U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT W. PRIDE and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Des Plaines, Ill.

Docket No. 97-331; Submitted on the Record;
Issued November 23, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, 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 effective April 14, 1994 on the grounds that his disability due to his employment injuries had ceased by that date.

On December 9, 1977 appellant, then a 28-year-old air traffic controller, filed a notice of occupational disease indicating the development of anxiety, nervousness and an ulcer which he felt to be causally related to factors of his federal employment. The Office accepted the claim for aggravation of passive-aggressive character disorder and aggravation of duodenal ulcer. Appellant received appropriate compensation. Appellant stopped work July 28, 1978 and has not returned to gainful employment.

By decision dated April 14, 1994, the Office terminated appellant's entitlement to disability compensation on or after said date on the grounds that the weight of the medical evidence failed to support any remaining disability as being causally related to the accepted employment-related conditions.[1] Following appellant's request, a hearing was held on August 1, 1996. At the hearing, appellant's representative, Alan J. Shapiro, submitted two medical reports.

In an August 5, 1994 medical report, Dr. Ronald G. Smith, a clinical psychologist, indicated.

> "[Appellant's] ability to maintain concentration and attention would appear to be good. His ability to follow simple one or two step job instructions would seem to be good except for the fact that he may be so preoccupied with his physical condition and the necessity for maintaining himself in a low stress status that he could not put himself into a work situation. His ability to relate to the public,

[1] The Office previously issued a notice of proposed termination of compensation on March 11, 1994.

> coworkers and supervisors will probably be problematic but the examiner is not very clear himself as to the exact nature of the problems that arise. He had been clearly diagnosed, it appeared on his papers, as a passive-aggressive personality, and there may be good documentation and reason for this. The examiner simply does not have the experience with him to be able to confirm or deny the diagnosis."

Dr. Smith diagnosed appellant as having "psychological factors affecting physical condition," "personality disorder NOS," and "says he has an ulcer and high blood pressure."

In a report dated January 31, 1995, Dr. James M. Medling, a psychologist, indicated:

> "Axis II: Personality Disorders A deeply ingrained and pervasive pattern of maladaptive functioning underlies Axis I clinical syndrome picture. The following personality diagnosis represents the most salient features that characterize this patient: 301.20 [s]chizoid [p]ersonality [d]isorder.

"The major personality features described previously reflect long-term or chronic traits that are likely to have persisted for several years prior to the present assessment.

"In the profile it is clear that neither a passive-aggressive personality disorder or psychological factors affecting physical condition are currently in evidence. [Appellant] does, however, present now and in the past with a schizoid personality disorder. It is my opinion that this diagnosis was most probably evident during his training and contributed to his workers' compensation claim. During the clinical interview, he discussed his employment with the FAA in detail. He reported that his dissatisfaction with the position was covered up and overcontrolled for several years. Terming the air traffic controller teams as 'like fraternities' he came to learn that 'you don't make waves' on the job. Thus he began a pattern of overcontrolling (*i.e*. swallowing if you will) emotional reactions that lead to bodily symptoms of stomach distress and to a gastrointestinal disorder. During this time as his frustration with the FAA grew, he became more withdrawn while working to remain within the agency seeking transfer. Thus, his dependence grew as well and has been reinforced over the years through his disability claim. While on the job, rather than 'make waves' and voice his discontent, he chose instead to drift into a peripheral role of the team as his feelings of low self-esteem mounted over the years. This is also viewed as leading to an effectively colorless existence. Since his disability award he has fallen into an increasingly introversive, dependent lifestyle disengaged from most activities of human affairs.

"It is my opinion that his prior evaluators may have been responding to his resistance in discussing topics of a personal nature and this combined with his overall presentation may have led to a diagnosis of passive-aggressive personality disorder with a schizoid style of relating was most probably also present but not subject to scrutiny and therefore not diagnosed. It is also my opinion that his initial diagnosis should have been mixed personality disorder (schizoid personality with passive-aggressive traits). While his passive-aggressive traits remain as remnants of stubbornness and of willingness to explore non-injury-related life events, his schizoid personality structure still remains intact. As such it is my opinion that this condition continues to qualify him for disability through the [w]orkers' [c]ompensation [s]ystem.

By decision dated October 1, 1996, an Office hearing representative affirmed the April 14, 1994 decision, finding that the medical evidence of record fails to support appellant's accepted employment-related physical and psychiatric conditions as continuing on or after April 14, 1994.

The Board finds that the Office properly terminated appellant's medical benefits, effective April 14, 1994.

Under the Act [2], when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[3] However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.[4] Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation 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.[6]

In the present case, the Office accepted appellant's claim for aggravation of duodenal ulcer and aggravation of passive-aggressive disorder. In terminating appellant's disability compensation benefits for aggravation of duodenal ulcer, the Office found that the medical evidence of record failed to support appellant's accepted employment-related physical and psychiatric conditions as continuing on or after April 14, 1994. The Board finds that the medical evidence of record supports the Office's conclusion.

In a narrative report dated November 30, 1977, appellant's treating physician Dr. John N. Bartone, a general practitioner, indicated that he treated appellant since July 25, 1977 for severe epigastric pain related to job anxiety. He offered a diagnosis of duodenal ulcer and recommended that appellant seek other employment.

In his July 11, 1983 medical report, Dr. Harry C. Garvin, a Board-certified internist, indicated, in part, that appellant was first diagnosed as having a duodenal ulcer on July 27, 1977. He indicated, however, that the only gastroitestina (G.I). series he had available was on October 1977, which revealed normal results. He diagnosed passive-aggressive character disorder as

[2] 5 U.S.C. §§ 8101-8193.

[3] *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

[4] *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

[5] *Pedro Beltran*, 44 ECAB 222 (1992).

[6] *Frederick Justiniano*, 45 ECAB 491 (1994).

previously diagnosed by psychiatric consultants and intermittent gastritis and duodenitis. Dr. Garvin stated:

> "I do not feel this patient's gastrointestinal symptoms are the result of true ulcer disease as no more than superficial erosions have ever been demonstrated by any diagnostic procedure. The patient's symptomatology as given to me is not consistent with that of ulcer disease. It is therefore my opinion that aside from the psychiatric disorder which I will not further eloborate on, that the patient's symptomatology was neither caused, precipitated, accelerated, or materially aggravated by his employment as an air controller. I do not feel that his basic symptomatology is on an organic basis.
>
> "In summary, I feel that this patient's symptomatology is primarily psychiatric in origin and that there is no evidence of any significant organic disease."

In his August 12, 1985 medical report, Dr. Fred B. Thomas, a Board-certified gastroenterologist, indicated that "although [appellant] has never had a documented peptic ulcer, he has had documentation of erosive gastritis and duodenitis indicative of acid-peptic disease. His current symptoms are somewhat atypical for acid-peptic disease and are more characteristic of a functional bowel disorder.

In his May 23, 1988 medical report, Dr. Edgar Achkar, a Board-certified gastroenterologist, stated that appellant was seen in May 1988 because of persistent abdominal pain. An endoscopic examination carried out on May 20, 1988 showed a normal esophagus, stomach and duodenum without any evidence of ulcer. Dr. Achkar stated "at this time, there is no evidence of active ulcer disease. The patient was given symptomatic treatment…Although disability may be based on other conditions, the past history of ulcer is not contributing at the present time."

In his March 30, 1992 medical report, Dr. Philippe G. Berenger, a Board-certified internist, indicated:

> "… In summary, at this point I see no reason to order any further laboratory or radiological investigations regarding [appellant's] diagnosis of duodenal ulcer. Indeed there has never been a documented ulcer on any examination and there are no [blank space]. The only diagnosis revealed at one time was 'duodenitis'. The patient denies that anyone has ever told him that cigarette smoking is probably the number one reason for exacerbation of peptic ulcer disease, significant symptoms or evidence of bleeding. I would recommend that [appellant] should first and foremost stop smoking cigarettes.
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> "It appears that [appellant] has functional gastrointestinal symptoms. Functional gastrointestinal symptoms are relatable to certain levels of anxiety. In certain individuals this will give them cramping-type sensations in the midepigastrc and abdominal areas, occasionally increased frequency of bowel movements and other such symptoms.

> Insomuch as the work of controller is preceived by [appellant] as being stressful in and of the work itself or the fact that he was dismissed from work, may have had some transient effects and exacerbated his gastrointestinal symptoms. [Appellant] will probably continue to have gastrointestinal symptoms of functional nature when he is confronted with various situations of daily life which he will find stressful. If [appellant] is not involved in controller work any longer, it would be difficult to relate any of his present gastrointestinal symptoms to an occupational etiology. I would say that he does not require any further treatment relating to an occupationally induced or aggravated peptic ulcer condition or psychiatric condition. It is of note that [appellant] presented the reason for his retirement and termination in 1977 as being solely related to his medical condition of ulcer. No mention was made of the problems he encountered in the performance of his job as presented in the 'statement of accepted facts in the case of [appellant] Pride' dated February 21, 1992

In his January 17, 1990 medical report, Dr. Neal E. Krupp, a Board-certified psychiatrist, indicated: "…[Appellant's] presentation,[[added to troubled mood] and physical complaints were changed very little since I first met him eight years ago. By his own report and our medical records, he continues to have intermittent bouts of troublesome gastrointestinal symptoms. Duodenitis has previously been diagnosed, but he does not suffer from demonstrable peptic ulcer. As in my previously examinations, [appellant] is quite about the frequent relationship between troublesome physical symptoms and worrisome stress. Again -- as previously -- I find no evidence of a primary psychiatric disorder or a reason to attest that this man is disabled on a psychiatric basis. "My information would indicated that Mr. Pride's present condition dates back to problems attending his dismissal as an air traffic controller. He admits himself that he would be capable of some kinds of employment, but sees himself prohibited from same by his status as a disabled worker entrapped in and together with a system which often complicates rehabilitation and punishes anything but complete, total and guaranteed recovery. I have no doubt that he would be unable to perform as an air traffic controller."

In his November 19, 1991 medical report, Dr. Krupp stated that his evaluation of appellant's present condition is essentially unchanged from the previous times he saw appellent. Dr. Krupp states that this condition dates back to problems related to his training for and dismissal from an air traffic control position. Dr. Krupp stated that he does not believe that appellant would be qualified to function in such a position, nor that without significant education, could he qualify for a comparatively supportive occupation. Dr. Krupp stated that he does not find evidence of a primary psychiatric disorder. His diagnosis, as in the past, is [p]sychological [f]actors [a]ffecting [p]hysical [s]ymptoms." In response to the Office's inquiry as to whether here are any continuing psychiatric residuals directly related to factors of employment, Dr. Krupp, in a medical report of August 19, 1992, stated that irrespective of the "statement of accepted facts in the case of [appellant], [he] was unable to expand upon those impressions or to be more specific about how "directly' Mr. Pride's symptoms were related to the factors of employment." Thus, while Dr. Krupp opined that appellant had "psychological factors affecting physical symptoms," he has failed to provide a definitive psychiatric diagnosis or medical rationale for his opinion.

In an April 1, 1993 medical report, Dr. Alan G. Resor, a Board-certified psychiatrist, noted that the mental status examination did not reveal any active psychiatric disorder except for the personality disorder. He stated that the psychiatric diagnosis at this time remains passive-aggressive personality disorder and psychological factors affecting physical condition. Dr. Resor stated that these conditions have no doubt been present since long before his employment as an air traffic controller. The stress of that occupation, the training involved and his failure to complete that training no doubt aggravated his personality disorder and his gastrointestinal condition. However, the stress is no longer present except in the residual sense. Attempts to rehabilitate appellant have been unsuccessful and he now freely admits that he cannot afford to work because he is overqualified for most occupations and because he cannot return to his previous job. Dr. Resor opined that he did not consider appellant to be disabled from a psychiatric or medical disorder. He stated that appellant certainly would have continued conflict in any workplace, or any social setting for that matter, but it is not because of the aggravation he suffered between 1972 and 1977. Dr. Resor recommended another effort to retrain appellant in an occupation of his choice. He stated that if that could not be done economically, the prognosis for his success was guarded. From a psychiatric standpoint, Dr. Resor opined that appellant should not be considered for return to his position as an air traffic control specialist. His difficulties during that time are well documented and would very likely recur.

Although Dr. Resor and Krupp agree that appellant possesses "psychological factors affecting physical condition," and both indicate appellant's inability to return to his position as an air traffic controller, neither physician supports appellant as being disabled due to the accepted employment-related condition of passive-aggressive character disorder. Dr. Resor supports the presence of such condition, but indicates that it is not employment related. Dr. Krupp was unable to find evidence of a primary psychiatric disorder. Although both physicians have diagnosed appellant as having "psychological factors affecting physical symptoms," the Office has not accepted such condition and both physicians differ with regard to whether such was related to appellant's employment environment. Dr. Krupp further fails to indicate whether such has resulted in appellant's disability for work. Thus, the Board finds that the medical reports of Dr. Krupp and Resor are of diminished probative value.

In light of the fact that the medical evidence of record fails to support appellant's accepted employment-related physical and psychiatric conditions as continuing on or after April 14, 1994, the Board finds that it is sufficient to justify the Office's October 1, 1996 decision to terminate appellant's disability compensation benefits.

The decision of the Office of Workers Compensation Programs dated October 1, 1996 is affirmed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member