

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROMAN J. KUTSKY and DEPARTMENT OF ENERGY,
BONNEVILLE POWER ADMINISTRATION, Vancouver, Wash.

*Docket No. 96-2449; Submitted on the Record;
Issued March 22, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he had disability for work on or after March 28, 1986 due to residuals of a temporary aggravation of a preexisting dysthymic disorder.

This is the third appeal in this case to the Board. In a decision dated March 22, 1993, the Board found that the Office of Workers' Compensation Programs met its burden of proof to terminate compensation on the grounds that appellant's disability due to his accepted emotional condition ceased by March 28, 1986.¹ The Board found that the weight of medical opinion was represented by Dr. Elmore E. Duncan, a Board-certified psychiatrist, selected to act as an impartial medical specialist, who opined that appellant's disability due to his accepted emotional condition had ceased by that date.² In a decision dated January 3, 1995, the Board found that the Office abused its discretion to reopen appellant's claim for merit review.³ The Board found that medical evidence submitted by appellant in support of his claim of continuing disability was new and contained relevant medical opinion on his claim. The case was remanded to the Office for further consideration of the merits. The facts of the case, as set forth in the Board's prior decision, are hereby incorporated by reference.

On remand, the Office reviewed the April 11, 1993 report submitted by Dr. Victor Gregory, an attending psychiatrist, and the June 5, 1986 report of Dr. Lendon Smith, an attending internist who treated appellant for gastrointestinal disorders.⁴ In a decision dated

¹ Docket No. 92-685 (issued March 22, 1993). The Office accepted that appellant sustained a temporary aggravation of a preexisting dysthymic disorder based on his April 27, 1988 compensation claim.

² A conflict in medical opinion was found between Dr. Victor Gregory, an attending psychiatrist, who conducted a June 22, 1989 evaluation, and Dr. Ronald Turco, an Office referral psychiatrist, who provided reports of an April 17, 1989 evaluation.

³ Docket No. 94-241 (issued January 3, 1995).

⁴ The report of Dr. Smith was also signed by Dr. Richard O. Brouse, a chiropractor.

May 11, 1995, the Office denied modification of the April 18, 1991 decision terminating compensation.

Appellant requested reconsideration and submitted medical evidence in a letter received by the Office on July 25, 1995. In a June 29, 1995 report, Dr. Terence H. Young, an attending family practitioner, commented on his treatment of appellant since October 1986. Dr. Young noted that appellant's claim had been accepted in 1989 for a temporary aggravation of a preexisting dysthymic disorder and that he diagnosed adrenocortical dysfunction. He stated that it appeared "from the evidence that it was not a temporary condition but a persistent one which dated at least from 1986 when I saw him until 1992 when the adrenocortical dysfunction was diagnosed." In an undated report, Dr. Smith reviewed appellant's physical symptoms and diagnosed an environmental illness due to exposure to chemical toxins and stress due to the "denials of those obvious connections by his supervisors."

In a report dated July 18, 1995, Dr. Gregory addressed appellant's loss of concentration and impairment of short term memory. He diagnosed dysthymic disorder, possible coronary artery disease and chemical exposure. Dr. Gregory noted that appellant "still suffers from what he considers to be unjust and unfair treatment" by his former supervisors and that this would continue to dominate appellant's thoughts until the situation became "somehow resolved."

By decision dated August 1, 1995, the Office denied modification of its prior decisions. The Office found that, with regard to appellant's emotional condition, Dr. Gregory's report was duplicative of his June 22, 1989 opinion and that Dr. Young's report was of diminished probative value as he was not a specialist in psychiatry and did not provide sufficient rationale in support of his opinion on causal relation.

Appellant again requested reconsideration on September 22, 1995 and submitted additional evidence. In a report of September 11, 1995, Drs. Smith and Brouse reiterated appellant's employment history and reviewed the results of serology testing dating from 1986. Dr. Smith concluded that appellant's health had declined due to occupational chemical exposures and emotional stress caused by a lack of consideration by his supervisors for his health.

By decision dated October 5, 1995, the Office denied modification of its prior decisions, finding that Dr. Smith's opinion on appellant's emotional condition was of diminished probative value as he was a pediatrician and not a psychiatrist. The Office noted that the record did not support appellant's allegations of occupational chemical exposures.

Appellant requested reconsideration on February 12, 1996 and submitted additional evidence. In a February 6, 1996 report, Dr. Kenneth Guy Paltrow, a Board-certified psychiatrist and neurologist, reviewed various medical reports of record, provided a social history, and related appellant's account of alleged harassment at the employing establishment. Dr. Paltrow diagnosed dysthymic disorder and chemical exposure, by history. He attributed appellant's emotional condition, in part, to negative conditioned reflexes in childhood. Dr. Paltrow indicated that appellant may have sustained a major depression from the work injury superimposed on a dysthymic disorder from marital stressors. He concluded that the primary cause of appellant's dysthymic disorder were "voluntary stressors" existing at the employing establishment.

In a June 4, 1996 decision, the Office denied modification of its prior decisions. The Office found that Dr. Paltrow's opinion lacked sufficient rationale explaining how factors of appellant's federal employment caused or contributed to his diagnosed condition resulting in disability after April 18, 1991.

The Board finds that appellant has failed to establish that he has residuals of the accepted aggravation of a preexisting dysthymic disorder on or after April 18, 1991.

In the present case, the Office accepted that appellant sustained a temporary aggravation of a preexisting dysthymic disorder. At the time of its March 22, 1993 decision, the Board found that the Office met its burden of proof to terminate appellant's compensation based on the medical opinion of Dr. Duncan, a Board-certified psychiatrist, selected as the impartial medical specialist in this case. Dr. Duncan's report established that appellant's temporary aggravation ceased by March 28, 1986, when he stopped work. Thereafter, the burden of proof shifted to appellant to establish that he had disability due to residuals of his accepted condition following the Office's termination of his benefits on April 18, 1991.⁵ In the January 3, 1995 decision, the Board found that appellant had submitted sufficient evidence to warrant further review of his claim on the merits.

The reports of Dr. Gregory, appellant's attending psychiatrist, reiterated his diagnosis of dysthymic disorder and opinion that appellant's disability was due to what appellant considered to be unjust and unfair treatment at the employing establishment. The Board notes that the reports submitted by the physician after 1992 are duplicative of Dr. Gregory's earlier opinion which was found to give rise to a conflict of medical opinion with Dr. Turco, an Office referral psychiatrist. As Dr. Gregory was on one side of the conflict that Dr. Duncan resolved, his additional reports are repetitive of his prior opinion on causal relation and insufficient to overcome the weight accorded Dr. Duncan's opinion as the impartial medical specialist in this case.⁶

As to the reports of Dr. Young, appellant's attending family practitioner, the Board finds that his diagnosis and treatment of appellant was for the condition of adrenocortical dysfunction, a condition not accepted by the Office are related to appellant's federal employment. The Board finds that Dr. Young's reports are not well rationalized pertaining to his explanation of how appellant's condition related to factors of his federal employment accepted in this case. For this reason, the reports are of diminished probative value.

Dr. Smith provided reports in which he opined that appellant's psychiatric condition was due to occupational chemical exposures, which have not been accepted as factual by the Office. The Board finds that Dr. Smith's reports do not contain sufficient medical rationale in support of his stated conclusion that appellant's emotional condition, on or after April 18, 1991, relates to his federal employment or adequately discuss his opinion that appellant's symptoms or disability

⁵ See *Gary R. Sieber*, 46 ECAB 215 (1994).

⁶ *Virginia Davis-Banks*, 44 ECAB 389 (1993).

after that date are employment related. The Board has held that medical opinion not fortified by medical rationale is of diminished probative value.⁷

Dr. Paltrow diagnosed dysthymic disorder which he attributed to negative conditioned reflexes from appellant's childhood and marital stressors, neither of which pertain to appellant's former federal employment. Further, Dr. Paltrow addressed causal relation in terms of chemical exposures which, as noted above, have not been accepted as factually established in this case. Dr. Paltrow did not directly address the vocational stressor at the employing establishment which he found causative of appellant's dysthymic disorder. The Board finds that his medical opinion is not well rationalized and is insufficient to overcome the special weight granted to Dr. Duncan's opinion as the impartial medical specialist in this case.

The decisions of the Office of Workers' Compensation Programs dated June 4, 1996 and October 5, 1995 are affirmed.

Dated, Washington, D.C.
March 22, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).