

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM C. BUSH and NATIONAL AERONAUTICS & SPACE
ADMINISTRATION, MARSHALL SPACE FLIGHT CENTER, Ala.

*Docket No. 96-118; Submitted on the Record;
Issued February 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of February 22, 1995.

The Board has duly reviewed the case record and concludes that the Office did properly terminate wage-loss benefits as of February 22, 1995.

This case has been before the Board on prior appeals.¹ In a decision dated July 10, 1989, the Board remanded the case to the Office for preparation of a statement of accepted facts and referral of appellant, along with the record, to an appropriate specialist for an impartial evaluation as to whether appellant's dystonia was causally related to accepted factors of employment. The Office was also instructed to determine whether appellant's bruxism and teeth extraction were causally related to factors of his federal employment.² On August 30, 1991 the Office denied appellant's claim on the grounds that none of the employment factors to which appellant attributed his conditions were compensable under the Federal Employees Compensation Act. By decision dated June 8, 1992,³ the Board found that the Office's August 30, 1991 denial was in error as appellant had alleged compensable factors of employment pursuant to the Act. The Board found that appellant's allegation of ongoing disputes with coworkers regarding noise while carrying out his employment duties was a compensable factor of employment; as was the employing establishment's adverse personnel action taken in 1975 which was later found to be an erroneous personnel action by the Civil Service Commission's Appeals Review Board. The Board concluded that the case was not in posture for decision as the Office failed to provide the impartial medical specialist with a proper statement of accepted facts, that set forth the employment factors which should be evaluated in determining causal

¹ On May 29, 1986 appellant, then a 60-year-old aerospace engineer, filed a claim asserting that his segmental torsion dystonia was caused by stress at work resulting from reprisal from management including improper demotion, and an antagonistic relationship with a co-worker resulting from a noise issue.

² Docket No. 89-449 (issued July 10, 1989).

³ Docket No. 91-1919 (issued June 8, 1992).

relationship. The case was remanded to the Office to clarify whether appellant's dystonia condition or bruxism were causally related to a compensable factor of employment.

On June 23, 1994 the Office informed appellant's representative that appellant's claim was accepted for the conditions of aggravation of segmental oro-fascial dystonia, bruxism, and post-traumatic stress syndrome. The Office advised that any medical bills related to these conditions should be submitted to the Office for consideration of payment, and any claim for compensation payment for wage loss should be filed by completion of Form CA-7. Finally, the Office advised that to resolve the issue of continuing disability, appellant would be referred for a second opinion evaluation.

Appellant was thereafter referred to Dr. R. Lawrence DePalma, a Board-certified psychiatrist, and Dr. Daniel C. Marson, a clinical neuropsychologist.

In a report dated March 22, 1995, Dr. DePalma reviewed appellant's psychiatric history in substantial detail. Dr. DePalma related that the accepted condition of segment oro-fascial dystonia persisted, however, that the persistence of the condition was caused by the stress of appellant's ongoing litigation of his claim, Dr. DePalma explained that the work-related residuals ceased shortly after appellant stopped work in 1985. Dr. DePalma noted appellant's own statement that "ninety percent of my troubles would go away if they'd give me that 'god damn' workers' compensation," and explained that the stress which was currently exacerbating appellant's dystonia arose from his ongoing dogged pursuit of his Office claim, rather than from any event that occurred ten or twenty years ago. Dr. DePalma addressed the issue of appellant's continuing disability by indicating that appellant was not limited occupationally by his persisting dystonia. He indicated that while appellant was somewhat dysarthric, his speech was intelligible and at acceptable volume levels. Dr. DePalma also noted that there was presently no evidence of post-traumatic stress disorder (PTSD), with no evidence of post traumatic stress contributing to any disability, and in his opinion appellant never met the criteria for PTSD arising from the accepted factors of employment. Finally, Dr. DePalma noted that he could not comment regarding appellant's bruxism as he was not a dental expert.⁴

In a report dated March 28, 1995, Dr. Marson related that appellant had a personality disorder of longstanding which probably contributed significantly to the development of appellant's employment-related difficulties. Regarding the accepted conditions, Dr. Marson related that neither appellant's interview nor his test results reflected evidence to support the current existence of PTSD. Dr. Marson explained that appellant's work history did not qualify as a traumatic event within the DSM-IV definition, and appellant currently was not reexperiencing the prior work-related events in ways that were affecting his social and other areas of function. Further he indicated that appellant's MLMPI-2 PTSD scales were not elevated, a finding consistent with the absence of PTSD. Regarding the diagnosed dystonia, Dr. Marson stated that this condition continued and appeared to be psychogenic in part. Dr. Marson explained that this condition became chronic and an integral part of appellant's self-concept as a victim of government abuse, however, this condition was no longer related to the specific compensable factors of employment described in the statement of accepted facts. Dr. Marson concluded that it was difficult to assign a precise date by which work related

⁴ Dr. DePalma also diagnosed several other psychiatric conditions which preexisted appellant's employment injury.

residuals regarding the dystonia ceased, however, it was likely to have significantly diminished within two years of appellant's departure from the employing establishment. Dr. Marson also deferred any opinion regarding appellant's bruxism to an appropriate dental expert.

By decision dated July 14, 1995, the Office terminated payment of compensation benefits after February 22, 1995 on the grounds that the accepted conditions of aggravated of segmental dystonia, bruxism and post-traumatic stress syndrome on and after February 22, 1995 were not causally related to the May 15, 1984 employment injury.

The Board finds that the Office met its burden of proof to establish that the conditions of post-traumatic stress syndrome and dystonia ceased by February 22, 1995 or were no longer causally related to the accepted employment injury after that date.

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 disabling condition has ceased or that it is no longer related to the employment.⁵

The reports provided by Dr. Marston and Dr. DePalma were based upon a proper factual background and a thorough review of appellant's psychiatric history. Both of these physicians found that the accepted condition of dystonia was no longer causally related to the accepted factors of employment but rather continued due to the appellant's ongoing compensation litigation. The Board has held that the processing of a compensation claim bears no relation to the employee's day-to-day or specially assigned duties and is therefore not a factor which arises in the performance of duty and is compensable pursuant to the Act.⁶ Any emotional stress arising from pursuit of a compensation claim would therefore not be compensable pursuant to the Act. Dr. DePalma further explained that while appellant's dystonia continued due to nonemployment-related stress, it no longer disabled appellant from his work.

Furthermore, both physicians found that appellant no longer had any signs of PTSD. Both of these physicians therefore supported a finding that these accepted conditions no longer continued to be causally related to the accepted employment factors or continued to exist after the date of their medical examinations on February 21 and February 22, 1995. Appellant has not submitted any medical evidence that these conditions do continue to disable him and that they continue to be related to the employment injury. The Office therefore did meet its burden of proof to terminate benefits regarding the accepted conditions of dystonia and PTSD.

The Board finds that the case is not in posture for decision regarding appellant's entitlement to continuing medical benefits for the accepted condition of bruxism.

Regarding the condition of bruxism, the record does not substantiate that the Office referred appellant for medical evaluation to evaluate whether appellant continued to have residuals of this condition, at the time that appellant was evaluated by Dr. DePalma and Dr. Marson for the condition of dystonia and post traumatic stress. Both Dr. DePalma and

⁵ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁶ *Barbara J. Nicholson*, 45 ECAB 803 (1994).

Dr. Marson indicated that they could not evaluate appellant for this condition as they were not specialists in the practice of dentistry. There is no evidence of record that the accepted condition of bruxism ceased. Furthermore, there is no evidence of record that this condition caused any period of disability. This case will therefore be remanded for further development of the medical evidence to determine whether appellant has continuing residuals of the accepted bruxism condition for purposes of payment of medical benefits. After such further development as necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated July 14, 1995 is affirmed regarding the finding that appellant was no longer disabled after February 22, 1995 and that the conditions of dystonia and post-traumatic-stress syndrome ceased by that date. The decision is set aside regarding the issue of appellant's entitlement to continuing medical benefits for accepted condition of bruxism and remanded for further development to be followed by a *de novo* decision on this issue.

Dated, Washington, D.C.
February 24, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member