

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM H. PERRY and DEPARTMENT OF THE TREASURY,
Richmond, VA

*Docket No. 02-717; Submitted on the Record;
Issued October 30, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to justify the termination of benefits effective January 31, 2001.

On March 24, 1984 appellant, then a 52-year-old special agent, filed a claim alleging that he developed coronary heart disease and alcoholism as a result of performing his duties as an agent from 1962 to October 1968.¹ He indicated that he became aware of his condition on November 9, 1979. Appellant retired in April 1980. The Office accepted the claim for temporary aggravation of alcoholism which ceased in October 1968.²

Appellant submitted a report from Dr. S.K. Dhanda, a family practitioner, dated December 26, 1979, which noted that he had treated appellant for coronary artery disease and advised him to avoid physical and emotional stress. Appellant reported that he worked under severe stress as an undercover agent since 1963. Appellant also submitted a statement which indicated that, alcohol consumption was an integral and necessary part of his job and his alcohol dependency was a result of his duties as an undercover agent.

Thereafter, appellant submitted a report from Dr. Robert B. Woolley, a Board-certified psychiatrist and neurologist, dated September 27, 1983, which advised that to a reasonable degree of medical probability appellant's coronary artery disease was in part related to the stress of his job as an undercover agent. A statement from appellant dated July 16, 1985 noted that he

¹ On December 11, 1979 appellant filed a claim alleging that he developed coronary heart disease and alcoholism as a result of the performing his duties as an agent. It appears from the record that the claims filed on December 11, 1979 and March 21, 1984 were developed by the Office as one claim.

² On February 11, 2002 appellant filed an appeal to the Employees' Compensation Appeals Board and requested an oral hearing. On September 2, 2003 he withdrew his request for an oral hearing and requested that the Board issue a decision based on the record.

became alcohol dependent as a result of his undercover duties and the disabling affects of the alcohol dependency carried over into his subsequent positions.

The matter was referred to the medical adviser, who, in a report dated July 18, 1985, advised that there was no scientific evidence that employment stress could cause coronary artery disease, although it may aggravate the symptoms associated with the disease. The medical adviser noted that appellant was not disabled from all work but should avoid stressful circumstances.

In a decision dated September 20, 1985, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that he sustained an injury in the performance of duty.

On February 5, 1986 appellant requested reconsideration and a submitted a report from Dr. R. Kathleen Riggs, a psychiatrist, dated October 14, 1985, which noted that appellant developed an alcohol condition as a result of performing undercover work where he was taught to drink and infiltrate organizations. She indicated that all the stress and stimulation of the adrenal gland affected his coronary arteries and concluded that appellant's drinking and undercover work was the cause of his coronary artery disease.

The Office referred appellant for a second opinion examination to Dr. Baikunth K. Singh, a Board-certified internist, and Dr. Bruce M. Smoller, a Board-certified psychiatrist and neurologist. Dr. Singh's report, dated March 31, 1986, indicated that appellant had preexisting coronary artery atherosclerosis which was not caused by employment stress. He advised that appellant had coronary risk factors of cigarette smoking and elevated serum cholesterol. Dr. Singh further advised that appellant had minimal symptoms and was not disabled from gainful employment. Dr. Smoller's report of April 23, 1986 noted that coronary artery disease was not linked to stress and that appellant had predisposing factors which were causal to his development of this syndrome. He diagnosed appellant with atherosclerotic coronary artery disease unrelated to employment and advised that there was no disability present.

In a decision dated May 28, 1986, the Office vacated the decision dated September 20, 1985 finding that there was a conflict in evidence between Dr. Riggs, appellant's treating psychiatrist, who believed appellant's cardiopulmonary disease and alcoholism were work related, and Drs. Singh and Smoller, the Office referral physicians, who determined that there was no link between appellant's coronary artery disease and alcoholism and his employment and advised that appellant had no disability.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to impartial medical examiners.

In a decision dated April 4, 1990, the Office accepted appellant's claim for aggravation of alcoholism ceasing 1968 and denied appellant's claim for coronary artery disease.

Thereafter, appellant submitted several reports from Dr. Riggs from May 29, 1991 to August 1, 2000. Her reports of May 29, 1991 to October 2, 1995 diagnosed appellant with chronic and severe alcoholism and heart disease secondary to alcohol abuse. Dr. Riggs advised that appellant was totally disabled because of his alcoholic condition and could not be gainfully

employed. She opined that appellant's condition began when he was working as an undercover agent and he sustained a permanent aggravation of his underlying alcoholic condition. In her report dated August 1, 2000, Dr. Riggs diagnosed appellant with alcoholism, severe and chronic; major depression, recurrent and severe; and generalized anxiety disorder. She noted that the temporary aggravation of alcoholism due to work-related stress was not resolved and indicated that the stress of appellant's job as an agent caused him to smoke and drink. Dr. Riggs advised that appellant was totally and permanently disabled.

On August 31, 2000 the Office referred appellant for a second opinion to Dr. Walter R. Butler, a psychiatrist. The Office provided him with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated October 11, 2000, Dr. Butler indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's condition. Dr. Butler diagnosed appellant with alcohol abuse and dependency, chronic and continuous; coronary artery bypass graft surgery; and severe occupational problems. He indicated that he could not find a present nexus between the aggravating employment circumstances between the 1962 to 1968 and appellant's present alcoholic condition. Dr. Butler noted that appellant has not been employed for over 32 years with the employing establishment and his current alcoholic condition bears little or no connection to the workplace stress of 1962 to 1968. He further noted that appellant's alcohol condition was caused by workplace induced stress, however this stress has long ceased. Dr. Butler advised that appellant's occupational incapacity was solely related to cognitive dementia associated with vascular disease and its affect on the brain complicated by the debilitating cognitive effects of chronic alcoholism.

The Office determined that a conflict of medical opinion had been established between Dr. Riggs, appellant's treating physician, who indicated appellant was totally disabled, and experiencing residuals of his work-related injury and could not work and Dr. Butler, an Office referral physician, who determined that appellant's work-related injury had resolved and that his occupational incapacity was solely related to the dementing processes associated with vascular disease.

To resolve the conflict appellant was referred to an impartial physician, Dr. Douglas H. Rank, a Board-certified psychiatrist and neurologist, who indicated, in a report dated December 12, 2000, that he reviewed the records provided to him and performed a physical examination of the appellant. He noted a history of appellant's work-related injury. Dr. Rank diagnosed appellant with alcohol dependence, continuous; major depression in full remission; dysthymia; cognitive disorder, not otherwise specified; nicotine dependence disorder; and atherosclerotic coronary artery disease. He indicated that appellant's work-related temporary aggravation of alcoholism ceased in 1968 when he left the employing establishment. Dr. Rank advised there was no requirement for appellant to drink while working for the Federal Aviation Administration and the Environmental Protection Agency from 1971 to 1980 and that during this time he was able to refrain from alcohol while performing his duties. He noted that appellant's condition returned to baseline shortly after the cessation of the aggravation. Dr. Rank noted that appellant's current psychological conditions of dysthymic disorder and cognitive disorder were independent of the work-related aggravation experienced from 1962 to 1968. He advised that the work-related aggravation had ceased and that appellant's current condition was due to

nonwork-related issues or the natural progression of other psychiatric disorders. Dr. Rank noted that the dysthymic disorder was a biological condition which could be controlled by medication and that there was no indication that this disorder was causing morbidity in functioning socially or occupationally.

In a letter dated December 26, 2000, the Office requested that Dr. Riggs review and comment on the reports from Drs. Butler and Ranks.

On December 27, 2000 the Office issued a notice of proposed termination of all compensation benefits on the grounds that Dr. Rank's report dated December 12, 2000 established that appellant's work-related condition has ceased and that he has no continuing disability as a result of the November 9, 1979 employment injury.

Subsequently, appellant submitted a narrative statement dated January 27, 2001 which indicated that he believed that the work-related aggravation was not temporary but permanent and total. He indicated that he had made an appointment with Dr. Riggs and requested an extension to file her report.

By decision dated January 30, 2001, the Office terminated appellant's benefits effective the same date on the grounds that the weight of the medical evidence established that appellant's work-related condition had ceased and he had no continuing disability resulting from his November 9, 1979 employment injury.

On March 1, 2001 appellant requested an oral hearing before an Office hearing representative. The hearing was held on August 1, 2001. Appellant, through counsel, argued that his alcoholic condition was permanent not temporary and noted that appellant was not an alcoholic prior to employment and, therefore, had no preexisting condition to aggravate. Appellant submitted additional medical evidence from Dr. Riggs. In her report of February 6, 2001, Dr. Riggs advised that she did not believe appellant's work-related aggravation had ceased and noted that alcoholism was not a temporary problem. She indicated that appellant's alcoholic condition was caused by his previous undercover work and that he had not stopped drinking even with intervention. Dr. Riggs noted that she had treated appellant for years and concluded that his undercover work was the cause of his alcoholism and diagnosed him with alcoholism, dementia and depression. Her July 24, 2001 report reiterated that appellant's alcoholism was directly linked to his government job as an undercover agent and advised that there was a causal nexus with his current alcoholic condition and the employment circumstances.

In a decision dated November 15, 2001, the hearing representative affirmed the Office's decision dated January 30, 2001.

The Board finds that the Office has met its burden of proof to terminate benefits effective January 30, 2001.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability

³ *Harold S. McGough*, 36 ECAB 332 (1984).

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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further treatment.⁶

In this case, the Office accepted appellant's claim for temporary aggravation of alcoholism which ceased no later than October 1968 and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Riggs, who disagreed with Dr. Butler, the Office referral physician, concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Rank to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. Rank is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁷

Dr. Rank reviewed appellant's history, reported findings and diagnosed alcohol dependence, continuous; major depression in full remission; dysthymia; cognitive disorder, not otherwise specified; nicotine dependence disorder; and atherosclerotic coronary artery disease. He indicated that appellant's work-related temporary aggravation of alcoholism ceased in 1968 when he left the employing establishment. Dr. Rank noted that appellant's condition returned to baseline shortly after the cessation of the aggravation. He further advised there was no requirement for appellant to drink while working for the Federal Aviation Administration and the Environmental Protection Agency from 1971 to 1980 and that during this time he was able to refrain from alcohol while performing his duties. Dr. Rank noted that appellant's current psychological conditions of dysthymic disorder and cognitive disorder were independent of the work-related aggravation experienced in 1962 to 1968. He advised that the work-related aggravation had ceased, that appellant's current condition was due to nonwork-related issues or the natural progression of other psychiatric disorders.

The Board finds that the Office properly relied on Dr. Rank's December 12, 2000 opinion as the basis for terminating benefits. His opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Rank not only examined appellant, but also reviewed

⁴ *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ *Aubrey Belnavis*, 37 ECAB 206 (1985).

appellant's medical records. He also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiners December 12, 2000 findings.⁸

The Board finds that, under the circumstances of this case, the opinion of Dr. Rank is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant's work-related condition has ceased.

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.⁹ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship.¹⁰ The fact that the etiology of a disease or condition is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof of the Office to disprove an employment relationship.¹¹

Appellant submitted reports from Dr. Riggs dated February 6 and July 24, 2001 which advised that she did not believe appellant's work-related aggravation had ceased and noted that appellant's alcoholic condition was caused by his previous undercover work. She reiterated that appellant's alcoholism was directly linked to his government job as an undercover Internal Revenue Service Agent and advised that there was a causal nexus with his current alcoholic condition and the employment circumstances and that appellant had to drink as part of his role as an undercover agent. However, these reports are similar to Dr. Riggs' previous reports and provide no new medical reasoning or rationale in support of her position. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.¹² Additionally, these reports did not contain new findings or rationale upon which a new conflict might be based and were duplicated evidence previously considered by the Office. Therefore, these reports are insufficient to overcome that of Dr. Rank or to create a new medical conflict.¹³

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

⁸ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁹ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; *see Howard Y. Miyashiro*, *supra* note 7.

¹⁰ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹¹ *Judith J. Montage*, 48 ECAB 292, 294-295 (1997).

¹² *See Daniel Deparini*, 44 ECAB 657 (1993).

¹³ *See Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

The decision of the Office of Workers' Compensation Programs dated November 15, 2001 is hereby affirmed.

Dated, Washington, DC
October 30, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member