

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID L. MINISH and DEPARTMENT OF THE NAVY,  
NAVAL SUPPLYCENTER, PUGET SOUND, Bremerton, Wash.

*Docket No. 96-1191; Submitted on the Record;  
Issued August 7, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant's employment-related emotional condition resolved no later than December 18, 1988.

The Board has duly reviewed the case record in this appeal and finds that appellant's employment-related emotional condition resolved no later than December 18, 1988.

This is the third appeal in this case.<sup>1</sup> In an order dated September 21, 1987, the Board dismissed appellant's March 4, 1987 appeal of the Office of Workers' Compensation Programs' April 4, 1986 letter, accepting appellant's claim for a temporary aggravation of bronchitis as a result of his exposure to toxic materials while cleaning the tanks inasmuch as there was no final decision of the Office, from which an appeal could be sought by appellant. In its June 7, 1994 decision, the Board affirmed the Office's September 29, 1992 decision denying appellant's claim for wage-loss benefits for disability causally related to an accepted lung condition. The Board, however, found a conflict in the medical opinion evidence between Dr. Scott Barnhart, a fellow at the occupational medicine program of the University of Washington, whose opinion that appellant was probably not capable of returning to the same duties because future exposure to fuel vapors could exacerbate his intermittent explosive disorder, but that appellant was probably employable in some other capacity did not support a finding of disability for any period of time because fear of future exacerbation of a condition does not establish that a period of disability, for which payment of compensation was warranted and Dr. Patricia A. Sparks, Board-certified in preventive medicine, who opined that appellant's current emotional condition was due in part to the residual central nervous system effects of his exposure to mixed organ solvents in the course of his work. The Board remanded the case for further development on the issue whether appellant's disability was caused by the accepted employment conditions of neurotoxicity and

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<sup>1</sup> See Docket No. 87-991 (Order Dismissing Appeal issued September 21, 1987); see also Docket No. 93-218 (issued June 7, 1994).

temporary aggravation of explosive disorder. The facts of this case are more fully set forth in the prior June 7, 1994 decision of the Board and are incorporated herein by reference.

Upon remand, the Office referred appellant along with the case record, instructions on evaluating appellant, a statement of accepted facts and a list of specific questions by letter dated August 19, 1994, to Dr. Richard T. Adamson, a Board-certified psychiatrist and neurologist, for an impartial medical examination. By letter of the same date, the Office advised Dr. Adamson of the referral.

By decision dated October 27, 1994, the Office found that the accepted conditions of solvent-induced neurotoxicity and temporary aggravation explosive disorder had resolved based on Dr. Adamson's October 12, 1994 medical report.

In an October 31, 1994 letter, appellant requested an oral hearing before an Office representative. By decision dated November 14, 1995, the hearing representative affirmed the Office's decision.

In an undated letter, appellant requested reconsideration of the Office's decision. By decision dated February 27, 1996, the Office denied appellant's request for reconsideration without a review of the merits of the claim on the grounds that the evidence submitted was irrelevant and of no probative value.

Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f there is a 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."<sup>2</sup> Inasmuch as a conflict did exist in the medical opinion evidence between Dr. Barnhart and Dr. Sparks as to whether appellant had any continuing disability causally related to the accepted emotional conditions, the Office properly referred appellant to Dr. Adamson for an impartial medical evaluation.

When there exists 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.<sup>3</sup> In his October 12, 1994 medical report, Dr. Adamson reviewed the case record, including appellant's medical records and a history of appellant's employment, medical treatment, psychiatric treatment, violent tendencies, traumatic events, education, social life and family. Dr. Adamson further noted his findings on mental and physical examination. Dr. Adamson diagnosed intermittent explosive disorder (312.34), undifferentiated somatoform disorder, (300.81) chronic intermittent solvent and fuel oil intoxication that was currently in remission, cluster B mixed personality traits with elements from

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<sup>2</sup> 5 U.S.C. § 8123(a).

<sup>3</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

the antisocial, borderline and histrionic subclasses as well as, paranoid traits and a history of bronchitis, asbestos exposure with evidence for asbestosis, head injury and alcohol and substance abuse which was not currently active. Dr. Adamson stated:

“[I]n my opinion, [appellant] came to his employment with preexisting behavioral dyscontrol problems and personality/adjustment problems arising from his developmental history. He was then injured both in a neurological and neuropsychiatric way by his exposure on a chronic, intermittent basis to the indicated solvents and fuel oils. This exposure was a direct contributor to exacerbations of his overall condition in that the accepted condition of neurotoxicity allowed a disinhibiting effect to occur thus increasing the maladaptive components of his personality/emotional construction. However, I believe the evidence shows that the neurological consequences of his toxic exposure began to subside after the exposure ended in 1988<sup>4</sup> and were virtually absent by 1989 when neuropsychiatric testing was performed by Dr. [Brenda B.] Townes, [a psychologist.] When neuropsychiatric testing was repeated in 1992 by Dr. [Francine H.] Powel, [a clinical psychologist,] testable objective manifestations of neurotoxicity had abated leaving no objective evidence for injury at least as far as cognitive/perceptual ratings are concerned. For this reason, from my examination and review of the records I can identify no CURRENT disability arising from cognitive/perceptual organic injury. Any exacerbation of this condition by toxic chemical exposure was temporary and limited to a span of approximately two years after the cessation of exposure.

“Then there is the problem of understanding the continuing behavioral dyscontrol problems manifesting as irritability and assaultive behavior. In the same way that alcohol intoxication causes an exacerbation of underlying personality problems, I believe the clinical record indicates that chronic, intermittent solvent and fuel oil exposures caused an indirect, temporary exacerbation of underlying personality problems for [appellant]. A man who was suspicious, wary, standoffish and externalizing at baseline became paranoid, rigid, isolative and aggressively assaultive when disinhibited by chronic toxic exposures. In a pattern approximately parallel to the course of direct neurotoxicity, I believe [appellant’s] capacity for self regulation is gradually improving over time as the disinhibiting effects subside. Will this recovery from chronic exposures be smooth and predictable? Certainly not. A host of other factors such as alcohol use, physical illness and marital harmony all play a role in determining just how and when the personality dysfunction will present itself. Even at baseline this employee will have a significant, longterm problem with anger and all the treatment recommendations put forward by Drs. Sparks and Powel are as valid and compelling now as they were in 1992.”

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<sup>4</sup> The Board notes that appellant stopped work on December 17, 1986 and that appellant received disability compensation benefits from the Social Security Administration beginning December 1, 1988.

In response to the Office's questions, Dr. Adamson stated, *inter alia*, that appellant's consistent subjective experience of dizziness, headache and memory lapses constituted current evidence for neurotoxicity, but that these symptoms most likely arose from sources other than demonstrable neurotoxicity inasmuch as there was no current laboratory, radiologic, single photon emission computed tomography, electroencephalogram, magnetic resonance imaging or physical examination data to support a concept of continuing disabling neurotoxicity. Dr. Adamson further stated that the same evidence generally failed to support the concept of a currently disabling solvent induced aggravation of explosive disorder in that it was impossible to state that prior aggravations of the disorder were continuing some six years after the last known exposure. The Board finds that Dr. Adamson's opinion is well rationalized and based on a proper factual background to support a finding that appellant is no longer disabled due to the accepted emotional conditions. Therefore, it must be accorded special weight on the issue of whether appellant had any continuing disability causally related to the accepted emotional conditions.

Appellant submitted blood test and pulmonary function test results. These results, however, failed to address whether appellant has any continuing disability causally related to the accepted emotional conditions.

Appellant also submitted the July 15, 1991 medical report of Dr. Anthony D'Silva, a Board-certified internist, revealing a history of appellant's employment, medical treatment, family and social life and a review of medical records. Dr. D'Silva diagnosed, *inter alia*, episodes of acute solvent and neurotoxicity and opined that it was unlikely that chronic effects resulted from appellant's solvent exposure based on the absence of the memory difficulties on formal neuropsychological testing in 1989.

Further, appellant submitted an October 12, 1994 medical report of Dr. Griffith Blackmon, a Board-certified internist, revealing a history of appellant's employment exposure, employment, medical treatment, family and social life, a review of medical records and his findings on physical examination. Dr. Blackmon opined that appellant's intermittent explosive disorder was caused by factors of his employment from 1976 through 1986 on a more probable than not basis. Dr. Blackmon further opined that it was probable that appellant's increasing difficulty with emotional lability and violent loss of temper beginning in the 1980s was caused by his workplace exposure. Dr. Blackmon also opined that the contribution of past solvent exposure with acute neurotoxicity to chronic apparently stable neurocognitive deficits and particularly to appellant's intermittent explosive disorder was much less clear. Appellant also submitted the October 13, 1994 medical report of Dr. Carl A. Brodtkin, a Board-certified internist, revealing a history of appellant's exposure to solvents while working for the employing establishment and appellant's medical treatment. Dr. Brodtkin diagnosed intermittent explosive disorder characterized by impulsive anger and associated violence and opined that it was biologically plausible that the level of intoxication, which appellant experienced during the period 1976 through 1986 could have precipitated angry outbursts. Dr. Brodtkin also opined that it was plausible on a more probable than not basis that outbursts during that time could have been aggravated by significant solvent exposure. Dr. Brodtkin also diagnosed multiple episodes of acute solvent intoxication and opined that it was more probable than not that appellant's episodes of inebriation, nausea, vomiting and dizziness in close temporal association with refueling procedures were work related. Drs. Blackmon and Brodtkin reiterated their findings in a

November 22, 1994 medical report. A December 15, 1994 medical report from Dr. Kenneth A. Zych, a Board-certified clinical neuropsychologist, indicated a history of appellant's employment exposure, a review of medical records and his findings on psychological or mental examination. Dr. Zych diagnosed personality change due to exposure to neurotoxins, disorder of written expression, no personality disorders and mental retardation, asbestos-related pleural plaques, asbestosis and chronic intermittent intoxication with mixed organic solvents. Dr. Zych opined that it was more probable than not that appellant suffered from personality/emotional changes specifically, anger and emotional disinhibition, as a result of occupational exposures associated with the cleaning of fuel tanks from 1976 through 1986.

The Board finds that the medical reports of Drs. Blackmon, Brodtkin and Zych are insufficient to establish continuing disability causally related to the accepted emotional conditions inasmuch as they are speculative as to the cause of appellant's emotional conditions and whether appellant's has any continuing disability causally related to the accepted emotional conditions.<sup>5</sup> In addition, Dr. Brodtkin's October 13, 1994 medical report, did not address whether appellant has any continuing disability causally related to the accepted emotional conditions.<sup>6</sup>

In a December 15, 1995 medical report, Drs. Blackmon and Brodtkin indicated that they were unable to link appellant's solvent exposure to a more probable than not basis with any residual neurocognitive deficits because they were self-limited.

Inasmuch as Dr. Adamson's opinion constitutes the weight of the reliable, probative and substantial evidence, the Board finds that the Office properly found that appellant's employment-related emotional condition resolved no later than December 18, 1988.

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<sup>5</sup> *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

<sup>6</sup> The Board notes that Dr. Brodtkin stated that he would review psychological testing with Dr. Townes to determine whether appellant had any continuing disability of the accepted emotional conditions, however, a report on this review from Dr. Brodtkin is not in the record.

The February 27, 1996 and November 14, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
August 7, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member