

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAGRANDE H. MERRITT and DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT, Cheyenne, WY

*Docket No. 98-357; Submitted on the Record;
Issued November 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate benefits in this case.

In the present case, the Office accepted that appellant, then a 49-year-old administrative officer, sustained major depression in the performance of his federal employment on or about September 6, 1984. The Office accepted that appellant's emotional condition was caused by four factors of employment: (1) that there was a major funding cut in the range programs and that appellant was required to convince certain employees to accept voluntary reassignments; (2) that there was a constant need for procurements in appellant's large district; (3) that during a move, a change of plans required an order of new equipment and changes on the equipment orders already placed, with reprogramming of funds necessary to make these purchases; and (4) that appellant felt pressured to hire a relative of a new assistant district manager in the fall of 1983, against his belief that a policy prohibited hiring relatives of senior staff members. The Office terminated appellant's compensation benefits on October 21, 1997, effective November 8, 1997, on the grounds that the weight of the medical evidence of record established that appellant no longer was disabled due to residuals of the September 6, 1984 employment injury.

The Board has duly reviewed the case record and finds that the Office did not meet its burden of proof in this case.

The medical evidence of record establishes that appellant had sought treatment from clinical psychologist, Vern A. Cox, Ph.D., for a number of years following the employment injury. In a report dated April 24, 1996, Dr. Cox explained that in 1989 appellant's depression although still present, began to lift, at that point appellant showed symptoms of post-traumatic stress disorder, with criteria far in excess of those required by the DSM-III-R for this diagnosis. He explained that appellant's work experience was a significant trauma to appellant's psyche, self-concept and self-confidence. Dr. Cox further explained that appellant had undergone several inventory tests which indicated that appellant felt moderate to high amounts of stress and had a low ability to cope with that stress, that appellant's post-traumatic stress symptoms remained moderate to severe, and that appellant experienced severe anxiety and moderate

depression. Regarding appellant's ability to return to work, he related that appellant could return to work, preferably in a part-time position, and in a position which was not controversial or confrontational. In a report dated October 9, 1997, Dr. Cox further explained that post-traumatic stress disorder was not a diagnosis which was well known and used in 1985, but that appellant's symptoms of marked forgetfulness, reliving past experiences continuously and intrusively, recurrent dreams of the episode and almost constant rumination of the incidences, amnesia, marked headaches, a marked inability to sleep, gritting of teeth, marked suspiciousness and distrustfulness, over exaggerated and obsessional fear, were symptoms which would receive that diagnosis then or now. He further stated that the accepted factors of appellant's employment did cause a total threat to his integrity and that appellant's disorder fit under the DSM-III-R definition of post-traumatic stress disorder as a psychologically distressing event.

Conversely, the Office received a report dated May 22, 1997 from the Office's second opinion physician, Dr. Steven V. Teynor, a psychiatrist, which concluded that appellant was no longer disabled due to the accepted employment injury. Dr. Teynor stated that appellant's current diagnoses were adjustment disorder with mixed anxious and depressed mood, chronic; major depression single episode, chronic, in full remission for many years; obsessive-compulsive and passive-dependent personality features. He explained his opinion that appellant no longer had a diagnosis of major depression as it had been in full remission for many years, but that appellant did have a diagnosis of adjustment disorder with mixed anxiety and depressed mood, which was chronic in nature. Dr. Teynor further explained that appellant did not have post-traumatic stress disorder because he had not been exposed to a traumatic event in which he experienced, witnessed or was confronted with an event that involved actual or threatened death, serious injury, or a threat to the physical integrity of himself or others; nor did he respond to such an event involving intense fear, helplessness or horror. Regarding the issue of continued disability, he opined that appellant was not disabled from all work, and that he could return to work for at least four hours a day, although he believed appellant would have difficulty functioning in his former position if the position included confrontation or a perceived lack of control. Dr. Teynor opined that appellant's intermittent anxiety and depression were secondary to situational factors involving a return to work, that the compensable factors of employment were part of the contributing causes of his anxiety and depression, but would be minimal in comparison to the total number of stressors that appellant reported in his work environment at that time, and that the compensable factors of employment were not the cause of appellant's current emotional difficulties.

The Federal Employees' Compensation Act provides at section 8123(a) 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.¹

In this case, appellant's psychologist and the Office second opinion physician agreed that appellant was not disabled from all work, but that he had an emotional condition which would not allow him to return to his former employment. Appellant's psychologist opined that appellant remained disabled from his former employment due to post-traumatic stress disorder, which was caused by his employment injury, and which became clearly apparent after appellant's major depression subsided. Dr. Cox opined that this condition was caused by the

¹ 5 U.S.C. § 8123(a).

threat the accepted employment injury caused to appellant's integrity. In his report dated April 24, 1996, he also opined that the accepted condition of depression in fact continued.

The Office medical adviser, on the other hand, opined that appellant's depression caused by the employment injury had ceased, that appellant's continued anxiety and depression were not work related. The Office medical adviser opined that appellant's post-traumatic stress condition was not caused by the accepted factors of employment, because this disorder could only be caused by a singular traumatic event of great magnitude.

A conflict therefore clearly existed in the medical opinion evidence regarding appellant's current diagnosis, and whether his current condition was causally related to the accepted employment injury. To resolve this conflict, the Office should have referred appellant to an appropriate medical specialist for an impartial medical evaluation and opinion pursuant to 5 U.S.C. § 8123(a).² As the Office did not resolve this conflict in the medical opinion evidence before it terminated appellant's compensation benefits, the Office did not meet its burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated October 21, 1997 is hereby reversed.

Dated, Washington, D.C.
November 15, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

² See *Warren L. Divers*, 47 ECAB 574 (1996).