

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNN BETTENCOURT and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, Calif.

*Docket No. 96-1364; Submitted on the Record;
Issued December 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that his emotional condition on and after March 6, 1994 was causally related to an accepted adjustment disorder with depressed mood.

In this case, the Office of Workers' Compensation Programs accepted on July 14, 1989¹ that appellant sustained an adjustment disorder with depressed mood on or before October 24, 1988.² Appellant, then a 47-year-old safety manager, alleged and the Office accepted, the following compensable factors of employment: appellant was "required to operate the safety office with a reduced staff" due to "budgetary constraints"; appellant had difficulty in completing tasks due to staff shortages; on October 21, 1987 appellant notified "the Commander, Captain Johnson, and Comptroller, Captain Williams, that staffing constraints made it impossible for his office to perform many mandated functions and that the shipyard would not pass the inspections schedules for 1988;" on October 26, 1987 appellant notified his superiors that a planned reorganization subordinating the safety department to a new executive assistant position, "rather than to the Commander, violated Navy regulations."³

¹ Appellant elected Federal Employees' Compensation Act benefits effective March 10, 1989. Appellant's case was placed on the periodic compensation rolls effective January 1, 1990.

² The record indicates that the Office denied, by February 4, 1983 decision, appellant's Claim No. A13-0875784 for a July 24, 1981 myocardial infarction as causal relationship was not established. Case Nos. A13-0875784 and A13-0656538 were doubled under master number A13-0875784 as of January 4, 1996.

³ An attached October 13, 1993 statement of accepted facts determined the following to be noncovered factors of employment: Union picketing in front of the shipyard in October 1987 and related Occupational Safety and Health Administration complaints regarding employing establishment safety practices; a January 1988 safety inspection resulting in an unsatisfactory safety rating; and an August 29, 1988 newspaper article reporting that the employing establishment had the worst safety record of any shipyard in the country.

The Office's acceptance of appellant's emotional condition was based on the June 18, 1989 report of Dr. David R. Kessler, a Board-certified psychiatrist of professorial rank and second opinion physician. Dr. Kessler diagnosed an adjustment disorder with depressed mood, opining that appellant's "difficulties in dealing with job requirements in view of decreasing budget and staff ... in conjunction with [appellant's] described compulsive personality, would be consistent with the development [of] a depressive disorder." He noted appellant would be "substantially impaired in carrying out his normal job duties, being involved in supervision, and in working under deadlines."

Appellant submitted periodic reports from Drs. Lloyd E. and Shannon Northrup, attending psychologists, from January 26, 1989 to June 16, 1992, noting his continuing symptoms and disability for work.

In a March 29, 1993 report, Dr. Carl E. Marusak, a Board-certified psychiatrist and neurologist and second opinion physician, noted reviewing the medical record and statement of accepted facts, commenting that recent cardiac records were absent from the file. On mental status examination, Dr. Marusak described a mildly lowered mood with anhedonia, anxiety, irritability, and compulsive tendencies with rigidity. Dr. Marusak diagnosed a "depressive disorder not otherwise specified," "personality disorder not otherwise specified with marked obsessive-compulsive tendencies," cardiac disorders with obesity, and minimal psychosocial stressors." Dr. Marusak stated that appellant's "adjustment disorder and industrial aggravators" were "quiescent" as he had been away from the employing establishment for four years, while "adjustment disorders last six months ..." He opined that while workplace stress could "trigger or accelerate his cardiac status," nonoccupational cardiac disease was more likely. Dr. Marusak found appellant "virtually asymptomatic from a psychiatric perspective ... the overall degree of disability is in the range of none to moderate," with a GAF (global assessment of functioning) of "70s." Dr. Marusak noted no specific occupational disability, with "no work events that could possibly account for industrial aggravation."

By notice dated October 13, 1993, the Office advised appellant that it proposed to terminate his compensation benefits as his work-related condition had ceased, based on Dr. Marusak's March 29, 1993 report.

Appellant responded by an October 28, 1993 letter, asserting that Dr. Marusak was biased, inaccurate and did not have adequate access to the medical record. He enclosed an April 1, 1993 report from Dr. Dao Kieu, an attending internist, who provided appellant's cardiac history with 1981 and 1992 myocardial infarctions, noting appellant had been medically unable to work since 1989. He stated that "those factors set in motion during [appellant's] working years, ultimately leading to a heart attack and open-heart surgery, continue to affect him" as his coronary artery disease progressed.

In a November 12, 1993 report, Dr. Rex Conrad, an attending clinical psychologist, noted appellant's employment and medical history. Dr. Conrad administered psychologic tests which indicated depression, schizophrenia, psychastenia, paranoia, hypochondriasis, hysteria, passivity, blunted affect, fine motor coordination difficulty, compulsive thinking routines, hostility, free-floating anxiety, "grossly diminished self-esteem," and passive traits. He diagnosed major depression, personality disorder not otherwise specified with marked obsessive-compulsive

tendencies, cardiac disorders, and obesity. Dr. Conrad opined that appellant was totally disabled due to his psychological disorders, and had “extreme stress as a result of the interruption of his career and the career was interrupted because of stress.... His disability is 100 percent work related.” He noted a GAF in the 30s.

By decision dated February 16, 1994, the Office terminated appellant’s compensation benefits effective March 6, 1994 on the grounds that his work-related disability and any residuals had ceased by March 6, 1994. The Office found the weight of the medical evidence rested with Dr. Marusak.⁴

Appellant disagreed with this decision, and by November 29, 1994 letter requested reconsideration. He submitted additional medical evidence.

In an undated letter,⁵ Dr. Conrad stated that appellant was “totally disabled due to stress-related variables in his occupation” and cardiac disease. Dr. Conrad stated that he was “totally puzzled by [Dr.] Marusak’s report wherein he finds no occupational illness.”⁶

In a November 12, 1993 report, Dr. Conrad diagnosed major depression, personality disorder not otherwise specified, heart disease, obesity, and psychologic stressors. He opined appellant was totally disabled due to employment-related psychological conditions.

In an October 21, 1994 report, Dr. Robert L. Hampton, an attending Board-certified psychiatrist, obtained social and medical histories, and reviewed medical records. He noted appellant’s symptoms of anxiety, and depression. Dr. Hampton related appellant’s account of Captain Johnson cutting appellant’s staff in 1987 from 32 to 16 thus increasing appellant’s work load, blaming appellant for a subsequent increase in injuries, accidents, and safety hazards, and in September 1988 relieving appellant of his duties and giving him “paper” assignments. Appellant resigned in late October 1988. Dr. Hampton obtained psychological test results indicating severe depression. He diagnosed “[m]ajor depression, single episode, severe, without psychotic features, chronic,” and “personality disorder with significant obsessive and compulsive traits.” Dr. Hampton noted moderate to severe impairments of appellant’s ability to maintain an appropriate work pace, perform complex tasks, relate to other people, make decisions without supervision, accept and carry out responsibility for direction, control and planning. He opined that appellant had a moderate to severe psychiatric disability and chronic depression, and was permanent and stationary on a psychiatric basis.

⁴ The record indicates that appellant was restored to the Office of Personnel Management retirement annuity rolls effective March 7, 1994.

⁵ From the letter’s position in the record, it was written in mid-March 1994.

⁶ In a May 2, 1994 letter, the Office advised appellant’s elected representative that Dr. Conrad’s undated letter “would have made no difference in our decision to terminate [appellant’s] benefits even if it had been received in a timely manner. The letter does not provide enough information to be considered as medical evidence. Dr. Conrad’s reference to a cardiac condition ignores the fact that [the Office] denied [appellant’s] claim for compensation due to a cardiac condition (A13-656538).” The Office noted its continued reliance on Dr. Marusak’s report.

By decision dated March 31, 1995, the Office denied modification on the grounds that the evidence submitted was insufficient to create a conflict with Dr. Marusak's opinion. The Office found that Dr. Hampton's report did not discuss specific work factors.⁷

The Board finds that the case is not in posture for a decision due to a conflict of medical opinion between Dr. Marusak, for the government and Drs. Conrad and Hampton, for appellant.

Once the Office accepts a claim, it has the burden of justifying 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.⁸ In this case, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective March 6, 1994 based on Dr. Marusak's March 29, 1993 report finding that appellant's accepted adjustment disorder had ceased as of that date, and that appellant was not disabled for work due to psychiatric causes.

However, appellant submitted sufficient medical evidence subsequent to the Office's February 16, 1994 decision terminating his compensation benefits to create a conflict of medical opinion regarding whether appellant had residuals of the accepted adjustment disorder with depressed mood on and after March 6, 1994.

Dr. Conrad, an attending clinical psychologist, and Dr. Marusak differ in their characterizations of the severity of appellant's psychiatric disorders, and if appellant had depression or a depressive disorder. In a November 12, 1993 report, Dr. Conrad diagnosed major depression and a personality disorder, and opined appellant was totally disabled due to employment-related psychological conditions. This opinion is in marked contrast to Dr. Marusak's March 29, 1993 characterization of a nondisabling depressive disorder and personality disorder.

Dr. Marusak's opinion is also in conflict with that of Dr. Hampton, an attending Board-certified psychiatrist, regarding the severity of appellant's depression and its relation to the accepted employment factors. In an October 21, 1994 report, Dr. Hampton noted the accepted factors of appellant's federal employment,⁹ and diagnosed "[m]ajor depression, single episode, severe, without psychotic features, chronic," and "personality disorder with significant obsessive and compulsive traits." Dr. Hampton explained that work factors caused the diagnosed disorders, and that appellant was disabled for work due to these psychiatric impairments, listing specific inabilities to perform job tasks. In contrast, Dr. Marusak opined that appellant's psychiatric disorders were not disabling as they caused no specific inabilities to perform work tasks, and that the disorders were not employment related.

⁷ On June 28, 1995 the Office approved appellant's attorney's request for a fee of \$1,649.25 for services rendered March 2, 1994 to April 5, 1995.

⁸ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁹ The Board notes that the Office's March 31, 1995 decision incorrectly states that Dr. Hampton's report did not discuss specific work factors, as Dr. Hampton provided a detailed account of the accepted work factors.

The Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: “If 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.”

Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for an examination and a rationalized medical opinion to resolve the medical conflict regarding whether appellant’s psychiatric and physical conditions on and after March 6, 1994 were caused or aggravated by the accepted employment factors. Following this and other such development the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers’ Compensation Programs dated March 31, 1995 is hereby set aside, and the case remanded to the Office for further development consistent with this decision and order.

Dated, Washington, D.C.
December 23, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member