

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES T. PFEIL and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

*Docket No. 98-288; Submitted on the Record;
Issued November 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability after September 30, 1989.

This case has previously been on appeal before the Board. By decision and order dated March 21, 1989, the Board set aside the Office of Workers' Compensation Programs' decision dated November 3, 1988 and remanded the case for further development of the evidence. The facts and circumstances of the case are completely set out in that decision and are hereby incorporated by reference.¹

After further development of the evidence on remand, the Office accepted appellant's claim for temporary aggravation of depression which ceased September 1989. Appellant received compensation benefits for the period October 14, 1986 to September 30, 1989. On September 1, 1993 appellant filed a claim for recurrence of disability, alleging that his October 1986 condition had never ceased. By decision dated February 10, 1995, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence of record did not establish that the claimed condition was causally related to the original injury. In a decision dated March 1, 1996, an Office hearing representative set aside the February 10, 1995 decision of the Office and remanded the case for further development of the evidence. By decision dated April 16, 1996, the Office again denied appellant's claim for a recurrence of disability after September 30, 1989 on the grounds that the evidence of record did not establish a causal relationship established between the claimed condition and the accepted work condition. In a decision dated October 30, 1996, the Office denied appellant's request for a recurrence of disability on the grounds that the evidence of record failed to establish a causal relationship between the claimed recurrence and appellant's accepted injury which ceased

¹ Docket No. 89-300 (issued March 21, 1989).

September 30, 1989. In a decision dated August 15, 1997, an Office hearing representative affirmed the Office's prior decisions denying appellant's claim for a recurrence of disability.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.²

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability, for which he claims compensation is causally related to the accepted injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

In the present case, appellant submitted office notes that cover the period July 23, 1987 to April 15, 1996 and several medical reports by Dr. Anil Parikh, a Board-certified psychiatrist. In a report dated July 26, 1995, Dr. Parikh noted that he began treating appellant in July 1987 when he was suffering from depression that was a direct result of work-related stress. He indicated that this condition was ongoing as appellant was "totally preoccupied and is obsessing about his work stress during psychotherapy sessions." Dr. Parikh concluded that appellant was making slow progress in recovering from his depression. In his April 23, 1996 report, Dr. Parikh diagnosed depression aggravated by work-related stress that began in 1986 which had become chronic in nature. These medical reports and the office notes of Dr. Parikh were reviewed by district medical adviser, Melvin B. Ross, a Board-certified psychiatrist. In his October 2, 1996 report, Dr. Ross indicated that Dr. Parikh did not provide sufficient evidence to support his diagnosis of bipolar disorder, agreed that appellant sustained a temporary aggravation of his chronic depression and diagnosed obsessive-compulsive personality disorder. With respect to the issue of the causal relationship between the conditions diagnosed by Dr. Parikh and appellant's accepted employment injury, Dr. Ross noted that he could not find "any reference to obsessions about working conditions in Dr. Parikh's office notes." He concluded that Dr. Parikh's July 1995 report was not consistent with his progress notes. Dr. Ross concluded that the diagnosed conditions were not related to appellant's 1986 work injury. Dr. Parikh has diagnosed depression that was the direct result of work-related stress whereas Dr. Ross diagnosed temporary aggravation of chronic depression that was not related to appellant's 1986 employment injury. Consequently, there is a conflict in the medical evidence concerning the cause of appellant's diagnosed depression. Section 8123(a) of the Act⁵ states that if there is disagreement between the physician making the examination for the United States and the

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on October 30, 1997, the only decisions before the Board are the Office's October 30, 1996 and August 15, 1997 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ *John E. Blount*, 30 ECAB 1374 (1979).

⁴ *Frances B. Evans*, 32 ECAB 60 (1980).

⁵ 5 U.S.C. § 8123(a).

physician of the employee, the Secretary shall appoint a third physician who shall make an examination. Because there exists an unresolved conflict between the opinions of Drs. Parikh and Ross, this case must be remanded to the Office for referral to an appropriate specialist for an independent medical examination and report to resolve this conflict. After such further development as the Office deems necessary, the Office shall issue a *de novo* decision on the merits of this claim.

The decisions of the Office of Workers' Compensation Programs dated August 15, 1997 and October 30, 1996 are set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
November 4, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member