[12] Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[13] Office procedures, which require it to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[14]

[10] *Id*.

[11] *See Virginia Davis-Banks*, 44 ECAB 389 (1993), *Dorothy Sidwell*, 41 ECAB 857 (1990).

[12] 5 U.S.C. § 8124(b)(1).

[13] 20 C.F.R. §§ 10.616, 10.617.

[14] *Claudio Vasquez*, 52 ECAB 496 (2002).

ANALYSIS -- ISSUE 2

The Office denied appellant's claim by a December 19, 2006 decision. Appellant's letter requesting an oral hearing was postmarked on January 19, 2007, more than 30 days after the December 19, 2006 decision. Thus, the Office properly found that appellant's request for an oral hearing was not timely filed under section 8124(b)(1) of the Act and that he was not entitled to a hearing as a matter of right.

The Office then exercised its discretion and determined that appellant's request for an oral hearing could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that the accepted emotional condition had not ceased. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.[15] The Board finds that there is no evidence of record that the Office abused its discretion in denying appellant's request. Thus, the Board finds that the Office's denial of appellant's request for an oral hearing was proper under the law and the facts of this case.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss and medical benefits. The Board further finds that the Office properly denied appellant's request for a hearing.

[15] *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 7, 2007 and December 19, 2006 are affirmed.

Issued: November 14, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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