U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM M. ALEXANDER and U.S. POSTAL SERVICE,
POST OFFICE, Juneau, AK

Docket No. 03-1156; Submitted on the Record;
Issued December 12, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective March 14, 2003.

The Office accepted appellant's claim for aggravated paranoid disorder. He stopped working for the employing establishment on December 2, 1985 and has not worked since that time. Appellant had preexisting conditions of alcoholism and paranoid personality disorder. The Office determined that of the many allegations of harassment appellant made against management, only two of the alleged incidents occurred in the performance of duty. These were that appellant was suspended on June 11, 1984 for working six hours without a lunch break and in May 1985 an erroneous deduction of $100.00 was made from his pay.

In a report dated April 12, 2002, a referral physician, Dr. Cheryn L. Grant, an osteopath, considered appellant's history of injury, performed a Minnesota Multiphasic Personality Inventory (MMPI) evaluation on appellant and performed a mental examination. She diagnosed delusional disorder, persecutory type, paranoid personality disorder and physical conditions including diabetes, chronic obstructive pulmonary disease and chronic bronchitis. Dr. Grant stated that appellant was convinced that the employing establishment and his supervisor there had conspired to ruin his life. She stated that he felt "they" were continuing to harass him and, in fact, were attempting to murder him. Dr. Grant stated that appellant felt that the attempts to murder him ranged from loosening the lug nuts on the wheels of his car to giving him insulin, when he was hospitalized at St. Vincent's Hospital for diabetes. She stated that appellant's function was extremely limited due to his fears that he would be harmed if he was out in public but she did not feel appellant was dangerous to others "at this time."

Dr. Grant stated that appellant "may very well have had a preexisting paranoid personality disorder" but it was "a little bit difficult to really determine … as there was not much history prior to his problems with the [employing establishment]." She stated that individuals with a paranoid personality disorder have "a pervasive distrust and suspiciousness of others such that their motives are interpreted as malevolent." Dr. Grant stated that according to the DSM-IV,

if the criteria for a personality disorder were met prior to the onset of the delusional disorder or schizophrenia, one could diagnose it as premorbid, but most individuals with a paranoid personality disorder do not go onto develop the full-blown delusional disorder. She stated that, during appellant's employment with the employing establishment, it appeared that he requested certain promotions and moves and was not granted any of them. Dr. Grant stated that appellant "apparently had some misunderstandings regarding some other communications and that due to his underlying paranoid personality disorder, [he] misinterpreted these various rejections as being done specifically to harass or injure him."

Dr. Grant stated that it was difficult to assess how much appellant's condition was aggravated or accelerated by his work conditions. She stated:

> "[Appellant] is an individual who already had a paranoid personality disorder. Over the course of his work at the [employing establishment], he seemed to fixate on the [employing establishment] and in particular his supervisor, as the cause of all of his problems and difficulties. It is quite likely though that no matter where [appellant] was working, he would have eventually developed a delusional disorder."

Dr. Grant stated that appellant's disorder severely impaired his ability to work, not only at the employing establishment, but anywhere else because he had a fixed delusion that individuals from the employing establishment were watching and observing him everywhere ready to harass or harm him. She stated that, if he returned to the employing establishment, he might become more incapacitated and might even become dangerous. Dr. Grant concluded that appellant was permanently disabled secondary to his delusional disorder.

In a report dated June 11, 2002, appellant's treating physician, Dr. Anderson, a Board-certified psychiatrist and neurologist, stated that he read Dr. Grant's report and noted that she concluded that appellant had a delusional disorder and a paranoid personality disorder along with severe multiple medical problems. He noted that Dr. Grant concluded that appellant was "permanently disabled secondary to his delusion order" and that he was unable to work. Dr. Anderson stated that he agreed with Dr. Grant's conclusions. He stated that appellant was permanently disabled and unable to return to work in any situation. Dr. Anderson stated that he found nothing in Dr. Grant's report or her progress notes to suggest that "[t]he weight of the medical evidence indicates that the emotional condition caused by the work-related factors has resolved" as stated by the Office.

The Office found that there was a conflict between Dr. Anderson's and Dr. Grant's opinions regarding the cause of appellant's emotional condition and referred appellant to an impartial medical specialist, Dr. Patrick K. Chau, a Board-certified psychiatrist and neurologist. In his report dated October 15, 2002, Dr. Chau considered appellant's history of injury and performed a clinical examination. He stated that his diagnostic impression was "almost identical" to Dr. Grant's diagnoses. Dr. Chau additionally stated that there was a possibility of

"compensation neurosis/factitious disorder," which could not be ruled out. Dr. Chau considered the performance of duty factors the Office had accepted. He stated:

> "[Appellant's] work history prior to the [employing establishment] strongly suggested the long-standing and preexisting disability from his [p]aranoid [p]ersonality as well as the possible [d]elusional [d]isorder. The nature of the disability such as lack of insight prevented him to seek any treatment all along…. Most likely, as suggested by his prior employment history and the derogative comments he applied to the prior coworkers and bosses, the aggravated disability happened many times and the [employing establishment]'s 'aggravated disability' was the last 'job related' and it happen[ed] to be the 'deep pocket' provided him the last 17 years of monthly compensation … benefit plus astronomical bill for psychiatric treatment…. For someone who only worked a 4.5 years for the [employing establishment] and had great difficulty keeping other jobs, this kind of benefit award it is like winning a 'jackpot….'"

Dr. Chau stated that appellant's financial incentive was great for maintaining his symptoms and resisting any possible improvement, but appellant might not have any conscious malingering intent. He stated as a caveat that there was "no good way to verify the current status of [appellant's] disability regardless of whether it is performance of duty connected or not."

Dr. Chau stated that the performance of duty factors "were very common errors in our daily life in all walks of life" and "could not have been factors of aggravation if he was not being under the influence of his preconceived faulty ideation of being persecuted by the [employing establishment]." He stated:

> "In other words, the two [performance of duty] factors were like the otherwise innocent bystander in the wrong place and in the wrong time being 'sucked' into his paranoia and then 'joined' all other nonwork[-]related factors in 'contributing' to his total status of disability. This is like the analogy of 'a specific rain drop contributed to the flooding' and later implies the notion that 'the rain drop caused the flooding' that persists after 18 years…. Whether in [the] presen[ce] or absen[ce] of these two [performance of duty] factors, he was no better or worse anyway that anyone can point out. In fact, there is no indication from either Dr. Grant's and my interviews that [appellant] is specifically bothered or 'traumatized' by these two [performances of duty] events. There's no traceable documentary evident indicated how the 2 [performance of duty] events continued the traumatic influence for the last 10 years. In fact, [appellant] might have forgotten it while he, being preoccupied by all other aggravating factors that he considered having importance…."

Dr. Chau stated that the performance of duty-related "factors' aggravations most likely had no clinically significant contribution" to appellant's disability in the first place and even if they had, the "impact should be inconsequential and totally negligible for the severity and continuity of his disability, then and now." He concluded that the absence of appellant's current preoccupation or even recollection of the two performance of duty factors and the lack of any consequential thought and "affect deterioration" from the performance of duty factors led him to

conclude that the portion of the disability aggravated by the performance of duty-related events had resolved even though appellant's nonperformance of duty-related disability was considered to be permanent. Dr. Chau stated that the resolution of appellant's work-related condition would have been on April 18, 1986, when the last error was corrected.

On November 15, 2002 the Office issued a notice of proposed termination of compensation benefits, stating that the opinion of Dr. Chau, the impartial medical specialist, constituted the weight of the medical evidence and established that appellant's current emotional condition was not work related, but resulted from his preexisting personality disorder.

Appellant submitted another report from Dr. Anderson, which was undated, but received by the Office on December 26, 2002. In the report, he considered appellant's history of injury and reviewed many of the medical reports in the record. He stated that he first saw appellant on January 28, 1998 and had seen him every two to four weeks since that time. Dr. Anderson considered the two performances of duty incidents the Office accepted as causing appellant's condition. He stated that, in his working with appellant, it had become "crystal clear" that appellant's interaction with one individual, his supervisor, Mr. Dinghy, led to the development of his illness. Dr. Anderson considered that another doctor noted in his report, that appellant refused to falsify travel documents in a trip he had taken with his supervisors and that it is "for Mr. Dinghy" that appellant had murderous rage and frequently talked about getting revenge against him personally. He stated that, from reading the reports of appellant's treating physicians, they were concerned about appellant's acting out his desire for revenge. Dr. Anderson stated that it "was abundantly clear that this and other incidents that occurred in the course of his interactions with Mr. Dinghy fueled the development of the delusional disorder, not the two [performance of duty] incidents." He stated that he did not receive Dr. Chau's report, but it appeared that the question they posed to him related only to the performance of duty's role in the development of appellant's disability.

Dr. Anderson stated that it needed to be stressed that "the original on-the-job incidents, however, one might define them are not what is keeping [appellant] disabled today," and that it "is the damage that resulted to his brain and psyche, as a result of the incidents, that have kept him disabled and unable to return to work." He concluded that appellant's illness was directly related to incidents that took place while on the job, primarily in dealing with interactions with Mr. Dinghy and that these job-related events aggravated his condition, which had been stable during his first year at the employing establishment and had not required previous treatment. Dr. Anderson stated that appellant remained disabled due to the continued existence of his psychiatric disorder, even though the aggravating influences were no longer operating. He stated that appellant was permanently totally disabled from ever returning to work at the employing establishment due to the extreme risk of his condition worsening and the possibility that he might act out consequences of any activated rage. Dr. Anderson stated that appellant could not perform other work due to the disabling effects of his psychiatric illness and specific delusions related to the employing establishment and Mr. Dinghy.

By letter dated February 4, 2003, appellant's attorney, Roger D. Wallingford, contended that Dr. Anderson's opinion was "more reasoned and rationalized" than Dr. Chau's opinion and noted that Dr. Anderson had treated appellant since January 1998, had a far more detailed and accurate history and "many, many more hours" to observe and diagnose appellant than Dr. Chau.

Further, Mr. Wallingford contended that Dr. Chau's opinion was poorly rationalized speculative and appeared "to be heavily motivated by his perceived financial self-interest in tailoring his opinion to remove [appellant] form the rolls…." He stated that Dr. Chau found only two performances of duty events and disregarded the employment factors which greatly aggravated appellant's condition, which were the interactions with his supervisor. Mr. Wallingford referenced Dr. Chau's analogy of the factors being like two drops in a flood and stated that his opinion is speculative and ignorant of the Federal Employees' Compensation Act's law on aggravation. He also stated that all the psychiatrists of record other than Dr. Chau opined that appellant was totally disabled due to stressors at work.

By decision dated March 6, 2003, the Office terminated appellant's compensation benefits effective March 14, 2003, stating that the evidence of record established that appellant's emotional condition was not work related for the reasons stated in the proposed notice of termination. The Office addressed Mr. Wallingford's contentions, stating that the allegations of harassment appellant made against his supervisor other than the two accepted performance of duty incidents had never been established as factual and, therefore, could not be considered as performance of duty factors in his claim.

Once the Office has accepted a claim, it has the burden of proof to justify termination or modification of compensation benefits.[1] 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.[2] The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.[3]

Section 8123(a) of the Act provides that, if there is a disagreement between the physician making the examination for the United Stated and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[4] In situations where there are 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 on a proper factual background, must be given special weight.[5]

The Board finds that the Office did not meet its burden of proof in terminating compensation benefits effective March 14, 2003.

In this case, the Office found that there was a conflict in the evidence between Dr. Anderson's June 11, 2002 report and Dr. Grant's April 12, 2002 report and referred appellant

[1] *David W. Pickett*, 53 ECAB ___ (Docket No. 01-950, issued October 16, 2002).

[2] *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

[3] *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Ricer*, 40 ECAB 284, 295-96 (1988).

[4] *Henry W. Shepard, III*, 48 ECAB 382, 385 n.6 (1997); *Went Ling Chang*, 48 ECAB 272, 273-74 (1997).

[5] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roadhouse*, 42 ECAB 288 (1990).

to an impartial medical specialist, Dr. Chau, for an evaluation to resolve the conflict. The Board finds, however, that there was no conflict between Dr. Anderson and Dr. Grant. In her April 12, 2002 report, Dr. Grant diagnosed, in part, delusional disorder, persecutory type and paranoid personality disorder. She did not address the two compensable factors that the Office accepted but stated that appellant was fixated on his supervisor as the cause of his problems. She noted that it was difficult to assess how much appellant's condition was aggravated or accelerated by his work conditions. Dr. Grant stated that it was "quite likely" that no matter where appellant worked, he would eventually have developed a delusional disorder. She stated that most individuals with a paranoid personality disorder do not develop a full-blown delusional disorder. Dr. Grant concluded that appellant was unable to work and was permanently disabled secondary to his delusional disorder.

In a June 11, 2002 report, Dr. Anderson stated that he agreed with Dr. Grant's conclusion that appellant was permanently disabled secondary to his delusional disorder. He also opined that appellant's work-related emotional condition had not resolved. Dr. Grant and Dr. Anderson agreed that appellant was permanently disabled secondary to his delusional disorder. Dr. Grant was unsure as to whether appellant's emotional condition was work related whereas Dr. Anderson opined that appellant's emotional condition was work related; therefore, no conflict between Dr. Anderson's June 11, 2002 report and Dr. Grant's April 12, 2002 report was created. For this reason, the Board finds that Dr. Chau is not an impartial medical specialist but a referral physician.

Even though the report of Dr. Chau is thus, not entitled to the special weight afforded to the opinion of an impartial medical specialist resolving a conflict of medical opinion, his report can still be considered for its own value.[6] Dr. Chau found that there was no evidence that the compensable factors traumatized appellant or that any work-related traumatic influence continued over 10 years. Dr. Chau stated that the accepted factors most likely had no clinically significant contribution to appellant's disability and that the impact should be "inconsequential and totally negligible for the severity and continuity of his disability, then and now." He concluded that the portion of the disability aggravated by the performance of duty factors had resolved, even through appellant's nonwork-related disability was considered to be permanent. Dr. Chau stated that the resolution of appellant's work-related condition would have been on April 18, 1986 when the last error was corrected. Dr. Chua's opinion that appellant's emotional condition is not work-related conflicts with Dr. Anderson's opinion that appellant's emotional condition is work related. The conflict in the evidence therefore remains and the Office did not meet its burden of proof to terminate compensation.[7]

[6] *See Cleopatra McDougal-Saddler*, 49 ECAB 480, 490 (1996); *Myrtle C. Pittman, petition for recon. denied*, 40 ECAB 880 (1980).

[7] *See Martha A. McConnell*, 50 ECAB 129, 131 (1998).

The March 6, 2003 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
December 12, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member