

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT D. SULLIVAN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE WESTERN REGION, Seattle, Wash.

*Docket No. 97-2017; Submitted on the Record;
Issued April 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant had any disability on or after April 24, 1997, the date the Office of Workers' Compensation Programs terminated his compensation benefits, causally related to his accepted conditions of depression and anxiety.

On September 11, 1979 appellant, then a 53-year-old revenue officer, filed a claim alleging that he developed anxiety and depression as a result of performing his duties. The Office accepted appellant's claim for depression and anxiety. Thereafter appellant was placed on the periodic roll.

On February 15, 1994 the Office requested that appellant submit a current medical report discussing the conditions for which he was receiving compensation. At that time the most recent medical report of record was dated September 14, 1988.

By report dated May 6, 1994, Dr. Robert A. Poole, a psychologist, indicated that he was basing his opinion exclusively on his 60-minute interview with appellant, a Minnesota Multiphasic Personality Inventory (MMPI) he administered, and review of mental health chart notes from November 6, 1979 through July 15, 1988. Dr. Poole, however, did not provide any written review or analysis of the 1979 to 1988 mental health chart notes, but he did describe appellant's 1994 presentation and report his comments and complaints. Dr. Poole opined that the MMPI revealed an anxious, nervous, tense, high-strung and jumpy person with significant levels of depression indicating an extremely pessimistic outlook about the world. Dr. Poole also noted that the MMPI revealed extremely low energy, a strong tendency to become fatigued, a lack of self-confidence, a strong need for attention, dependency, inability to cope, self-criticism and excessive worry. Dr. Poole diagnosed dysthymia and dependent personality disorder, and indicated that appellant had the psychosocial stressor of possible loss of disability income. He noted that treatment was not being given for these conditions at that time. Dr. Poole stated: "With respect to the above diagnosis, it is my opinion that work factors would significantly impact this diagnosis and are directly related to this diagnosis." He did not, however, identify

what work factors were implicated or provide any explanation of how specific work factors that terminated in 1979 were directly related to dysthymia 15 years later in 1994. Dr. Poole merely opined that appellant's long-term prognosis was poor, that his condition would very likely deteriorate if he were to attempt to return to work, and that he was not capable of full-time employment with the employing establishment.

No further medical evidence was submitted to the record during the period 1994 to 1997.

The Office scheduled appellant for a second opinion examination with Dr. Alan L. Morgenstern, a Board-certified psychiatrist, on March 7, 1997. A statement of accepted facts, the relevant case record, and questions to be answered, were provided to Dr. Morgenstern.

By report dated March 11, 1997, Dr. Morgenstern reviewed the factual and medical history of appellant's life and the development of his conditions, and conducted a thorough mental status examination. He indicated that appellant remained rather timid and anxious but had "been free of depressive symptoms for many years." Dr. Morgenstern diagnosed chronic generalized anxiety disorder, possible early cognitive disorder as manifested by memory difficulty, and dependent personality disorder. In response to the specific questions posed by the Office, Dr. Morgenstern opined that appellant did not currently suffer from any medical condition which was caused by his federal employment. He provided as rationale that, in spite of the shifts of appellant's personality functioning, and his vulnerability to serious anxiety and depressive symptoms in the late 1970s, it was unrealistic to conclude that his current state of chronic but mild anxiety was related to federal employment which terminated many years ago. Dr. Morgenstern noted that appellant changed from a self-confident and highly aggressive man to one with many dependent and anxious features, but noted that these features had persisted long since his end of federal service in 1979. He opined that the stress of appellant's job with the employing establishment was not an important causal factor in his current chronic state of anxiety. Dr. Morgenstern noted that appellant's last contact with mental health professionals was in the early 1980s, and opined that there was no indication for further psychiatric treatment. Dr. Morgenstern also noted that appellant was not taking any psychotropic medications. He opined that appellant was incapable of returning to work as his chronic anxiety would rapidly escalate into anxiety of unmanageable proportions and opined that, since at age 72 appellant felt like "an old man," he doubted there was any prospect that appellant would be able to perform any other type of work.

By notice dated March 19, 1997, the Office proposed termination of compensation, advising appellant that the weight of the medical evidence of record, constituted by the well-rationalized report of Dr. Morgenstern, demonstrated that he no longer suffered disability due to his accepted employment conditions. The Office gave appellant 30 days within which to submit additional evidence or argument if he disagreed.

By letter dated April 5, 1997, appellant disagreed with the proposed termination of compensation claiming that it was not true that he was free of depressive symptoms, that stress still made him sick, that he had seen several mental health professionals in the 1990s, and that he was planning to see another psychiatrist on April 8, 1997. However, no further medical evidence was forthcoming.

By decision dated April 24, 1997, the Office terminated appellant's compensation effective that date finding that the weight of the medical evidence of record established that the accepted conditions had resolved, and that appellant no longer suffered disability resulting from the accepted conditions.

The Board finds appellant had no disability on or after April 24, 1997, the date the Office terminated his compensation benefits, causally related to his accepted conditions of depression and anxiety.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.² The Office met its burden to terminate compensation in this case, by establishing that appellant's disability was no longer related to his employment.

The only medical evidence of record since 1988 that supported continuing employment-related disability was the 1994 unrationalized report from Dr. Poole. Dr. Poole based his report, not on a complete and accurate factual and medical history, but, by his own admission, only on the results of an MMPI and a 60-minute interview, and supposedly on mental health chart notes more than 6 years old at that time which he did not discuss. Medical opinions not based upon a complete and accurate factual and medical history are of diminished probative value.³ Further, Dr. Poole merely reported MMPI testing results, but he did not interpret how they were related to appellant's federal employment in 1979. Dr. Poole simply concluded that appellant's dysthymia was directly related to employment factors, but he did not explain how or why it was related, or to what specific employment factors that ended 15 years earlier it was related. Conclusory opinions are of diminished probative value.⁴ Further, opinions without medical rationale are of diminished probative value.⁵ Dr. Poole opined that appellant was disabled from work, but he did not explain how this disability was causally related to his 1979 accepted employment conditions or to factors of appellant's 1979 employment, and he did not even discuss appellant's accepted condition of anxiety, nor diagnose its presence. Dr. Poole did, however, note that appellant was not receiving any treatment for his conditions at that time, but he did not explain why, if appellant remained disabled, he was not receiving any psychiatric treatment. As Dr. Poole's 1994 report was not based upon a complete and accurate factual and medical history, as it was conclusory, and as it was totally unrationalized, it is of such diminished probative value that it is insufficient to support appellant's continuing employment-related disability at that time.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ See *Geraldine H. Johnson*, 44 ECAB 745 (1993); *Billie C. Rae*, 43 ECAB 192 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *William C. Thomas*, 45 ECAB 591 (1994); *Leon Harris Ford*, 31 ECAB 514 (1980).

⁵ *Jean Culliton*, 47 ECAB 728 (1996); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

Dr. Morgenstern, however, based his extensive and thorough report on a complete and accurate factual and medical history, on a detailed statement of accepted facts, and on the complete case record, as well as on a comprehensive mental status examination of appellant. Dr. Morgenstern diagnosed a generalized chronic anxiety disorder which he opined was not caused by appellant's 1979 federal employment, and noted that appellant had been free of depressive symptoms for years. Dr. Morgenstern opined that appellant did not need further psychiatric treatment and noted that he was not on psychotropic medication. Dr. Morgenstern opined that appellant was disabled for work, but that this disability was due to his underlying chronic mild anxiety state, his age, and his perception of his ability to work, and not due to his 1979 employing establishment employment or his 1979 accepted conditions of depression/anxiety. As Dr. Morgenstern's report was based upon a complete and accurate factual and medical history, was thorough and well rationalized, and was supported by the evidence of record, it is due significant probative value, which, in the absence of any other contemporaneous probative medical evidence supporting continuing employment-related disability, constitutes the weight of the medical opinion evidence of record. As this report supported that appellant no longer suffered disability due to his 1979 accepted employment conditions, and as it constituted the weight of the medical opinion evidence of record, the Office, therefore, met its burden of proof to terminate compensation in reliance upon this report.

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 24, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 15, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member