U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD E. RUDISILL and DEPARTMENT OF THE NAVY, NAVAL ELECTRONIC SYSTEMS ENGINEERING CENTER, San Diego, CA

Docket No. 98-409; Submitted on the Record;
Issued January 10, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective December 12, 1995 on the basis that he no longer had any residual disability from the accepted condition of aggravation of adjustment disorder and acne neurodermatitis.

On September 21, 1985 appellant, then a 52-year-old ship surveyor, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his trauma was due to his employment. He stated that on October 19, 1984 he "blanked out after [a] [tele]phone call with Mr. Newton." Appellant stopped work on September 10, 1985. The Office accepted appellant's claim for aggravation of adjustment disorder, reflex esophagitis and acne neurodermatitis. On October 2, 1986 appellant was approved for disability retirement by the Office of Personnel Management. Appellant elected to receive compensation under the Federal Employees' Compensation Act and was placed on the periodic rolls for temporary total disability effective April 10, 1988.

In a July 10, 1986 report, Dr. Jonathan C. Greenberger,[1] based upon a physical examination, review of the medical record and statement of accepted facts, diagnosed reflux esophagitis, duodenitis, headaches, dermatitis and allergic symptoms. He opined that appellant's reflux esophagitis was unrelated to his employment and that any abdominal complaints were due to his reflux esophagitis and not his duodenitis. Regarding the duodenitis, Dr. Greenberger opined that it was a temporary problem which had resolved within six weeks form October 31, 1985.

[1] A second opinion Board-certified internist.

In a report dated March 23, 1995, Dr. Milan R. Brandon[2] opined that appellant was totally disabled and was "unable to go back to work for any reason."

In a report dated June 13, 1995, Dr. Brandon diagnosed atopic neurodermatitis, photosensitivity, allergic rhinitis, mixed anxiety and depressive psychosis, history of recurrent ureteral calculi, severe migraine, severe reflux esophagitis, cardiospasm and pylorospasm, irritable colon and mixed vascular and tension headaches.

On August 29, 1995 the Office referred appellant, together with a statement of accepted facts and medical records, to Bill O'Malley who scheduled appointments for a second opinion with Drs. David N. Mowbray,[3] Gary L. Nitz[4] and Lawrence F. Waldman.[5]

In a joint report dated September 18, 1995, Dr. Waldman, based upon a physical examination, statement of accepted facts and history, diagnosed reflux esophagitis which he opined was not currently disabling. He further opined that appellant could perform his usual employment and that "his current gastrointestinal symptoms are totally related to his anxiety and stress." In the psychiatric evaluation portion of the September 18, 1995 report, Dr. Nitz noted that appellant's adjustment disorder was not "currently manifest or impairing his functioning." Regarding whether appellant was totally disabled, Dr. Nitz noted that [t]he [a]djustment [d]isorder may occur from time to time in the presence of acute distress. It is not a condition which would render him unable to work." Lastly, Dr. Mowbray, in the September 18, 1995 report, opined that appellant "does not have any active pruritus, which would be against an ongoing case of neurodermatitis. He does, however, have areas of inflammation with erythematous scaling suggesting that he has ongoing contact irritant or contact allergic dermatitis." Regarding the issue of whether appellant had any continuing disability, Dr. Mowbray opined that, based upon appellant's "regression of his skin findings over the past ten years, I do not feel that this in itself is justifiable cause for ongoing permanent disability." In conclusion, the three physicians opined that there was no evidence that the accepted conditions were still active and causing objective symptoms, there was no evidence for continuing disability and that appellant was capable of performing his date-of-injury position.

On November 2, 1995 the Office advised appellant that it proposed to terminate his compensation benefits based upon the opinions of Drs. Mowbray, Nitz and Waldman as well as the July 10, 1986 report by Dr. Greenberger regarding reflux esophagitis.

In a letter dated November 15, 1995, appellant appealed the proposal to terminate his compensation benefits arguing that his symptoms recur when he is under stress.

[2] An attending Board-certified immunologist and allergist.

[3] A Board-certified dermatologist.

[4] A Board-certified psychiatrist.

[5] A Board-certified internist.

By decision dated December 5, 1995, the Office found that appellant did not have any continuing disability due to his accepted employment injury and terminated his wage-loss and medical benefits compensation effective December 12, 1995.

In a letter dated December 27, 1995, appellant requested a written review of the record and submitted a November 16, 1995 report from Dr. Brandon.

In a report dated November 16, 1995, Dr. Brandon opined that appellant is permanently and totally disabled from working and that appellant's health problems were due to his employment. He noted that appellant cannot tolerate stress. Dr. Brandon also disagreed with the report prepared by Drs. Mowbray, Nitz and Waldman upon which the Office relied to terminate appellant's compensation benefits. He stated that a return to work would aggravate appellant's gastrointestinal (GI) problems, increase appellant's stress and anxiety and possibly cause his death.

In a report dated February 8, 1996, Dr. Brandon noted that appellant had eczema of the face, severe headaches and a recurrence of rash. He also noted that appellant had "pain in the esophagus from reflux esophagitis. Symptoms had all been back for one month now."

In a report dated July 8, 1996, Dr. Brandon diagnosed atopic neurodermatitis, photosensitivity, vascular and tension headaches, allergic rhinitis, mixed anxiety and depressive psychosis, history of recurrent ureteral calculi, severe migraine, severe reflux esophagitis, cardiospasm and pylorospasm, irritable colon and mixed vascular and tension headaches. He opined that appellant "continues to be disabled in relation to his workers' comp[ensation] claim as before."

By decision dated October 18, 1996, the hearing representative determined that the Office erred in terminating medical benefits for aggravation of appellant's reflux esophagitis, but properly terminated benefits for aggravation of his adjustment disorder and acne neurodermatitis. In reaching his decision, the hearing representative relied upon the opinions of Drs. Mowbray, Nitz and Waldman.

By letter dated November 13, 1996, the Office requested Dr. Waldman to provide an opinion as to whether appellant continued to suffer from aggravation of his reflux esophagitis due to his accepted employment injury.

In a letter dated February 18, 1997, appellant requested reconsideration of the decision by the hearing representative and enclosed a November 16, 1996 report from Dr. Brandon and a February 10, 1997 report from Dr. Paul U. Strauss.[6] He also argued that the opinions of Drs. Waldman, Greenberger and Nitz should be entitled to little weight.

In a report dated November 16, 1996, Dr. Brandon opined that appellant never recovered from his accepted employment injury. He further noted that appellant "could not tolerate the

[6] An attending Board-certified psychiatrist and neurologist.

stress of return[ing] to work without aggravation of his ulcers, fibryomalgia-osteoarthritis, eczema and other health difficulties." Next, Dr. Brandon stated:

> "The type of psychophysiologic reaction engendered by his work is known as an engram by psychiatrists.… [Appellant]'s engram consists of the psycho-physiologic reactions engendered by his work with eczema, ulcers, etc, that may now be triggered for minimal reasons. If they had not been brought on by his work, he may never have had them the rest of his life. Now they are easily triggered. Thus, they are a work-related illness that has continued to recur even though he has not been at this job for well over 10 years. The vascular headaches, cardiospasms, etc., as described are all part of his engram."

In a report dated February 10, 1997, Dr. Strauss opined that basically appellant's problem is "his belief that he has not been treated fairly in the aftermath of his stress-related disability" and that appellant was "physiologically reactive to stress and many of his experiences are similar to those of a person suffer[ing] from post-traumatic stress disorder." Lastly, he opined that appellant was unable to perform his usual occupation due to his psychiatric diagnoses, his age, duration of his disability, medical conditions and poor job market for his skills.

By decision dated May 27, 1997, the Office denied appellant's request for modification of its prior decision. In the attached memorandum, the Office found that Dr. Strauss' opinion was insufficient to outweigh the opinion of Dr. Nitz as Dr. Strauss failed to discuss how appellant's psychiatric problems were related to his employment particularly as appellant stopped work on September 10, 1985.

In a letter dated June 26, 1997, appellant requested reconsideration and submitted a June 10, 1997 report by Dr. Brandon. In the February 10, 1997 report, he disagreed with the Office's decision to terminate benefits based upon the opinions of Drs. Mowbray, Nitz and Waldman. Dr. Brandon stated that appellant "did not have GI or skin problems and central nervous system difficulties until the harassment and other problems he faced at work finally overcame him." He further noted:

> "My main point is that [appellant]'s problems all started from his original employment and all the difficulties he has had with [w]orkers' [c]omp[ensation] since that time treating him so unfairly and leading to so much psychologic trauma. The severe chronic anxiety leads to fatigue, depression and in turn, agitated depression which in turn can lower resistance to other problems, so that even the prostate cancer can be considered to be related to his original comp[ensation] claim. Had [appellant] been treated properly and not been exposed to so much stress by his employer and [w]orkers' [c]omp[ensation] actions and decisions, he would be free of many of his current health problems, in all probability."

By merit order dated October 3, 1997, the Office denied appellant's request for modification of its prior decision. In the attached memorandum, the Office found Dr. Brandon's report insufficient to support that appellant continues to be disabled due to his accepted employment injury on the basis that the opinion was speculative.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective December 12, 1995.

Under the Act,[7] once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.[8] Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[9]

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.[10] The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[11]

In this case, the Office accepted that appellant sustained an aggravation of his adjustment disorder, reflex esophagitis and acne neurodermatitis in the performance of duty on September 10, 1985 and placed appellant on the periodic rolls for temporary total disability effective April 10, 1988. The Office terminated appellant's compensation benefits for temporary total disability effective December 12, 1995 on the grounds that residuals of the accepted September 10, 1985 condition, an aggravation of his adjustment disorder, reflex esophagitis and acne neurodermatitis had ceased by that date.

In the joint September 18, 1995 narrative report, Drs. Mowbray, Nitz and Waldman opined that there was no objective evidence to support that appellant continued to have any disability related to his accepted conditions of aggravation of adjustment disorder, reflex esophagitis and acne neurodermatitis and that he was capable of performing his date-of-injury position.

The Board finds that the March 23, 1995 reports by Dr. Brandon are insufficient to detract from the probative weight of the report by Drs. Mowbray and Nitz that appellant's aggravation of his adjustment disorder and acne neurodermatitis had resolved. Essentially, Dr. Brandon opined that appellant continued to be totally disabled due to his accepted employment injury without providing any rationale explaining how appellant's current disability was causally related to his employment injury.

[7] 5 U.S.C. § 8101 *et seq.*

[8] *William Kandel*, 43 ECAB 1011, 1020 (1992).

[9] *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

[10] *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

[11] *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

Therefore, the Board finds that the weight of the medical evidence rests with the opinions in the report prepared jointly by Drs. Mowbray and Nitz who provided a rationalized medical explanation of why the accepted conditions had resolved and appellant had no continuing disability from the accepted conditions of aggravation of an adjustment disorder and acne neurodermatitis and is sufficient to meet the Office's burden of proof in terminating appellant's compensation.[12]

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he has a disability causally related to his accepted employment injury.[13] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[14]

In support of his claim for continuing disability and subsequent to the Office's termination decision, appellant submitted reports dated November 15, February 8 and November 16, 1995 from Dr. Brandon and a February 10, 1997 report from Dr. Strauss. The Board finds these reports insufficient to outweigh the rationalized opinions of Drs. Mowbray and Nitz. Dr. Brandon reiterates his opinion that appellant is totally disabled as well as opining that appellant cannot return to work because the stress of working would aggravate his disability. The fear of future injury if appellant returns to work because the stress of working would aggravate his disability is not a compensable factor of employment.[15]

Dr. Strauss' opinion is insufficient to outweigh the reports of Dr. Waldman as he failed to state how appellant's continuing disability was causally related to his accepted employment injury. He noted that appellant believed he had been treated unfairly and opined that appellant was "physiologically reactive to stress" which was characteristic of a person suffering from post-traumatic stress disorder. Dr. Strauss opined that appellant was totally disabled for a

[12] *See Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

[13] *George Servetas*, 43 ECAB 424, 430 (1992).

[14] *James Mack*, 43 ECAB 321 (1991).

[15] Disability compensation is payable only for an employment injury which causes disability for work; fear of a recurrence of disability if the employee returns to work is not a basis for compensation. *William A. Kandel*, 43 ECAB 1011 (1991); *see Mary A. Geary*, 43 ECAB 300 (1991).

variety of reasons including age, poor job market for appellant's skills, medical conditions and psychiatric diagnoses. He failed to relate appellant's current disability to his employment or support his opinion with medical rationale setting forth how appellant's current disability was related to his accepted employment injury. Thus, the weight of the evidence that appellant no longer had any residuals related to his aggravation of his adjustment disorder and acne neurodermatitis remains with the opinions of Drs. Mowbray and Nitz.

The decisions of the Office of Workers' Compensation Programs dated October 3 and May 27, 1997 are hereby affirmed.

Dated, Washington, D.C.
January 10, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member