

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

*Docket No. 00-2419; Submitted on the Record;
Issued November 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation effective June 17, 2000.

The case was before the Board on a prior appeal. In a decision dated November 15, 1999, the Board found that the Office had failed to meet its burden of proof to terminate compensation.¹ The Board noted that a conflict in the medical evidence existed with respect to a continuing employment-related emotional condition. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

In a letter dated April 19, 2000, the Office advised appellant that it proposed to terminate his compensation on the grounds that the weight of the medical evidence established that his employment-related condition had resolved. By decision dated May 23, 2000, the Office terminated compensation effective June 17, 2000.

The Board finds that the Office met its burden of proof to terminate compensation effective June 17, 2000.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.²

In its prior decision, the Board found that a conflict in the medical evidence existed. To resolve the conflict, the Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Bert S. Furmansky, a Board-certified psychiatrist. Appellant argues that

¹ Docket No. 98-357.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

Dr. Furmansky was not properly selected as an impartial medical specialist, but the record indicates that the Office followed its established procedures in selecting Dr. Furmansky.³ Appellant also appears to contest the accuracy of the statement of accepted facts, asserting that he was subject to harassment by his supervisors. The Board notes that harassment was not accepted as a compensable work factor, nor does the record contain probative evidence substantiating a claim based on harassment. The statement of accepted facts accurately enumerated the compensable factors substantiated by the evidence, and provided an accurate background for the impartial medical specialist.

In a report dated February 15, 2000, Dr. Furmansky provided a history, reviewed medical records and discussed results on examination. Dr. Furmansky diagnosed chronic adjustment disorder with mixed disturbance of emotions and conduct and personality disorder. He further indicated that appellant did not have a major depressive disorder,⁴ nor did he meet the criteria for post-traumatic stress disorder. With regard to causal relationship with employment, Dr. Furmansky opined that appellant “does not suffer from any psychiatric disorder as a result of the compensable factors of employment as set forth in the Statement of Accepted Facts.” He noted that these factors occurred over 15 years earlier, and he indicated that his current adjustment disorder was related to his alleged mistreatment by the Office regarding his claim. The Board notes that this is not a compensable work factor in this case.⁵ In a supplemental report dated April 19, 2000, Dr. Furmansky reiterated that the current diagnosis of adjustment disorder was not causally related to compensable work factors.

The Board finds that Dr. Furmansky provided a reasoned medical opinion, based on a complete and accurate background, that appellant did not have a continuing employment-related condition. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶

Accordingly, it is found that Dr. Furmansky’s opinion is entitled to special weight and represents the weight of the evidence in this case. The Office therefore met its burden of proof in terminating compensation effective June 17, 2000.

³ The Office claims examiner selects the impartial medical specialist by rotational system using an appropriate medical directory such as the Physicians’ Directory System. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b) (March 1994).

⁴ The accepted condition in this case was major depression, reactive.

⁵ See *Donna J. DiBernardo*, 47 ECAB 700 (1996).

⁶ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

The decision of the Office of Workers' Compensation Programs dated May 23, 2000 is affirmed.

Dated, Washington, DC
November 14, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member