

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

C.R., Appellant)

and)

DEPARTMENT OF LABOR, PENSION &)
WELFARE BENEFITS ADMINISTRATION,)
Washington, DC, Employer)

Docket No. 06-1439
Issued: February 21, 2007

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 2, 2006 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated March 9 and May 26, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective March 10, 2006 on the grounds that his accepted temporary aggravation of psychosis and depression had resolved; and (2) whether appellant established that he had any continuing employment-related disability after March 10, 2006.

FACTUAL HISTORY

This case has previously been before the Board regarding appellant's cervical and left shoulder strains and aggravation of cervical disc disease at C6-7 with disc herniation. In a decision dated July 19, 2000, the Board reversed an Office decision dated July 28, 1997

regarding termination of appellant's medical benefits. The Board found that a conflict in medical opinion existed regarding whether appellant continued to be disabled from his employment-related orthopedic conditions. The Board also found that a conflict existed regarding appellant's entitlement to a schedule award for his accepted conditions.¹ By order dated April 23, 2003, the Board remanded the case to the Office to reassemble the case record.² In a December 24, 2003 decision, the Board vacated a June 19, 2003 Office decision. The Board found that a conflict remained regarding whether appellant was entitled to a schedule award for his accepted orthopedic conditions.³ The law and the facts as set forth in the previous Board decisions and orders are incorporated herein by reference.

Appellant filed claims for employment-related stress. On October 25, 1994 the Office accepted that he sustained an employment-related aggravation of psychosis and depression. The accepted factors of employment were that in 1990 he became frustrated due to his inability to perform newly assigned duties when these were changed for approximately three months due to an agency reorganization. The Office also accepted that, due to the relocation of his office during this three-month period, he was exposed to smoke in an open office environment. Appellant received appropriate compensation and was placed on the periodic rolls.

Appellant came under the care of Dr. Joel Cohen, a Board-certified psychiatrist. In November 17, 2004 reports, he diagnosed bipolar disorder, mixed and post-traumatic stress disorder (PTSD) and advised that appellant "certainly continues to have ill effects from his former employment." Dr. Cohen advised that he was unable to work in any capacity because he had paranoid anxiety, could not concentrate, had difficulty processing and retrieving information, had a low frustration tolerance and was inattentive to detail.

On September 15, 2005 the Office referred appellant to Dr. Bruce Hershfield, Board-certified in psychiatry for a second opinion evaluation. By reports dated September 30, 2005, Dr. Hershfield noted appellant's psychiatric and medical history and performed a mental status examination. He diagnosed schizoaffective disorder bipolar type, panic disorder with agoraphobia by history, cognitive disorder, paranoid traits, cervical disc disease and pain by history and occupational problems by history. Dr. Hershfield could not relate any of these diagnosed condition to the accepted employment factors, stating that there was nothing about the work environment that caused appellant's significant psychiatric presentation. He opined that appellant did not meet the criteria for PTSD since the trauma he had suffered was not sufficient under the DSM-IV criteria used to justify a diagnosis of that condition. Dr. Hershfield

¹ Docket No. 98-301 (issued July 19, 2000). That claim was adjudicated by the Office under file number 110104429 and the instant claim under file number 110114755, for which appellant has been receiving wage-loss compensation effective December 13, 1991 although he worked briefly in 1992 and 1993, when he retired. He also received wage-loss compensation for intermittent absences. Subsequent to the December 24, 2003 decision, by decision dated August 23, 2004, the Office denied appellant's reconsideration request of a February 14, 2003 decision regarding his claim for wage-loss compensation for the period August 12 to September 8, 1990. Appellant did not file an appeal of this decision with the Board. On September 15, 2005 he was granted a schedule award for a 100 percent loss of use of the right upper extremity.

² Docket No. 03-777 (issued April 23, 2003).

³ Docket No. 03-1692 (issued December 24, 2003).

concluded that appellant was actively psychotic and could not return to gainful employment. However, his disability was not employment related.

Appellant submitted a September 19, 2005 report in which Dr. Asim Haracic, an attending Board-certified psychiatrist, diagnosed bipolar disorder, mixed and chronic PTSD with debilitating symptoms.

The Office determined that a conflict in medical evidence was created between the opinions of Dr. Cohen and Dr. Hershfield as to whether appellant's current emotional condition was causally related to employment. On November 7, 2005 it referred him to Dr. Joanna Dorin Brandt, Board-certified in psychiatry, for an impartial evaluation.⁴ In January 2, 2006 reports, Dr. Brandt noted her review of the statement of accepted facts, the medical record, including psychiatric and medical treatment and the questions provided. She reported a history that at that time a family member drove appellant to a psychiatric day treatment program five days a week where he had psychotherapy two times weekly. Appellant's former wife, who attended the examination, reported that appellant regularly became highly agitated, was very disorganized, self-absorbed and uncooperative, did not bathe regularly and did not get along well with others. She stated that he was very talkative and had trouble stopping. Dr. Brandt performed a mental status examination and opined that some of appellant's symptoms were exaggerated. She disagreed that he had PTSD, stating that he did not meet the criteria under DSM-III or DSM-IV because the trauma of the accepted factors was not severe enough, noting that the DSM-IV-TR definition was that "the person experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury or a threat to the physical integrity of self or others...." Dr. Brandt also opined that a diagnosis of bipolar disorder did not fully explain the chronic and persistent nature of appellant's psychotic symptoms of persecutory delusional ideation about his employer and his reported hallucinations.

Dr. Brandt diagnosed schizoaffective disorder, bipolar type, malingering, anxiety disorder, not otherwise specified and chronic pain from cervical disc disease. In answer to specific Office questions, she noted that appellant had a history of impulsivity, angry outbursts, overspending and overeating dating back to his teenage years which, Dr. Brandt advised, were prodromal symptoms of mood disturbance that later coalesced into his current illness. She agreed with Dr. Hershfield's assessment that, while they did not know the cause of appellant's condition, it was not due to the work environment, noting that his condition worsened after he stopped work. Dr. Brandt advised that appellant had a chronic illness characterized by both psychotic, mood disorder and anxiety disorder symptoms, which were not caused by stresses he encountered at work. Appellant had not worked in over a decade and there was no evidence that his condition continued to be aggravated by his former employment. His ongoing condition was not due to the fact that in 1990 his duties were changed or that he encountered cigarette smoke at work. As appellant remained symptomatic with psychotic symptoms of persecutory delusions and auditory hallucinations and mania symptoms including irritability and flight of ideas with significant functional impairment, Dr. Brandt did not anticipate that he would ever reach his pre-1990 level of functioning or return to work.

⁴ Drs. Hershfield and Brandt were furnished with a statement of accepted facts, a set of questions and the medical record.

By letter dated January 19, 2006, the Office informed appellant that it proposed to terminate medical benefits for his emotional condition on the grounds that the medical evidence establishes that there was no continuing causal relationship between his work and his current emotional condition. Appellant disagreed with the proposed termination. He submitted numerous medical reports dating from November 2 to 30, 2005 in which Dr. Haracic and Nancy Shaffer, Ph.D. reiterated the diagnosis of mixed bipolar disorder and outlined his care at a psychiatric day facility. He also submitted the first page of a CA-1 form, traumatic injury claim dated January 2006 for an ongoing stress condition that was accelerated by employment factors.

On March 9, 2006 the Office terminated appellant's medical benefits for his emotional condition. The Office continued his wage-loss compensation based on his orthopedic injuries and also denied the claim that he had submitted in January 2006. The Office found that the weight of the medical evidence rested with the opinion of Dr. Brandt, the impartial examiner who found that the employment-related aggravation of appellant's emotional condition had ceased.

On April 12, 2006 appellant requested reconsideration and submitted an April 2, 2006 report from Joyce M.L. Harrison, a licensed social worker. In an April 12, 2006 report, Dr. David T. Hackney, a Board-certified psychiatrist and an associate of Dr. Cohen, advised that appellant had been exposed to adverse employment conditions from 1975 to 1993 when he was exposed to second-hand smoke at work. He opined that appellant did not have a schizoaffective disorder but that his hallucinations were instead caused by his medications. Dr. Hackney stated that he agreed with the findings and conclusions of a January 30, 2002 report from his facility, which noted that, when appellant was exposed to an event in 1991 that threatened his physical and mental integrity, his response was intense fear and helplessness. He continued to have intrusive, distressing recollections of this event which rendered him incapable of functioning in a work setting. Appellant's symptoms included hypervigilance, irritability, difficulty concentrating and startled response with periods of abnormally and persistently elevated, expansive and irritable mood, pressured speech, distractibility and flight of ideas. Dr. Hackney continued that appellant admitted to occasional verbal altercations and readiness to defend himself when threatened or insulted during childhood and early adulthood. Appellant acknowledged other brief incidents of impulsivity such as overspending, overeating and Dr. Hackney opined that these were of no clinical significance. Appellant had no presentation to suggest that he had a preexisting condition prior to developing psychiatric symptoms in 1988 when he developed symptoms of PTSD because he was denied the ability to escape or avoid exposure to toxic second-hand cigarette smoke at work. Appellant was first diagnosed with bipolar disorder in 1991 and diagnosed PTSD, chronic bipolar disorder, inhalant allergies and conflicts in workers' compensation regarding health benefits. Dr. Hackney concluded that appellant could not return to gainful employment. In a May 10, 2006 report, he diagnosed PTSD, bipolar disorder and inhalant allergies.

By decision dated May 26, 2006, the Office denied modification of the March 9, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

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. 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. Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. 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

Section 8123(a) of the Federal Employees' Compensation Act⁶ provides that 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 When 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.⁸

ANALYSIS -- ISSUE 1

The Office properly determined that a conflict in the medical evidence had been created between the opinions of Board-certified psychiatrists Dr. Cohen, an attending physician, and Dr. Hershfield who had provided a second opinion evaluation for the Office. They disagreed as to whether appellant's current emotional condition was causally related his employment. The Office properly referred appellant to Dr. Brandt, Board-certified in psychiatry, for an impartial evaluation.⁹

The Board finds Dr. Brandt's report sufficiently well rationalized to support a finding that appellant's employment-related emotional condition had resolved.¹⁰ The Office met its burden of proof to terminate appellant's medical benefits effective March 10, 2006.¹¹ In comprehensive reports dated January 2, 2006, Dr. Brandt provided a careful and thorough analysis of appellant's psychiatric condition. She noted her review of the statement of accepted facts, the medical record including psychiatric and medical treatment and the questions provided. Dr. Brandt described appellant's current treatment program, symptoms and behaviors and performed a mental status examination. She advised that some of appellant's symptoms were exaggerated

⁵ *Fred Simpson*, 53 ECAB 768 (2002).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

⁸ *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Supra* note 7.

¹⁰ *Manuel Gill*, *supra* note 8.

¹¹ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

and opined that he did not have PTSD. Appellant did not meet the criteria under the DSM standard because the trauma of the accepted factors was not severe enough. The DSM-IV-TR definition was that “the person experienced, witnessed or was confronted with an event or events that involved actual or threatened death or serious injury or a threat to the physical integrity of self or others....” Dr. Brandt also opined that a diagnosis of bipolar disorder did not fully explain the chronic and persistent nature of appellant’s psychotic symptoms. These included delusional ideation about his employer and his reported hallucinations. She diagnosed schizoaffective disorder, bipolar type, malingering, anxiety disorder, not otherwise specified and chronic pain from cervical disc disease. In answer to specific Office questions, the physician noted that appellant had a history of impulsivity, angry outbursts, overspending and overeating dating back to his teenage years. These were prodromal symptoms of mood disturbance that later coalesced into his current illness. Dr. Brandt agreed with Dr. Hershfield’s assessment that appellant’s current condition was not aggravated by employment factors, noting that his condition had worsened since he stopped work over a decade previously. She opined that his condition was not due to the fact that in 1990 his duties were changed or that he encountered cigarette smoke at work. Dr. Brandt concluded that, as he remained symptomatic, she did not anticipate that he would ever reach his pre-1990 level of functioning or return to work.

Dr. Haracic and Dr. Shaffer repeated the diagnoses of bipolar disorder and chronic PTSD with debilitating symptoms. They did not provide an opinion on whether appellant had an employment-related condition. Medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.¹² The physicians reports are, therefore, insufficient to overcome the special weight accorded Dr. Brandt.

Dr. Brandt provided a well rationalized evaluation in which she clearly explained her findings and conclusion that appellant’s employment-related aggravation had resolved. The Board, therefore, finds it is entitled to special weight as a referee opinion.¹³ The Office, therefore, met its burden of proof to terminate appellant’s compensation benefits effective March 10, 2006.¹⁴

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant’s medical benefits for his psychiatric condition, the burden shifted to him to establish that he had any continuing psychiatric disability causally related to his accepted injuries.¹⁵ 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.¹⁶ Causal relationship is a medical issue and

¹² *Willie M. Miller*, 53 ECAB 697 (2002).

¹³ *Manuel Gill*, *supra* note 8.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁷ 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.¹⁸

ANALYSIS -- ISSUE 2

The medical evidence relevant to any continuing psychiatric disability includes an April 2, 2006 report from Ms. Harrison, a licensed social worker. This report, however, is not competent medical evidence, as a social worker is not a "physician" as defined by section 8101(2) of the Act.¹⁹ Dr. Hackney submitted an April 12, 2006 report in which he noted his disagreement with Dr. Brandt's opinion. He advised that he agreed with findings and conclusions made by a colleague in January 2002, Dr. Hackney also practices at the same facility as Dr. Cohen. Dr. Hackney's April 12, 2006 report includes the same diagnoses, bipolar disorder and PTSD, as those provided by Dr. Cohen. He also agreed with Dr. Cohen's assessment that appellant continued to be disabled due to employment factors. The submission of an additional report from an attending physician which essentially repeats earlier findings and conclusions is insufficient to overcome the weight accorded to an impartial medical specialist's report.²⁰ Likewise, an additional report from a physician who was on one side of the medical conflict that an impartial specialist resolved is, by itself, insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.²¹ The Board finds that, as Dr. Hackney acknowledged that he supported findings and conclusions found in a January 2002 report made by a colleague and his April 2006 opinion mirrors that of his colleague Dr. Cohen, it is insufficient to overcome the special weight accorded to Dr. Brandt, the referee physician. 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.²² The Board, therefore, finds that, as Dr. Hackney's opinion is in essence that of Dr. Cohen, appellant did not submit sufficient medical evidence to establish that he continued to have employment-related residuals of his emotional condition, he has not met his burden of proof to establish that he was entitled to medical benefits for this condition after March 10, 2006.²³

¹⁷ *Donna L. Mims*, 53 ECAB 730 (2002).

¹⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁹ 5 U.S.C. § 8101(2); *Phillip L. Barnes*, 55 ECAB 426 (2004).

²⁰ *Roger G. Payne*, 55 ECAB 535 (2004).

²¹ *John D. Jackson*, 55 ECAB 465 (2004).

²² *Richard O'Brien*, 53 ECAB 234 (2001).

²³ *Leslie C. Moore*, *supra* note 18.

Regarding the claim filed by appellant in January 2006, the Board notes that appellant was not alleging any new employment factors and has not worked since 1993. The Board, therefore, deems this a duplicate claim.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for his psychiatric condition effective March 10, 2006 and that appellant failed to meet his burden of proof to establish that he had any employment-related residuals after March 10, 2006 that would entitle him to benefits.²⁴

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 26 and March 9, 2006 be affirmed.

Issued: February 21, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

²⁴ The Board notes that appellant submitted evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).