# United States Department of Labor
# Employees' Compensation Appeals Board

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| **D.S., Appellant** | ) | |
| **and** | ) | **Docket No. 07-1356** |
| | ) | **Issued: October 15, 2007** |
| **SOCIAL SECURITY ADMINISTRATION, OFFICE OF REGIONAL CHIEF COUNSEL, Chicago, IL, Employer** | ) | |

*Appearances:*
*Gordon Reisett*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On April 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 23, 2006 and January 18, 2007 merit decisions concerning his claim for employment-related Ganser's syndrome. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish that he sustained Ganser's syndrome due to his December 12, 2002 employment injury.

## ***FACTUAL HISTORY***

This is the second appeal in this case. In a March 9, 2006 decision,[1] the Board set aside the Office's denial of appellant's claim that he sustained Ganser's syndrome due to his December 12, 2002 employment injury.[2] The Board found that there was a conflict in the medical evidence between Dr. Joseph A. Bongiorno, an attending Board-certified psychiatrist and neurologist, and Dr. Spivy, an Office referral physician, regarding whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury. The Board noted that on August 15, 2003 Dr. Bongiorno concluded that appellant's December 12, 2002 fall at work contributed to his development of Ganser's syndrome, a condition which was accepted in the medical literature as a dissociative disorder.[3] Dr. Bongiorno indicated that appellant's provision of nearly-correct answers on mental status testing was known as paralogia and constituted the central symptom of Ganser's syndrome. He stated that the December 12, 2002 fall served as a precipitator for appellant's Ganser's syndrome, that his physical and psychological symptoms were consistent with the disorder and that the condition was totally disabling. Dr. Spivy produced a contrasting opinion on March 23, 2004 that appellant did not have Ganser's syndrome. He made reference to an article on Ganser's syndrome which indicated that it was a factitious disorder. Dr. Spivy stated that because appellant did not have Ganser's syndrome he did not have any employment-related limitations. He also noted: "A possible financial gain is very prominent in this case." The Board remanded the case to the Office for referral of appellant to an impartial medical specialist to resolve the conflict in medical evidence. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand, appellant was referred to Dr. Robert M. Galatzer-Levy, a Board-certified psychiatrist, for an impartial medical examination and an opinion regarding whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury.

On May 18, 2006 Dr. Galatzer-Levy discussed appellant's medical history indicating that the file showed that his psychiatric problems seemed to begin in 1999 and that he experienced a number of psychiatric symptoms since that time, including depression, anxiety and delusions.

[1] Docket No. 06-241 (issued March 9, 2006).

[2] On December 26, 2002 appellant, then a 33-year-old legal assistant, filed a traumatic injury claim alleging that he sustained a head injury on December 12, 2002 when he slipped and hit his head on the sink and floor in a restroom at work. The Office accepted that he sustained a concussion and conversion disorder and paid appropriate compensation for periods of disability. The Office terminated appellant's compensation effective June 23, 2003 on the grounds that he had no disability due to his December 12, 2002 employment injury after that date. The Office based its termination on the second opinion evaluations of Dr. Dixon F. Spivy, a Board-certified psychiatrist and neurologist, and Dr. Hilliard E. Slavick, a Board-certified neurologist. Appellant later claimed that he sustained Ganser's syndrome due to his December 12, 2002 employment injury. He asserted that he had this condition during the 9- or 10-month period after the December 12, 2002 employment injury and that it totally disabled him. The Office denied his claim based on Dr. Spivy's opinion that he did not have Ganser's syndrome due to his December 12, 2002 employment injury.

[3] Dr. Bongiorno described Ganser's syndrome as neither a totally willful syndrome (malingering) nor a partially willful, partially unconscious syndrome (factitious disorder), but as an unconsciously-derived syndrome which can include many manifestations including depression, psychosis, anxiety and conversion symptoms.

An examination on April 20, 2006 showed evidence of thought disorder in that, at times, appellant failed to make logical connections between the elements of the matters he discussed. Dr. Galatzer-Levy noted that Ganser's syndrome is not recognized as a psychiatric disorder in the current edition of *Diagnostic and Statistical Manual of the American Psychiatric Association* but is referred to once in the text under the heading "Dissociative Disorder Not Otherwise Specified." He stated that the text listed Ganser's syndrome as one of a number of examples of disorders in which the predominant feature (*i.e.*, a disruption in the usual integrated functions of consciousness, memory, identity or perception of the environment) does not meet the criteria for any specific dissociative disorder. The text referred to Ganser's syndrome as the giving of approximate answers to questions, such as two plus two equals five, in the absence of dissociative amnesia or dissociative fugue. Dr. Galatzer-Levy stated that the writers of the text appeared to consider Ganser's syndrome not as a specific psychiatric disorder but, at most, a subtype of the psychiatric disorder "Dissociative Disorder Not Otherwise Specified." He posited that appellant did not exhibit the cardinal features of such a dissociative disorder. Dr. Galatzer-Levy stated:

> "Hence, he is not suffering from any form of dissociative disorder, including Ganser's syndrome. While at times he does exhibit blatantly disturbed thought processes, these difficulties with thinking are better understood as elements of an ongoing severe psychiatric disorder than as symptoms of Ganser's syndrome. They are entirely consistent with a psychotic depressive disorder with which [appellant] has been previously diagnosed and which diagnosis is supported by the current clinical examination.
>
> "Additionally, [appellant] is receiving a large number of potent psychiatric medications and has been described as sensitive to their side effects, which include psychiatric symptoms. It is possible that some of these medications may be contributing to his current psychiatric impairment."[4]

In a May 23, 2006 decision, the Office denied appellant's claim that he sustained Ganser's syndrome due to his December 12, 2002 employment injury. The Office found that the weight of the medical evidence regarding the matter rested with the well-rationalized opinion of Dr. Galatzer-Levy.

In a December 11, 2006 report, Dr. Bongiorno stated that he did not believe that appellant had Ganser's syndrome at the present time but rather developed the condition several days after his December 12, 2002 accident at work. He indicated that this condition rendered appellant disabled by bilateral lower-limb paralysis requiring a wheelchair, difficulty thinking and concentrating, visual problems, increased groin pain and profound difficulty in speaking. Dr. Bongiorno stated that by August 2003 these symptoms disappeared except for the increased groin pain and a speech stammer. He asserted that the December 12, 2002 fall caused the emergence of new symptoms after that date, whether they are characterized as Ganser's syndrome or some other condition, but that appellant's conflicts with supervisors "made him still more vulnerable to the physical and psychological traumas of the fall." Dr. Bongiorno stated

[4] In a May 24, 2000 form report, Dr. Galatzer-Levy indicated that appellant was disabled by his nonwork-related psychiatric illness and stated that "delusional beliefs about supervisors disable him from work."

that the fall aggravated appellant's preexisting psychiatric conditions and "tipped him (further) over the edge."

Appellant requested a hearing before an Office hearing representative. At the December 12, 2006 hearing, appellant's attorney argued that he should not have been referred to Dr. Galatzer-Levy's office in Chicago, but should have been referred to a physician closer to his home in Skokie, IL. Dr. Bongiorno testified at the hearing that appellant had Ganzer's syndrome during the 9- or 10-month period after the December 12, 2002 employment injury, but posited that Dr. Galatzer-Levy did not adequately discuss appellant's medical condition during this period. He indicated that he initially diagnosed appellant with conversion disorder after December 12, 2002 but later realized that he had Ganzer's syndrome as his symptoms increased.

In a January 18, 2007 decision, the Office hearing representative affirmed the Office's May 23, 2006 decision. He found that the testimony of Dr. Bongiorno at the hearing did not create a new conflict in the medical evidence and that appellant was properly referred to Dr. Galatzer-Levy.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[5] has the burden of establishing the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[6] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

Section 8123(a) of the Act provides in pertinent part: "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] Office procedure provides that selection of impartial medical specialists is made by a strict rotational system using

[5] 5 U.S.C. §§ 8101-8193.

[6] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). The Board has held that an emotional condition related to the effects or residuals of an employment injury could be covered under the Act. *See Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

[7] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[8] 5 U.S.C. § 8123(a).

the Physician's Directory System (PDS) whenever possible. The zip code used for selecting an impartial medical specialist through the PDS would normally be the zip code of the claimant's home address, but at times a duty station or other zip code may be used to ensure that a physician with an appropriate specialty is selected.[9]

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.[10] In a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.[11]

## ***ANALYSIS***

The Office accepted that appellant sustained a concussion and conversion disorder in connection with a December 12, 2002 accident which occurred when he hit his head on the sink and floor in a restroom at work. Appellant later claimed that he sustained Ganser's syndrome due to his December 12, 2002 employment injury and suffered periods of disability after that date due to this injury. In a March 9, 2006 decision, the Board found that there was a conflict in the medical evidence between Dr. Bongiorno, an attending Board-certified psychiatrist and neurologist, and Dr. Spivy, a Board-certified psychiatrist and neurologist who served as an Office referral physician, regarding whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury.

On remand, the Office properly referred appellant to Dr. Galatzer-Levy, a Board-certified psychiatrist, for an impartial medical examination and an opinion regarding whether he sustained Ganser's syndrome due to his December 12, 2002 employment injury.[12]

On May 18, 2006 Dr. Galatzer-Levy discussed appellant's medical history and his examination of appellant on April 20, 2006 and concluded that he did not have Ganser's syndrome, let alone any form of dissociative disorder related to the December 12, 2002 employment injury. He noted that on April 20, 2006 appellant showed evidence of thought disorder in that at times he failed to make logical connections between the elements of the matters he discussed. Later in his report, Dr. Galatzer-Levy concluded that, while at times

[9] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4, 7 (March 1994); FECA Bulletin 00-01 (issued November 5, 1999).

[10] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[11] *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

[12] The Board notes that the Office properly used the PDS to choose a physician from an appropriate geographical area. Appellant's home address was in Skokie, a distance of about 15 miles from Dr. Galatzer-Levy's office in Chicago and therefore the appointment was held in a location which was reasonably within the geographical area of appellant's home. *See supra* note 9 and accompanying text.

appellant "does exhibit blatantly disturbed thought processes, these difficulties with thinking are better understood as elements of an ongoing severe psychiatric disorder than as symptoms of Ganser's syndrome."

The Board notes that appellant has claimed that he sustained Ganser's syndrome due to his December 12, 2002 employment injury and that he had this condition during the 9- or 10-month period after the December 12, 2002 employment injury such that he was totally disabled during this period. In his May 18, 2006 report, Dr. Galatzer-Levy did not provide any notable discussion of appellant's symptoms and medical condition during this period. His opinion that appellant did not sustain any dissociative condition, such as Ganser's syndrome, appears to have been based as much on his assessment of appellant's condition when he examined him on April 20, 2006 than on the period following the December 12, 2002 accident. Dr. Galatzer-Levy acknowledged that at times appellant exhibited "blatantly disturbed thought processes" but he did not provide much specific discussion of these instances. Moreover, Dr. Galatzer-Levy did not provide any explanation of the role head trauma might play in contributing to Ganser's syndrome.

For these reasons, the opinion of Dr. Galatzer-Levy is in need of clarification and elaboration. Therefore, in order to resolve the continuing conflict in the medical opinion, the case will be remanded to the Office for referral of the case record, a statement of accepted facts and, if necessary, appellant, to Dr. Galatzer-Levy for a supplemental report regarding whether the December 12, 2002 employment injury contributed to appellant sustaining Ganser's syndrome or any other condition not previously accepted. If Dr. Galatzer-Levy is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative or lacking in rationale, the Office must submit the case record and a detailed statement of accepted facts to a second impartial specialist for the purpose of obtaining a rationalized medical opinion on the issue.[13] After such further development as the Office deems necessary, an appropriate decision should be issued regarding this matter.

## ***CONCLUSION***

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained Ganser's syndrome due to his December 12, 2002 employment injury. The case is remanded to the Office for further development of the evidence.

[13] *Harold Travis*, 30 ECAB 1071, 1078 (1979).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' January 18, 2007 and May 23, 2006 decisions are set aside and the case remanded to the Office for further development in accordance with this decision of the Board.

Issued: October 15, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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