

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARRY NEUTUCH and DEPARTMENT OF THE TREASURY,
MANHATTAN DISTRICT OFFICE, New York, NY

*Docket No. 01-1532; Submitted on the Record;
Issued January 6, 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 in terminating appellant's compensation benefits effective May 15, 2000, on the grounds that his work-related disability had ceased on or before that date.

On September 4, 1986 appellant, then a 41-year-old internal revenue agent, filed an occupational disease claim (Form CA-2), indicating an aggravation of obsessive compulsive disorder (OCD) related to his employment. He stopped work on September 4, 1986. Appellant's claim was accepted for aggravation of OCD, aggravation of prostatitis, aggravation of dental grinding. He was placed on the periodic rolls and received appropriate compensation.

In a report dated May 16, 1997, Dr. Terence Leingang, a Board-certified psychiatrist, who had treated appellant since 1982, noted appellant's history of injury and treatment, including the duties as a tax agent that served to aggravate his OCD. He indicated that appellant's duties exacerbated his symptoms and his job worsened his condition. Dr. Leingang noted that appellant's condition was aggravated and continued to be aggravated by his fear of investigation by the Internal Revenue Service (IRS), noting a 1977 investigation for allegations that he violated the IRS code of ethics. Dr. Leingang stated that although the charges were dropped, the investigation had an "ongoing detrimental effect" upon appellant. Further, he indicated that this incident strengthened the obsessional concern that he now be perfect to avoid an investigation. Dr. Leingang referred to an August 1995 letter from the IRS stating "we are investigating your (Worker's Compensation) claim." He opined that this letter and the use of the term "investigating, rekindled" appellant's "fears of IRS scrutiny and the need to maintain perfection through his compulsive rituals." Dr. Leingang further noted: "[I]n summary, the duties of an IRS agent aggravated his obsessive compulsive symptoms. Furthermore, appellant's ongoing contact with the IRS through letters, 'investigations' memories and dreams continue to aggravate his symptoms." Dr. Leingang opined that appellant was totally disabled, could not be accommodated or rehabilitated and could not return to work.

By letter dated April 14, 1997, the Office referred appellant, along with the medical evidence of record, together with a statement of accepted facts and a list of questions to be resolved, to Dr. Solomon Miskin, a Board-certified psychiatrist, for a second opinion regarding the status of appellant's work-related condition.¹

In a May 20, 1997 report, Dr. Miskin noted appellant's history of injury and treatment. He opined that there appeared to be no causal relationship between appellant's current psychiatric symptomatology and any external stressor and opined that the etiology of OCD was unknown. Dr. Miskin noted that the "variability in the course has not been determined to be related to particular external factors and, at the present date, it continues to be of uncertain cause. He opined that there was "no clear-cut evidence that [appellant's] OCD is being aggravated by a work-related condition." Further, Dr. Miskin noted that the accompanying records indicated that appellant was subjected to reported work-related stressors in 1986 and there was no evidence that these continued to impact on appellant's present level of functioning.

In a January 19, 1998 disability certificate, Dr. Leingang indicated that appellant was under his care for OCD and was receiving 40 milligrams of Prozac a day for his disorder. He stated that Prozac and (other selective serotonin reuptake inhibitors-SSRI's) were all standard psychopharmacological treatments for OCD and they were the drugs of choice.

By report dated May 4, 1999, Dr. Leingang noted that continued contacts with the IRS and the Office had continued to aggravate appellant, "even though he has not been 'exposed' to work since September 1986." He cited such factors as fear that the agencies were attempting to return him to the harmful work environment and disputes with the Office personnel regarding the handling of his claim. Dr. Leingang concluded that the duties of an IRS agent had permanently aggravated the obsessive-compulsive symptoms. He noted that appellant was incapable of rehabilitation and was permanently disabled on account of the job-related aggravation.

By letter dated July 28, 1999,² the Office referred appellant to Dr. Allan Burstein, a Board certified psychiatrist, to resolve the conflict in opinion between Drs. Miskin and Leingang.³

In an August 19, 1999 report, Dr. Burstein noted appellant's history of injury and treatment and opined that he could not work in any position. He stated that appellant had a

¹ The record reflects that appellant was referred to Dr. John L. Simon for a second opinion evaluation on May 26, 1987. He was also seen by Dr. Joseph D. Sullivan for a impartial psychiatric evaluation on August 17, 1987. Appellant was seen by Dr. Lennart Belok on April 27, 1989 and Dr. Roger Brunswick on May 10, 1989. Additionally, neuropsychological evaluations were performed on May 7, 1989.

² In the statement of accepted facts dated June 3, 1999, the claims examiner indicated that appellant was being referred to resolve a conflict between, Dr. Leingang, who believed that appellant was fully and permanently disabled from work due to a *JOB-RELATED* aggravation of his OCD and that he could not be accommodated and Dr. Miskin, who believed that there appeared to be "*NO CLEAR CUT EVIDENCE THAT [APPELLANT'S] OCD IS BEING AGGRAVATED BY A WORK-RELATED CONDITION.*" Further, he added that there is *NO EVIDENCE THAT THESE CONTINUE TO IMPACT ON THE CLAIMANT'S PRESENT LEVEL OF FUNCTIONING.*

³ The Office had referred appellant to a Dr. Snyder, earlier, however, this had to be rescheduled.

“legitimate OCD problem.” Dr. Burstein further indicated that appellant had “built a lifestyle over the past 10 years that does not involve work.” He stated that appellant had become “institutionalized.” He referred to the DSM IV section on OCD disorder and stated that the “majority of individuals have a chronic waxing and waning course with exacerbation of symptoms that may be related to stress. About 15 percent show progressive deterioration in occupational social functioning.” Dr. Burstein opined that the section “does not report on the existence of ‘permanently aggravating’ factors but exacerbations, which are time limited and can be related to external stressors.” He opined that there is no basis for a work-related permanent aggravation of OCD. Further he noted that appellant reported exacerbations when the government threatened his livelihood and lifestyle. Dr. Burstein concluded that appellant had experienced a temporary aggravation of his OCD at the job site in 1986, but there was no evidence of a permanent worsening of the underlying condition due to employment factors. He noted that appellant was “at his baseline and probably has been for years.” Dr. Burstein added: “[a]ccording to the record the claim of bruxism seems to rest on Dr. Leingang’s comment that [appellant] would ‘grind his teeth with tension.’ This is too inexact a description to make the diagnosis of bruxism. I could locate no evaluation by a dentist and/or evidence of treatment for bruxism.” He further noted that there was “no firm evidence for the claim that his OCD was aggravating or causing prostatitis.” Dr. Burstein opined that appellant was totally disabled and could not work at any position but it was not due to a work-related incident, which was a self-limiting exacerbation.

By letter dated August 12, 1999, the Office referred appellant to Dr. Sherwood Jacobson, a Board-certified neurological surgeon, to resolve a conflict in opinion between Drs. Miskin and Leingang.

In a report dated September 28, 1999, Dr. Jacobson noted appellant’s history of injury and treatment. He opined that appellant “showed no disability due to neural deficit from his work since he has no neural defects.”

By letter dated April 12, 2000, the Office issued a proposed notice of termination of compensation. The Office advised appellant that his compensation for wage loss and medical benefits was being terminated because he no longer had any continuing injury-related disability. The Office indicated that the weight of the medical evidence, as demonstrated by the opinions of Drs. Jacobson and Burstein, that appellant’s work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

By letter dated May 1, 2000, appellant’s representative argued that Drs. Burstein and Jacobson, failed to provide a rationalized opinion and that the Office erred in according them the weight of the medical evidence.

By decision dated May 15, 2000, the Office finalized its proposed termination of benefits effective May 20, 2000. The Office indicated that the reports of Dr. Burstein, the Board-certified psychiatrist, and Dr. Jacobson, the Board-certified neurosurgeon, remained the weight of the medical evidence and that the evidence of record established that appellant’s injury-related disability had ceased.

On May 19, 2000 appellant through his representative, disagreed with that decision and requested an oral hearing, which was held on November 9, 2000.

Subsequent to the hearing, in a letter dated June 7, 2000, appellant's representative provided additional medical evidence.

By report dated April 27, 2000, Dr. David L. Brisman, a dentist (DMD), indicated that appellant was a dental patient that he had been treating for some time. He stated that appellant ground his teeth as a stress release. Dr. Brisman noted that over the years, he had to remake appellant's bite plate because he ground his teeth through the material and the bite plate was needed as it minimized the damage to his teeth caused by the stress.

By report dated April 27, 2000, Dr. William Kohlberg, a Board-certified urologist, noted that appellant was still under his care for prostatitis. He noted: "[appellant] is tense and nervous and stress can aggravate the symptoms of chronic prostatitis."

By report dated May 15, 2000, Dr. David Frank, a Board-certified psychiatrist and neurologist, stated that appellant suffered from severe OCD which aggravated his migraines. He noted that appellant also indicated that the migraines were sometimes triggered by the performance of his rituals and at other times, by missing meals or post-poning urination.

In a report dated May 29, 2000, Dr. Leslie William Sojka, Board-certified in internal medicine, stated that appellant suffered from severe OCD, which certainly aggravated appellant's hypertension most likely, his hyperlipidemia as well.

In a June 5, 2000 report, Dr. Leingang argued that Dr. Burstein failed to consider the ongoing contacts with the IRS and the Office as aggravating factors. He indicated that these continued aggravations flowed directly from appellant's job-related injury of August 11, 1986 and were a consequence of that injury. Dr. Leingang opined that the responsibilities required by the IRS and the Office in their contact with appellant "over the years since he has received compensation has had the consequence of worsening his job-related disorder." He noted that these responsibilities included the submission of financial and medical reports, drug and travel expenses, administrative forms regarding his marriage and new address, *etc.* Dr. Leingang opined that appellant's job-related aggravations "would continue indefinitely due in large part to the inevitable repeated aggravations of his disorder through the inevitable continued stressful contacts with the IRS and [the Office]."

In a decision dated February 2, 2001, the Office terminated appellant's compensation and medical benefits on the grounds that his employment-related disability had ceased.

The Board finds that the Office failed to meet its burden of proof in terminating appellant's compensation benefits effective May 15, 2000 on the grounds that his work-related disability had ceased by that date.

Under the Federal Employees' Compensation Act,⁴ once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁵ 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.⁶ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

In the instant case, the Office accepted appellant's claim for aggravation of OCD, aggravation of prostatitis and aggravation of dental grinding.

Appellant's treating psychiatrist, Dr. Leingang, reported that appellant continued to suffer from work-related injuries and was totally disabled. Dr. Miskin, the second opinion physician, opined that there was no clear-cut evidence that appellant's OCD was being aggravated by a work-related condition.

To resolve the conflict, the Office referred appellant, pursuant to section 8123(a) of the Act, to Dr. Burstein, a Board-certified psychiatrist and Dr. Jacobson, a Board-certified neurologist, for impartial medical examinations and opinions on appellant's continuing employment-related disability.

Section 8123 (a) of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, a third physician will be appointed to make an examination.⁹ Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purposes of resolving the conflict, the opinion of such specialist is entitled to special weight if sufficiently well rationalized and based upon a proper factual review of the case.¹⁰

The Board finds that the weight of the medical evidence cannot be represented by the opinions of Drs. Burstein and Jacobson, the impartial medical specialists selected to resolve the conflict in medical opinion. In the instant case, the statement of accepted facts was drafted in what appears to be a biased and misleading manner, such that the opinions of the impartial medical specialists were fatally flawed. For example, the statement of accepted facts highlighted

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Lawrence D. Price*, 47 ECAB 120 (1995).

⁶ *Id.*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *Id.*

⁹ 5 U.S.C. § 8123(a).

¹⁰ See *Glen C. Chasteen*, 42 ECAB 493 (1991); *James P. Roberts*, 31 ECAB 1010 (1980).

the fact that appellant's physician felt that his condition was "***JOB RELATED***" all capitalized, bold and italics and underlined. Further, in the statement of accepted facts, the claims examiner noted that the claim was being referred to a Board-certified neurologist/psychologist and again all capitalized, bold and italics and underline stated that there was "***NO CLEAR-CUT EVIDENCE THAT THE [APPELLANT'S] OCD IS BEING AGGRAVATED BY A WORK-RELATED CONDITION***" and subsequently that "***THERE IS NO CLEAR CUT EVIDENCE THAT THESE CONTINUE TO IMPACT ON THE [APPELLANT'S] PRESENT LEVEL OF FUNCTIONING***." As the Board considers this to be an unfair and inappropriate presentation of the facts, the opinions of the impartial medical specialists failed to meet the burden of proof stated above, as these opinions were fatally flawed. The Board, therefore, reverses the Office's May 15, 2000 decision terminating benefits, as the impartial medical specialists' medical reports, upon which the decision is based are insufficient to satisfy its burden of proof.

Accordingly, the February 2, 2001 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
January 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member