

¹ Docket No. 07-1356 (issued October 15, 2007).

December 12, 2002 employment injury.² The Board found that additional clarification was needed from Dr. Robert M. Galatzer-Levy, a Board-certified psychiatrist who served as an impartial medical specialist.³

On May 18, 2006 Dr. Galatzer-Levy indicated that an examination on April 20, 2006 showed evidence that, at times appellant failed to make logical connections about the matters he discussed. He noted that Ganser's syndrome was not recognized as a psychiatric disorder in the current edition of *Diagnostic and Statistical Manual of the American Psychiatric Association* but was referred to once in the text under the heading "Dissociative Disorder Not Otherwise Specified." Dr. Galatzer-Levy stated that the text listed Ganser's syndrome as one of a number of examples of disorders in which the predominant feature (*i.e.*, a disruption in the usual integrated functions of consciousness, memory, identity or perception of the environment) does not meet the criteria for any specific dissociative disorder. The text referred to Ganser's syndrome as the giving of approximate answers to questions, such as two plus two equals five, in the absence of dissociative amnesia or dissociative fugue. Dr. Galatzer-Levy stated that the writers of the text appeared to consider Ganser's syndrome not as a specific psychiatric disorder but, at most, a subtype of the psychiatric disorder "Dissociative Disorder Not Otherwise Specified." He posited that appellant did not exhibit the cardinal features of such a dissociative disorder and was not suffering from any form of dissociative disorder, including Ganser's syndrome. While at times appellant exhibited "blatantly disturbed thought processes," these difficulties with thinking were better understood as elements of an ongoing severe psychiatric disorder rather than as symptoms of Ganser's syndrome. Dr. Galatzer-Levy posited that these difficulties with thinking were entirely consistent with a psychotic depressive disorder, which had previously been diagnosed and which was supported by the current clinical examination. He also noted that appellant was receiving a large number of potent psychiatric medications and has been described as sensitive to their side effects, which include psychiatric symptoms.

² The Office accepted that on December 12, 2002 appellant, then a 33-year-old legal assistant, sustained a concussion when he slipped and hit his head on the sink and floor in a restroom at work. It later accepted conversion disorder due to this injury. The Office terminated appellant's compensation effective June 23, 2003 on the grounds that he had no disability due to his December 12, 2002 employment injury after that date. Appellant later claimed that he sustained Ganser's syndrome due to his December 12, 2002 employment injury. He asserted that he had this condition during the 9 or 10 months after the December 12, 2002 employment injury and that it totally disabled him. The Office denied appellant's claim based on the opinion of Dr. Dixon F. Spivy, a Board-certified psychiatrist and neurologist and Office referral physician, who opined that he did not have work-related Ganser's syndrome.

³ In a March 9, 2006 decision (Docket No. 06-241, issued March 9, 2006), the Board found that there was a conflict in the medical evidence between Dr. Joseph A. Bongiorno, an attending Board-certified psychiatrist and neurologist, and Dr. Spivy, the Office referral physician, regarding whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury. The Board remanded the case to the Office for referral of appellant to an impartial medical specialist to resolve the conflict in medical evidence and this remand led to the referral to Dr. Galatzer-Levy.

Dr. Galatzer-Levy felt that it was possible that some of these medications were contributing to appellant's current psychiatric impairment.⁴

In its October 15, 2007 decision, the Board found that Dr. Galatzer-Levy's opinion that appellant did not have work-related Ganser's syndrome was in need of clarification because it appeared to have been based more on his condition at the time of the April 20, 2006 examination than on his condition during the 9 or 10 months after the December 12, 2002 accident, *i.e.*, the period that appellant claimed he had Ganser's syndrome. The Board noted that Dr. Galatzer-Levy acknowledged that at times appellant exhibited "blatantly disturbed thought processes" but pointed out that he did not provide much specific discussion of these instances. Moreover, Dr. Galatzer-Levy did not provide any explanation of the role head trauma might play in contributing to Ganser's syndrome. Therefore, in order to resolve the continuing conflict in the medical opinion, the Board remanded the case to the Office for referral of the case record, a statement of accepted facts and, if necessary, appellant, to Dr. Galatzer-Levy for a supplemental report regarding whether the December 12, 2002 employment injury contributed to him sustaining Ganser's syndrome or any other condition not previously accepted. The Board directed the Office to issue an appropriate decision regarding this matter after such development as it deemed necessary. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand, the Office referred the case to Dr. Galatzer-Levy for a supplemental report regarding whether the December 12, 2002 employment injury contributed to him sustaining Ganser's syndrome or any other condition not previously accepted.

In a November 14, 2007 report, Dr. Galatzer-Levy provided a discussion of Ganser's syndrome, reiterating that it was a dissociative disorder, not otherwise classified. He noted that, the condition in which individuals, who are otherwise psychiatrically intact with regard to major psychiatric disorders, behave in a manner as if to appear to have a psychiatric disorder. The condition is the psychiatric parallel to conversion symptoms in which persons exhibit symptoms that they believe to be consistent with physical ailments, but do not have any underlying physical condition. Dr. Galatzer-Levy indicated that during the 9 or 10 months after his December 12, 2002 head injury appellant did exhibit some symptoms consistent with descriptions of Ganser's syndrome. In particular, he gave approximate but wrong answers to simple questions and exhibited conversion symptoms, *i.e.*, changes in bodily function that could not be explained by physical, as opposed to psychological, causes. However, appellant did not exhibit several typical features of the condition. He did not have amnesia for the precipitating event documented and he did not make "absurd statements" of the type described for Ganser's syndrome, *i.e.*, statements of the sort that an individual attempting to mimic psychiatric illness, but unaware of

⁴ The record also contains a December 11, 2006 report, in which Dr. Bongiorno stated that he did not believe that appellant had Ganser's syndrome at the present time but rather developed the condition several days after his December 12, 2002 accident at work. He indicated that this condition rendered appellant disabled by bilateral lower-limb paralysis requiring a wheelchair, difficulty thinking and concentrating, visual problems, increased groin pain and profound difficulty in speaking. Dr. Bongiorno asserted that the December 12, 2002 fall caused the emergence of new symptoms after that date, whether they were characterized as Ganser's syndrome or some other condition, but that appellant's conflicts with supervisors "made him still more vulnerable to the physical and psychological traumas of the fall." Dr. Bongiorno stated that the fall aggravated appellant's preexisting psychiatric conditions and "tipped him (further) over the edge."

the actual symptoms the psychiatric conditions might make. Dr. Galatzer-Levy indicated that appellant stood to gain administrative or legal advantages by virtue of having a psychiatric disorder and indicated that it was possible he was malingering.

Dr. Galatzer-Levy stated that additional factors weighing against appellant having had Ganser's syndrome were the clearly documented presence of other psychiatric disorders, his not being a prisoner (approximately half of Ganser's syndrome sufferers being prisoners) and the availability of other, simpler explanations for his symptoms. He indicated that, most tellingly, the course of appellant's condition did not follow that typically described in Ganser's syndrome, which ordinarily has a sudden onset and completely and equally suddenly remits, usually after several days. Some of the symptoms that began after the December 12, 2002 episode have not remitted almost five years later and many of them lasted many months. Dr. Galatzer-Levy noted that although Ganser's syndrome following head trauma has been reported, the number of cases was so tiny that no statement could be made about the severity of head trauma needed to contribute to Ganser's syndrome, nor even whether head trauma could contribute to (as opposed to be associated with) the syndrome.

Dr. Galatzer-Levy noted that it is general medical practice that if an individual's symptoms can be explained as well or better by a commonly occurring condition than by a rare condition, the diagnosis of the more common condition should be made. He noted that Ganser's syndrome was an extremely rare condition and indicated that all of appellant's symptoms could be accounted for by a nonwork-related psychotic depression, with which he had previously been diagnosed. At the time of the December 12, 2002 incident appellant had suffered from a nonwork-related psychiatric disorder characterized by delusions, suspiciousness, anxiety, social adjustment problems and thought disorder for a considerable time. Dr. Galatzer-Levy stated that appellant appeared to have incorporated the experience of his December 12, 2002 fall into a delusional belief which was a result of his underlying nonwork-related illness. Appellant then proceeded to act in a way that was consistent with this belief by manifesting various symptoms, including disturbed thought processes, that were not caused by the fall but rather by the underlying psychiatric illness. Dr. Galatzer-Levy stated that, although some of appellant's symptoms were consistent with Ganser's syndrome in the 9 or 10 months after December 12, 2002, he did not suffer from many of the symptoms associated with the condition, he did not belong to the population in which the condition typically appears, his condition deviated markedly from the time course typical of Ganser's syndrome, his symptoms are better explained in other ways and the likelihood of his having this extremely rare condition was very small. Therefore, appellant did not have Ganser's syndrome during the time in question.

Appellant submitted a November 11, 2008 report in which Dr. Bongiorno indicated that he disagreed that appellant's symptoms in the months after his December 12, 2002 fall could be explained by his nonwork-related preexisting psychiatric condition. He posited that the Ganser-related symptoms appellant exhibited after December 12, 2002 were not typical of psychotic depression and asserted that appellant had both Ganser's syndrome and psychotic depression after that date. Dr. Bongiorno indicated that appellant's rapid deterioration after December 12, 2002, including developing lower-limb paralysis requiring a wheelchair and having difficulties in seeing, thinking, concentrating and speaking, were explained by his development of Ganser's syndrome.

In a January 21, 2009 decision, the Office determined that appellant did not meet his burden of proof to establish that he sustained Ganser's syndrome due to his December 12, 2002 employment injury. It found that the supplemental opinion of Dr. Galatzer-Levy, the impartial medical specialist represented the weight of the medical evidence with respect to this matter.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.⁷

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."⁸ 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.⁹ In a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.¹⁰

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). The Board has held that an emotional condition related to the effects or residuals of an employment injury could be covered under the Act. See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

⁷ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁸ 5 U.S.C. § 8123.

⁹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹⁰ *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988).

ANALYSIS

The Office accepted that on December 12, 2002 appellant sustained a concussion when he slipped and hit his head on the sink and floor in a restroom at work. It also accepted conversion disorder due to this injury. Appellant later claimed that he sustained Ganser's syndrome due to his December 12, 2002 employment injury and that this condition caused disability for 9 or 10 months after December 12, 2002.

The Board has previously determined that the opinion of the impartial medical specialist, Dr. Galatzer-Levy, a Board-certified psychiatrist, was in need of clarification and remanded the case to the Office in order to obtain such clarification. The Board finds that the opinion of Dr. Galatzer-Levy, as supplemented by his comprehensive November 14, 2007 supplemental report, represents the weight of the medical evidence regarding whether appellant had Ganser's syndrome.¹¹ Dr. Galatzer-Levy's reports show that appellant did not develop Ganser's syndrome due to his December 12, 2002 injury.

In his May 18, 2006 and November reports, Dr. Galatzer-Levy discussed the nature of Ganser's syndrome, noting that it is a dissociative disorder, not otherwise classified. He indicated that during the 9 or 10 months after appellant's December 12, 2002 head injury appellant did exhibit some symptoms consistent with descriptions of Ganser's syndrome. In particular, appellant gave approximate but wrong answers to simple questions and exhibited conversion symptoms, *i.e.*, changes in bodily function that could not be explained by physical, as opposed to psychological, causes. However, he did not exhibit several typical features of the condition. Appellant did not have amnesia for the precipitating event documented and he did not make "absurd statements" of the type described for Ganser's syndrome, *i.e.*, statements of the sort that an individual attempting to mimic psychiatric illness, but unaware of the actual symptoms the psychiatric conditions might make. Dr. Galatzer-Levy stated that additional factors weighing against appellant having had Ganser's syndrome were the clearly documented presence of other psychiatric disorders, his not being a prisoner (approximately half of Ganser's syndrome sufferers being prisoners) and the availability of other, simpler explanations for his symptoms. He concluded that, although some of appellant's symptoms were consistent with Ganser's syndrome in the 9 or 10 months after December 12, 2002, he did not suffer from many of the symptoms associated with the condition, he did not belong to the population in which the condition typically appears, his condition deviated markedly from the time course typical of Ganser's syndrome, his symptoms are better explained in other ways and the likelihood of his having this extremely rare condition was very small. Therefore, appellant did not have Ganser's syndrome during the time in question.

The Board has carefully reviewed the opinion of Dr. Galatzer-Levy and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Galatzer-Levy's opinion is based on a proper factual and medical history and he reached conclusions in accord with this history.¹² He provided medical rationale for his opinion by explaining that, most tellingly, the course of appellant's condition did

¹¹ See *supra* notes 8 through 10.

¹² See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

not follow that typically described in Ganser's syndrome, which ordinarily has a sudden onset and completely and equally suddenly remits, usually after several days. Some of the symptoms that began after the December 12, 2002 episode have not remitted almost five years later and many of them lasted many months. Dr. Galatzer-Levy noted that Ganser's syndrome was an extremely rare condition and explained that all of appellant's symptoms could be accounted for by a nonwork-related psychotic depression, with which he had previously been diagnosed. At the time of the December 12, 2002 incident appellant had suffered from a nonwork-related psychiatric disorder characterized by delusions, suspiciousness, anxiety, social adjustment problems and thought disorder for a considerable time. Dr. Galatzer-Levy stated that appellant appeared to have incorporated the experience of his December 12, 2002 fall into a delusional belief, which was a result of his underlying nonwork-related illness.

In reports dated December 11, 2006 and November 11, 2008, Dr. Bongiorno, an attending Board-certified psychiatrist and neurologist, determined that appellant sustained Ganser's syndrome due to his December 12, 2002 work injury. He posited that appellant had both Ganser's syndrome and a continuing nonwork-related psychotic depression after December 12, 2002. Dr. Bongiorno indicated that appellant's rapid deterioration after December 12, 2002, including developing lower-limb paralysis requiring a wheelchair and having difficulties in seeing, thinking, concentrating and speaking, were explained by his development of Ganser's syndrome. These reports are similar to prior reports of Dr. Bongiorno, including those that helped to create a conflict in the medical evidence. As he was on one side of the conflict resolved by Dr. Galatzer-Levy, his additional reports, which are essentially duplicative of his prior stated opinions, are insufficient to give rise to a new conflict.¹³

For these reasons, appellant has not shown that he sustained work-related Ganser's syndrome and the Office properly denied his claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained Ganser's syndrome due to his December 12, 2002 employment injury.

¹³ See *Richard O'Brien*, 53 ECAB 234 (2001).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 21, 2009 decision is affirmed.

Issued: December 1, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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