

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMY LAWRENCE RAWLINS and DEPARTMENT OF
TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION,
Atlanta, GA

*Docket No. 01-350; Submitted on the Record;
Issued December 10, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant had any disability or injury-related residuals requiring further medical treatment after June 20, 2000, the date the Office of Workers' Compensation Programs terminated his compensation benefits, causally related to his May 23, 1979 accepted depressive reaction.

This is appellant's second appeal before the Board. In the prior appeal, the Board dismissed appellant's appeal at his request so that further evidence could be submitted.¹

The Office accepted that on May 23, 1979 appellant, then a 32-year-old air traffic controller, sustained a depressive reaction in the performance of duty.² On September 17, 1979 appellant was permanently disqualified for continued air traffic control duties due to his psychiatric condition. He stopped work and received appropriate compensation benefits.

Dr. William H. Biggers, a Board-certified psychiatrist and appellant's treating physician, provided brief reports which noted appellant's symptoms of anxiety and depression and indicated that appellant continued on medication under his care. He opined that appellant had ongoing work-related disability due to a chronic dysthymic disorder with atypical features, which had persisted for over 20 years.

On July 12, 1999 the Office referred appellant, a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. R. Bruce Prince, a Board-certified psychiatrist, for a second opinion examination concerning the nature and extent of appellant's employment-related disability.

¹ Docket No. 00-1230, issued April 27, 2000.

² Appellant was involved in two incidents which were categorized as "mid-air collisions."

In a narrative medical report dated July 13, 1999, Dr. Prince reviewed appellant's factual and medical history, reviewed the case record as provided and the statement of accepted facts, performed a mental status examination and diagnosed "[d]epressive neurosis, chronic, [and] [a]lcohol abuse, in remission." He noted that originally appellant's depressive neurosis was a direct result of the employment injury described in the statement of accepted facts, but that after several years the traumatic aspects of the event appear to have weakened and appellant's depressive symptoms became chronic and that once they became chronic, "they essentially became to exist autonomously" and the work stress was no longer causal in maintaining them. Dr. Prince opined that appellant had no objective evidence of continuing disability or psychiatric residuals causally related to the May 23, 1979 employment condition.³

The Office determined that there existed a conflict in medical opinion between Dr. Biggers and Dr. Prince on whether appellant had any continuing disability or injury-related residuals. On August 5, 1999 the Office referred appellant, a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Michael C. Hilton, a Board-certified psychiatrist, for an impartial medical examination to resolve the conflict.

By report dated August 24, 1999, Dr. Hilton reviewed appellant's factual and medical history, reviewed the case record as provided, the statement of accepted facts, performed a mental status examination and diagnosed his clinical disorders as "[d]ysthymic [d]isorder, [h]istory of alcohol abuse" and his personality disorders as "[p]ersonality [d]isorder NOS with narcissistic, borderline and paranoid features." Dr. Hilton noted: "Psychological testing indicates gross and purposeful exaggeration to his complaints and based on his situation would appear to be an effort on his part at bolstering his claim of disability." He reviewed appellant's ongoing complaints of anxiety, depression and anger and noted that Dr. Prince had indicated that appellant's condition was no longer directly related to the work injury, but had become an autonomous condition. Dr. Hilton opined: "It is my opinion that [appellant] is exaggerating his complaints in support of his claim of disability. He is absolutely resistant to any thoughts or ideas of returning to any form of employment. Appellant is not severely depressed or disabled as he would have others believe. While he does suffer from some chronic depressive symptoms, the majority of his problems at the present time are related to his personality disorder and his ongoing anger toward the [Office] and the [employing establishment] for unfair treatment." Dr. Hilton opined that appellant was capable of returning to work in other capacities outside of work that would involve the lives of others in his hands, but noted that appellant would be very resistant to this idea and would react very hostile to any recommendation that he return to work. He concluded:

"It appears obvious to me that [appellant's] present emotional problems are in no way any longer causally related to or aggravated by work stress that occurred over 20 years ago. His present emotional complaints are in large part related to his personality disorder, but also in part related to exaggeration of symptoms, frustration toward the [Office] and an ongoing mindset of disability with associated low self-esteem."

³ The Board notes that emotional conditions do not generally manifest with objective symptomatology.

Dr. Hilton opined that appellant's treatment was in the maintenance mode for his present symptoms and that he likely would not improve further.

On October 8, 1999 the Office issued a notice of proposed termination of compensation, advising appellant that the weight of the medical evidence of record established that he had no further disability for employment or psychiatric residuals requiring medical treatment, causally related to his May 23, 1979 injury. He was advised that if he disagreed with the proposed termination, he had 30 days within which to submit further evidence supporting continued disability.

In response appellant, through his representative, disagreed with the proposed action and argued that he was still disabled and on medication from Dr. Biggers.

Appellant also submitted an October 15, 1999 report from Dr. Biggers, which stated that he had reviewed the reports of Drs. Prince and Hilton and that he did not agree with their conclusions.

By decision dated November 22, 1999, the Office finalized the proposed termination of compensation and medical benefits effective December 5, 1999.

On November 22, 1999 and again on June 9, 2000 appellant requested reconsideration of the November 22, 1999 decision.

In support appellant submitted an additional affidavit from Dr. Biggers and a report from Dr. Pedro F. Garcia, a Board-certified psychiatrist.

The affidavit from Dr. Biggers stated that he strongly adhered to his formal diagnosis, that appellant had a dysthymic disorder with atypical features, that the condition was chronic and the duration had been 20 years, that appellant was totally and permanently disabled and that appellant remained under his care.

By report transmitted on November 23, 1999, Dr. Garcia reported a history as provided by appellant, conducted a limited psychiatric examination without testing, diagnosed "dysthymic disorder, chronic" and opined that appellant's diagnosis from 20 years ago should not be challenged now.⁴ He opined that appellant's "psychiatric illness has become chronic," that appellant was totally and permanently disabled and that his prognosis was poor.

By decision dated June 20, 2000, the Office denied modification of the November 22, 1999 decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office found that Dr. Garcia did not have the benefit of reviewing the record and, therefore, based his narrative report on an inaccurate history of injury and treatment, which reduced its probative value and that Dr. Bigger's report was cumulative and hence of little probative value. Moreover, the Office found that Dr. Bigger's cumulative opinion was on one

⁴ Evidently appellant's representative provided Dr. Garcia with Dr. Hilton's August 24, 1999 report, Dr. Prince's July 31, 1999 report, a letter to the representative from Dr. Biggers and a copy of the statement of accepted facts in this case.

side of the conflict, which was resolved by Dr. Hilton's impartial medical report and, therefore, found that it had no new probative value.

On September 9, 2000 appellant requested reconsideration of the Office's June 20, 2000 decision. In support of his request he submitted an August 2, 2000 report from Dr. Patricia J. Donley, a Board-certified psychiatrist, who noted that appellant's history of a 1979 "near miss" of aircraft under his positive control and examined appellant and noted signs of agitation, depression, hostility, paranoia, defensiveness and underlying feelings of inadequacy and loss of self-esteem. Dr. Donley stated that appellant had "continued significant symptoms of anxiety and depression, but these symptoms are related to post-traumatic stress disorder (PTSD)." She diagnosed PTSD, major depression related to PTSD and alcohol abuse in remission.

By decision dated September 18, 2000, the Office denied modification of the June 20, 2000 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that Dr. Donley did not relate appellant's current symptoms to the 1979 incidents or to the accepted condition of depressive reaction, but rather to PTSD, a nonaccepted condition.

The Board finds that appellant had no disability or injury-related residuals requiring further medical treatment after June 20, 2000, causally related to his May 23, 1979 accepted depressive reaction.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁵ After it has determined that an employee has disability causally related to his 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.⁶ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁷ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁸

In the present case, Dr. Biggers, in multiple reports based upon a history of treatment, continued to opine that appellant had ongoing injury-related disability and needed further injury-related medical treatment for continuing medication therapy.

However, the second opinion specialist, Dr. Prince, in a well-rationalized report based upon a complete and accurate factual and medical background, performed a mental status examination and found that there was no psychiatric evidence of employment-related continuing

⁵ *Harold S. McGough*, 36 ECAB 332 (1984).

⁶ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁷ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁸ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

disability or injury-related residuals requiring further medical treatment, causally related to the May 23, 1979 incident or emotional condition.

The Federal Employees' Compensation Act at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a 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."

The Office, therefore, properly referred appellant for an impartial medical examination.

The impartial medical examiner, Dr. Hilton, in a well-rationalized report based on a proper and complete factual and medical background, concluded that appellant's work-related disability had ceased, that his present conditions were not employment related and that he had no injury-related residuals requiring further medical treatment.

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.⁹

In this case, Dr. Hilton's report was based on a proper factual and medical background and was well rationalized and, therefore, it was entitled to that special weight. Accordingly, the special weight results in it constituting the weight of the medical opinion evidence and establishing that appellant's work-related disability had ceased and that he had no injury-related residuals requiring further medical treatment.

Thereafter appellant submitted the report from Dr. Donley, who diagnosed PTSD and related depression, but who provided no rationale as to how it was related to appellant's 1979 depressive reaction or to the 1979 work incidents. As Dr. Donley related appellant's current condition to PTSD, a nonaccepted condition, her report does not support appellant's claim of continued injury-related disability. Further, as this report was unrationalized, it is of diminished probative value and is insufficient not only to overcome the weight accorded the impartial medical examiner but also is insufficient to create a new conflict in medical evidence.

Therefore, Dr. Hilton's well-rationalized report continues to constitute the weight of the medical opinion evidence.

⁹ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated September 18 and June 20, 2000 and November 22, 1999 are hereby affirmed.

Dated, Washington, DC
December 10, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member