

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

NORMAN K. BRUNER, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
DENVER MEDICAL CENTER, Denver, CO,
Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-1815
Issued: April 1, 2005**

Appearances:
Norman K. Bruner, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 13, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated June 15, 2004, which terminated his compensation effective June 15, 2004 on the grounds that he no longer had any residuals or disability causally related to his June 13, 1989 accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this termination case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation effective June 15, 2004 on the grounds that he no longer had any residuals or disability causally related to his June 13, 1989 employment injury.

FACTUAL HISTORY

On September 25, 1989 appellant, a 57-year-old social work associate, filed an occupational disease claim alleging that he first realized his depression/anxiety was employment

related on August 14, 1989. Specifically, he attributed his condition to discrimination and working conditions. The Office accepted the claim for temporary aggravation of adjustment disorder with depression and placed him on the periodic rolls for temporary total disability effective September 1, 1990.

On July 31, 2003 the Office referred appellant to Dr. Michael S. Shrift, a Board-certified psychiatrist, for a second opinion evaluation. In a report dated August 18, 2003, he diagnosed bipolar mood disorder and personality disorder. Dr. Shrift opined that the accepted condition of temporary aggravation of adjustment disorder with depression had resolved and that appellant was not disabled from the position of social worker due to this condition. With regards to when the temporary aggravation ceased, Dr. Shrift stated that there was insufficient information to answer this question. However, Dr. Shrift opined that appellant's "bi-polar mood disorder and personality disorder are severe and disabling, but not caused by employment-related factors."

On October 27, 2003 the Office received a report dated October 10, 2003 from Dr. Steve D. Martin, appellant's treating Board-certified psychiatrist, who noted that he had treated appellant since November 1989 and that appellant "continues to be severely impaired." He stated that appellant continued to experience "intrusive thoughts about the V[eterans] A[dministration], his attack and the location of his attack." He indicated that appellant "continues to experience significant clinical symptoms." Dr. Martin's diagnoses include mixed bipolar disorder, organic personality disorder and acute exacerbation of adjustment disorder with progression into a chronic post-traumatic stress disorder. With regards to appellant's capability to work, Dr. Martin opined that appellant "remains severely impaired for any type of work" which he attributed to his employment injury.

On November 14, 2003 the Office issued a notice of proposed termination of benefits based upon the report of Dr. Shrift.

On December 8, 2003 the Office received a November 20, 2003 report by Dr. Martin, who opined that appellant continued to "be significantly impaired" and that he "continues to suffer from flashbacks, agitation when he's even close to his prior place of employment." He opined that appellant's "Adjustment Disorder has continued over a long-term basis and basically has evolved into a [p]ost-[t]raumatic [s]tress [d]isorder" which is permanent and chronic. Diagnoses include mixed bipolar disorder, organic personality disorder and acute exacerbation of adjustment disorder with progression into a chronic post-traumatic stress disorder.

On February 26, 2004 the Office referred appellant to Dr. Bert S. Furmanský, a Board-certified general and forensic psychiatrist, to resolve the conflict in the medical opinion evidence between Dr. Martin, appellant's attending Board-certified psychiatrist, and Dr. Shrift, a second opinion Board-certified psychiatrist, on the issue of whether appellant continues to have any residuals or disability due to his accepted employment injury.

In a report dated April 13, 2004, Dr. Furmansky, based upon a review of the medical evidence, statement of accepted facts, an addendum to the statement of accepted facts, list of questions and examination, opined “that the temporary aggravation of [appellant]’s [a]djustment [d]isorder ceased in 1990. In support of this conclusion, Dr. Furmansky stated:

“By definition of an [a]djustment [d]isorder according to the DSM, the disturbance lasts less than six months. According to the DSM, ‘By definition, symptoms cannot persist for more than six months after the termination of the stressor or its consequences.’ It is my opinion that subsequent events outlined in the notes of Stephen Martin, M.D., psychiatrist, indicate that subsequent stressors overshadowed the lack of professional supervision [appellant] experienced at work in 1989. One must again take into account that [appellant] has significantly compromised psychiatric functioning caused by his distinct Axis I disorders and that any stressor subsequent to his work stress would also significantly cause him to decompensate.”

Dr. Furmansky opined appellant’s “preexisting and severe other chronic psychiatric disorders are causing his psychiatric disability. He also stated:

“Other significant stressors have subsequently arisen that are enough to explain [appellant]’s additional psychiatric decompensation over the last decade. (Emphasis in the original.) They consist of [appellant]’s multiple hospitalizations, her (sic) psychiatric disability for depression, severe financial stressors, substance abuse and legal problems regarding [appellant]’s two sons and severely dysfunctional relationships with his sons including severe physical and emotional abuse.”

Dr. Furmansky diagnosed nonemployment-related mixed bipolar disease, “[c]hronic [p]ost-[t]raumatic [s]tress [d]isorder caused by his military duty and not work related,” obsessive compulsive disorder, panic disorder without agoraphobia and “[d]ementia due to multiple etiologies (head trauma and ? [d]iabetes [m]ellitus).” With regards to Dr. Martin’s November 20, 2003 report, Dr. Furmansky stated:

“Dr. Martin’s notes indicated that [appellant]’s psychiatric symptomatology could no longer simply be explained by a work-related aggravated [a]djustment [d]isorder. It is understandable that he made a diagnosis of [b]ipolar [d]isorder, mixed; [o]rganic [p]ersonality [d]isorder; and [p]ost-[t]raumatic [s]tress [d]isorder. Dr. Martin, however, overlooks the significant military history and [appellant]’s chronic course of severe mental illness that, in my opinion, identifies a preexisting [p]ost-[t]raumatic [s]tress [d]isorder caused by his military duty which was temporarily aggravated by the 1977 attack at work and then chronically aggravated by his ongoing physical and emotional abuse by his sons. ([Appellant] is currently receiving [a]dult [p]rotective [s]ervices from the Department of Human Services not related to work.)”

Dr. Furmansky noted that the temporary aggravation of appellant’s adjustment disorder was due to “a combination of MSW supervision, the discouragement of filing another work injury claim,

and the incident at the copying machine.” He opined “these stressors had time constraints and did not become chronic as a result of [appellant] being disabled from work and being removed from the work site.” In concluding Dr. Furmansky opined that appellant needs continued “psychopharmacological and psychotherapeutic intervention for his chronic preexisting psychiatric disorders,” but there is “absolutely no indication that [appellant] continues to suffer from a work-related injury.”

On May 3, 2004 the Office issued a notice of proposed termination of wage-loss and health benefits based upon the report of the impartial medical examiner, Dr. Furmansky.

Appellant disagreed with the proposed termination and submitted two undated letters from himself and a May 17, 2004 report by Dr. Martin. Dr. Martin disagreed with Dr. Furmansky on the cause of appellant’s post-traumatic stress disorder. While Dr. Furmansky attributed the post-traumatic stress disorder to appellant’s military experience, Dr. Martin concluded that it was “a direct result of his work-related attack.” In concluding, Dr. Martin opined that Dr. Furmansky’s opinion was speculative. Dr. Martin opined that contrary to Dr. Furmansky’s opinion, appellant’s “adjustment disorder was caused by the vicious attack at work progressed to a [post]-[traumatic] [stress] [disorder].”

On June 15, 2004 the Office finalized the termination of appellant’s wage-loss and health compensation benefits. The Office found that the weight of the evidence rested with the report by Dr. Furmansky and that Dr. Martin’s subsequent report was insufficient to create a new conflict.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.² The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ However the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.⁴ 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.⁵ If the Office, however, meets its burden of proof and properly

¹ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

² *Lynda J. Olson*, 52 ECAB 435 (2001).

³ *Manuel Gill*, 52 ECAB 282 (2001).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Franklin D. Haislah*, 52 ECAB 457 (2001).

terminates compensation, the burden for reinstating compensation benefits properly shifts to appellant.⁶

Section 8123(a) of the Federal Employees' Compensation 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."⁷

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.⁸

ANALYSIS

In this case, the Office accepted appellant's claim for temporary aggravation of adjustment disorder with depression and paid appropriate compensation. The Office determined that there was a conflict in the medical opinion between Dr. Martin, appellant's attending Board-certified psychiatrist, and Dr. Shrift, an Office referral Board-certified psychiatrist, as to whether appellant continued to suffer residuals or any disability due to his accepted temporary aggravation of adjustment disorder with depression. In order to resolve the medical conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Furmansky, for impartial medical examination and opinion.⁹

The Board finds that, under the circumstances of this case, the opinion of Dr. Furmansky, the impartial medical specialist 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.¹⁰

Dr. Furmansky reviewed appellant's history, medical reports, statement of accepted facts, reported findings and advised that he has essentially fully recovered from the temporary adjustment disorder with depression which emanated from the accepted employment factors. He noted that appellant was disabled from performing his usual employment due to his preexisting conditions of mixed bipolar disorder, organic personality disorder and post-traumatic stress

⁶ See *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁷ 5 U.S.C. § 8123(a); see *Thomas J. Fragale*, 55 ECAB ____ (Docket No. 04-835, issued July 8, 2004).

⁸ *John E. Cannon*, 55 ECAB ____ (Docket No. 03-347, issued June 24, 2004).

⁹ 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." 5 U.S.C. § 8123(a); see *Thomas J. Fragale*, *supra* note 7.

¹⁰ *Willie C. Howard*, 55 ECAB ____ (Docket Nos. 04-342 & 04-464, issued May 27, 2004).

disorder, which were not employment related. Dr. Furmansky did not believe appellant's current psychiatric treatment was for the residuals of his accepted work injury, but was rather for treatment of his preexisting psychological conditions

Appellant submitted a May 17, 2004 report from Dr. Martin which contradicted Dr. Furmansky. Although he indicated that he disagreed with Dr. Furmansky in his conclusion that appellant has no current residuals of his work-related injury and that appellant's post-traumatic stress disorder was not employment related, this report did not contain new findings or rationale upon which a new conflict might be based.¹¹ Therefore, this report is insufficient to overcome that of Dr. Furmansky or to create a new medical conflict.¹²

The Board finds that the Office properly relied on Dr. Furmansky's April 13, 2004 opinion as the basis for terminating medical benefits. His opinion is sufficiently well rationalized and based upon a proper factual background. Dr. Furmansky not only examined appellant, but also reviewed his medical records. He also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical specialist's April 13, 2004 findings, which established that appellant's work-related condition has ceased.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective June 15, 2004.

¹¹ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value.

¹² *See Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 15, 2004 is affirmed

Issued: April 1, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member