

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

**Gregory P. Irish**  
**Office of the Director**



FREDDIE JONES,	)	
	)	
Petitioner,	)	
	)	
v.	)	Dir. Dkt. No. 07-99
	)	OHA No. PBL No. 97-14
D.C. DEPARTMENT OF CORRECTIONS,	)	ODC No. 312082
	)	(Public Sector)
Employer.	)	
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OPINION AND REMAND ORDER OF THE DIRECTOR

I. PRELIMINARY STATEMENT

This proceeding arises out of a claim for disability compensation benefits filed pursuant to the provisions of the District of Columbia Merit Personnel Act of 1979, as amended, D.C. Law 2-139, D.C. Code §1-624.1 et seq. (1981 Edition, as amended) (hereinafter, the "Act").

II. BACKGROUND

Petitioner, a correctional officer with Employer, was injured on the job when he was attacked, on May 16, 1984, by some inmates. Petitioner was beaten about his neck and shoulders. Timely notice was filed and Petitioner's claim was accepted by the Office of Benefits Administration (hereinafter, the "OBA") Petitioner received continuation of pay for forty-five (45) days, thereafter, temporary total disability was paid until September 30, 1984. Petitioner

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returned to duty on October 1, 1984, but filed a recurrence of injury on December 21, 1984. Petitioner has not returned to work. On May 31, 1985, Petitioner's benefits were terminated.

A formal hearing was held and Petitioner was awarded temporary total disability benefits up to December 7, 1996.<sup>1</sup> Another formal hearing was held on September 30, 1998. Following this hearing, the Hearing Examiner concluded, based upon the evidence presented, that Petitioner had no remaining disability causally related to the job accident in 1984. The Hearing Examiner stated that the bulk of the evidence was the medical opinions of Drs. Smoller, Gaarder and Schulman, all board certified psychiatrists, who stated that Petitioner's current condition was not causally related to the 1984 job accident. The Hearing Examiner determined that the doctor's opinions concluded that Petitioner no longer suffered from the post traumatic stress disorder which was diagnosed by his treating physician, Dr. Thomas V. Matkovic.

The Hearing Examiner found that Petitioner was most recently evaluated by Dr. Michael Diamond on August 4, 1998. Dr. Diamond agreed with the medical opinion of Dr. Matkovic, Petitioner's treating physician. Both physicians indicated in their respective reports that Petitioner continued to suffer from PTSD which was found by the physician to be causally related to the job accident of 1984.

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<sup>1</sup>Petitioner had also been receiving Civil Service Disability Retirement since September 1993.

The Interim Assistant Director for Labor Standards (hereinafter, the "Assistant Director") adopted the recommendation of the Hearing Examiner on March 18, 1999 which denied benefits. Petitioner appealed to this Office on April 16, 1999.

### III. DISCUSSION

On appeal, Petitioner argues that the Assistant Director erred in concluding that there was no causal connection between his current disability and the 1984 work related injury. Petitioner proffers that the Assistant Director's decision failed to address the issue whether Petitioner's mental condition occurred prior to the job accident.

Employer counters and states that the Assistant Director's decision should be affirmed as it is supported by substantial evidence in the record. Employer urges the rejection of Petitioner's argument relating to whether his mental condition predated the job accident.

After a thorough review of the Assistant Director's decision, the arguments of the parties as well as the record evidence, this matter must be reversed. As noted by the Assistant Director, the Employees' Compensation Appeals Board consistently held that in order to modify, decrease or terminate benefits, the burden of proof is on the OBA to show a change in a petitioner's condition. *Vernell Chase v. D.C. Department of Human Services*, ECAB No. 82-9 (July 9, 1982). Furthermore, the Board held that the evidence necessary to terminate, modify or suspend benefits must be recent medical opinions. *Marian Robinson v. D.C. General Hospital*, ECAB No. 90-15 (September 16, 1992).

Herein, the record evidence contains recent medical opinions regarding whether Petitioner's current condition was causally related to the job accident. However, the Assistant Director relied on several stale medical opinions in determining Petitioner's current condition. Specifically, the reports of Drs. Smoller, Gaarder, and Schulman date back to the mid 1990's and are

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stale as they do not offer a current analysis of Petitioner's current psychiatric condition and whether it relates to his job accident. *Id.* The record, however, does contain the more recent medical opinion of Dr. Diamond dated August 14, 1998. In this report, Dr. Diamond indicated that Petitioner continued to suffer from residuals of his job accident some 16 years ago. Employer's Exhibit No. 5c. The report of this doctor, to whom Petitioner was referred by Employer, offers a more up to date analysis of whether Petitioner continued to suffer from the job injuries. Thus, it must be concluded that because the Assistant Director has erred in relying on stale medical evidence, the OBA has failed to carry its burden in order to terminate Petitioner's benefits. Thus, Petitioner remains eligible for temporary total disability benefits and medical expenses causally related to his job accident.

On remand, due to the fact that Petitioner is currently receiving disability retirement, the OBA is directed to give Petitioner the option to elect which benefits he desires to receive. See, D.C. Code §1-624.16 (b) (1980).

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IV. ORDER

Accordingly, the Interim Assistant Director's March 18, 1999 order is **REVERSED** and this matter is **REMANDED** for appropriate action in conformance with this opinion.



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Gregory P. Irish  
Director

DEC 19 2000  
Dated