



## **FACTUAL HISTORY**

On November 2, 1990 the Office accepted that appellant, then a 41-year-old electronic engineer, sustained an employment-related temporary aggravation of obsessive-compulsive disorder from August to October 1989 and again from March to June 1990 when he returned to limited duty. In July 1991, appellant came under the care of Dr. Kenneth D. Glass, a Board-certified psychiatrist.<sup>1</sup> In March 1992, he returned to his full, unrestricted duties. Due to reorganizations at the employing establishment, appellant worked in various positions until December 1999 when he was transferred to the position of program analyst. On July 27, 2000 he filed a recurrence of disability claim, stating that he became disabled for intermittent periods when he was transferred to this new position. Appellant was removed from the employing establishment effective October 27, 2000 on the grounds that he was unable to perform his work duties because of a medical condition. On February 21, 2001 the Office accepted that he sustained a temporary aggravation of obsessive-compulsive disorder and was returned to the periodic rolls.

The Office referred appellant, together with a statement of accepted facts and the medical record, to Lee Howard, Ph.D., a clinical psychologist, for a second opinion evaluation. By report dated May 12, 2003, Dr. Howard noted his review of the record, including appellant's work history and his description of obsessive-compulsive complaints, depression and anxiety.<sup>2</sup> He described appellant's daily routine, appearance, behavioral presentation and emotional functioning. Dr. Howard noted testing results and diagnosed obsessive-compulsive disorder, currently in partial remission, which he opined was caused by internal factors as opposed to external factors. He noted that it would be predicted that appellant would demonstrate the same symptom complex whether his work activities occurred or not. Dr. Howard concluded that there was no current evidence of any aggravation of a preexisting obsessive-compulsive condition.

In a May 15, 2003 report, Dr. Glass advised that appellant continued to experience symptoms of obsessive-compulsive disorder, such as checking behaviors, obsessive ruminative thinking, indecisiveness and ambivalence. He noted that appellant also experienced general anxiety, times of anger, dysphoria, negative feelings, times of low energy, low motivation, difficulty accomplishing tasks and difficulty maintaining structure and a schedule with much anxiety in social interactions. Dr. Glass opined that appellant's obsessive symptoms were aggravated by times of stress, anger and anxiety and concluded that he continued to experience active residuals of the work-related aggravation of obsessive-compulsive disorder. He stated that he was medically incapable of performing the duties and responsibilities of the program analyst position and recommended continued psychological therapy and psychiatric treatment, including medication. Dr. Glass also provided a psychiatric work capacity evaluation in which he stated that appellant was totally disabled due to his continued obsessive compulsiveness.

The Office determined that a conflict in medical evidence arose between Dr. Glass and Dr. Howard. It referred appellant, together with a statement of accepted facts and the medical record, to Dr. Gary A. Balster, Board-certified in psychiatry, for an impartial medical evaluation.

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<sup>1</sup> Beginning in 1989, appellant was also followed by a psychologist, Cynthia B. Levy, Ph.D.

<sup>2</sup> Dr. Howard specifically outlined his record review in a May 28, 2003 letter.

In a report dated November 18, 2003, Dr. Balster reviewed the medical record and appellant's report of his illness. On mental status examination, he found appellant to be quite anxious with notable tremulousness, especially when discussing the work place and stresses that had been placed on him in the past. Appellant reported great difficulty learning new activities such as working with a computer. Dr. Balster diagnosed obsessive-compulsive disorder, depressive disorder not otherwise specified and compulsive and avoidant personality disorders. He advised that appellant's work-related aggravation was still active, stating "he does not, at the present, appear to have returned to his baseline level of pathology and continues to have marked restriction in day-to-day activities." Dr. Balster opined that appellant was not medically capable of performing the job duties of program analyst and recommended continued psychotherapy and medication.

By letter dated December 12, 2003, the Office requested that Dr. Balster further clarify the continuation of appellant's obsessive-compulsive disorder was the result of employment factors and whether he could perform any type of work. He provided a psychiatric work capacity evaluation dated December 29, 2003 in which Dr. Balster advised that appellant could not work 8 hours a day due to persistent and severe compulsions and rituals that lasted for days at a time which precluded basic functioning. He noted that this impairment had existed for 14 years. Dr. Balster further advised that appellant could not work quickly or accurately and would fold under pressure. In a report dated December 31, 2003, he noted that appellant's social restrictions were affected by his depressive disorder and personality disorder and opined that "it would be hard to prove that any current aggravation of his obsessive-compulsive disorder would be related to a work-related aggravation of his obsessive-compulsive disorder." Appellant described continued periods of compulsive behavior which precluded basic day-to-day functioning, but stated "it would be very difficult to prove one way or another whether prior aggravation of his condition was related to any current aggravation or precipitation, as any factor that would increase general anxiety may result in worsening of these symptoms." Dr. Balster recommended vocational rehabilitation to assess whether appellant was capable of working.

The Office wrote Dr. Balster on January 15, 2004, noting that temporary aggravation of obsessive-compulsive disorder was the accepted condition and asked him to explain whether this aggravation was still active and, if so, whether it was temporary or permanent.

By report dated January 31, 2004, Dr. Balster opined that obsessive-compulsive disorder tended to be chronic and would go through periods of exacerbation and remission. He stated that appellant had a temporary aggravation of his illness related to work stressors but that, as he had not faced these stressors for several years, the continued symptomatology most likely could not be attributed to the stressors at that time. Dr. Balster concluded that appellant's condition was permanent and that, since he had not been faced with work conditions for several years, "I believe that the chronic illness itself is responsible for his ongoing disability."

On March 17, 2004 the Office informed appellant that it proposed to terminate his compensation benefits on the grounds that the accepted temporary aggravation of his obsessive-

compulsive disorder had resolved.<sup>3</sup> He submitted a March 23, 2004 report in which Dr. Glass noted his disagreement with the proposed termination, stating that appellant had been functioning at work prior to his transfer to the job of program analyst and had been unable to work since that time. He advised that appellant's condition was exacerbated by the job transfer and had not significantly improved since that time, opining that he continued to be totally disabled due to the accepted condition. Dr. Glass concluded, "I believe [appellant's] obsessive-compulsive disorder continued to be aggravated by his concerns and worries regarding past performance on his job and worries about having to return to his job."

In a decision dated April 21, 2004, the Office terminated appellant's compensation benefits effective that day, on the grounds that the medical evidence established that his employment-related condition had resolved.

On May 1, 2004 appellant, through counsel, requested a hearing and submitted additional evidence, including treatment notes from Dr. Glass dating from June 12, 2003 to July 6, 2004. Dr. Glass noted that appellant's compensation benefits had been terminated which exacerbated his condition.

At the hearing, held on January 25, 2005, appellant testified regarding his medical condition and job duties. He stated that, after the employing establishment was reorganized, he was transferred to a position which he did not like and could not do and was then terminated in 2000.

By decision dated July 19, 2005, an Office hearing representative affirmed the April 21, 2004 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the

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<sup>3</sup> The Office noted that the compensable factors of employment were that: (1) shortly after starting the job of program analyst, appellant did not feel that he possessed the necessary qualifications and requested a transfer; (2) as a program analyst he was required to develop agendas and prepare and coordinate a log of meeting for high level attendees, including general officers, senior executive service personnel and GS-15s and 16s, that the meetings were stressful because they were fast paced and involved discussions using numerous acronyms that he did not understand; (3) the position was uniformly fast paced with short deadlines which could require the completion of work assignments on evenings and weekends; (4) appellant had limited knowledge of information technology which was required for the position such as typing, dictation, computer usage, power point presentations, preparing meeting minutes and web page development; and (5) while learning the position he was required to complete "inhouse" computer training but was not always able to attend the sessions due to conflicts with his work schedule and that, when attending the training, his emotional condition was aggravated in that type environment and even though self-paced training was approved, appellant was not able to complete it due to time constraints imposed by his workload.

employment.<sup>4</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

In situations where there are 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 on a proper factual background, must be given special weight.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in the original report.<sup>7</sup> The Office, therefore, properly requested clarifying reports from Dr. Balster, the impartial specialist.

In comprehensive, responsive reports dated November 18 and December 29, 2003 and January 31, 2004, Dr. Balster advised that, while appellant continued to be disabled from work, his condition was not related to employment factors. He stated that he had a temporary aggravation due to work stressors and this was accepted by the Office. Dr. Balster, however, opined that, as appellant had not been exposed to the work stressors for several years, his continued symptomatology was not employment related, but that "the chronic illness itself is responsible for [his] ongoing disability." The Board, therefore, finds that Dr. Balster's opinion established that he ceased to have any disability or condition causally related to employment factors.

While appellant's attending psychiatrist, Dr. Glass, who had been on one side of the conflict in medical opinion, submitted a March 23, 2004 report and treatment notes, he merely repeated his prior diagnoses and conclusions. A subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.<sup>8</sup> The Board finds that Dr. Glass' medical opinion is insufficient to overcome the weight accorded Dr. Balster, as an impartial medical specialist. The Office, therefore, met its burden of proof to terminate his compensation benefits effective April 21, 2004.<sup>9</sup>

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<sup>4</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>5</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>6</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>7</sup> *Raymond A. Fondots*, 53 ECAB 637 (2002).

<sup>8</sup> *Richard O'Brien*, 53 ECAB 234 (2001).

<sup>9</sup> *Manuel Gill*, *supra* note 6.

## LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits effective April 21, 2004, the burden shifted to him to establish that he had any continuing disability causally related to his accepted injuries.<sup>10</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>11</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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.<sup>13</sup>

## ANALYSIS -- ISSUE 2

The relevant medical evidence submitted by appellant after the April 21, 2004 termination of benefits consists of treatment notes from Dr. Glass dated May 7, June 4 and July 6, 2004. In these reports, however, he merely advised that appellant's condition was exacerbated by the termination and described his treatment regimen. As stated above, a subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.<sup>14</sup> The Board, therefore, finds that, since appellant submitted insufficient medical evidence to establish that he continued to be disabled from the accepted employment-related temporary aggravation of obsessive-compulsive disorder, he has not met his burden of proof.<sup>15</sup>

## CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 21, 2004. The Board further finds that he failed to meet his burden of proof to establish that he had any disability after April 21, 2004 causally related to employment.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Donna L. Mims*, 53 ECAB 730 (2002).

<sup>13</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>14</sup> *Richard O'Brien*, 53 ECAB 234 (2001).

<sup>15</sup> *Leslie C. Moore*, *supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 19, 2005 be affirmed.

Issued: February 3, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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