

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM R. BELL and U.S. POSTAL SERVICE,  
POST OFFICE, Washington, DC

*Docket No. 00-1778; Submitted on the Record;  
Issued December 21, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has a psychiatric condition that is causally related to his December 20, 1977 shoulder injury.

The Office of Workers' Compensation Programs accepted that on December 20, 1977 appellant, then a 50-year-old tractor-trailer operator, sustained an injury to his right shoulder when he fell off a vehicle. The Office found that this injury resulted in a right shoulder rotator cuff impingement syndrome, for which it authorized surgery, which was performed on December 8, 1978. Appellant last worked on September 13, 1978, and the Office has been paying him compensation for temporary total disability.

By decision dated January 24, 1995, the Office found that the evidence failed to demonstrate that appellant's psychiatric condition was causally related to his December 20, 1977 employment injury. By decision dated March 27, 1996, the Office found that appellant's request for reconsideration of the January 24, 1995 decision was not timely filed and did not demonstrate clear evidence of error. This decision noted that the issue decided in the January 24, 1995 decision was whether appellant's psychiatric condition was causally related to appellant's January 20, 1977 employment injury, not whether his psychiatric condition was causally related to other factors of his employment, as a claim had not been filed for a psychiatric condition related to factors of employment.

Appellant appealed the March 27, 1996 decision to the Board, which, by decision and order dated September 22, 1998, found that appellant's request for reconsideration of the Office's January 24, 1995 decision was timely filed; the Board remanded the case to the Office for proper consideration of appellant's claim under the appropriate standard.

By decision dated November 12, 1998, the Office found that the evidence was not sufficient to modify or vacate its January 24, 1995 decision, as the medical evidence did not show that appellant's psychiatric condition resulted from his December 20, 1977 employment

injury. The Office suggested that appellant file a claim for an occupational disease for incidents occurring in his employment.

The Board finds that appellant does not have a psychiatric condition that is causally related to his December 20, 1977 employment injury.

There was a conflict of medical opinion on the issue of whether appellant has a psychiatric condition causally related to his December 20, 1977 employment injury. In a July 9, 1985 report appellant's attending psychologist, Michael Smith, Ph.D., stated: "The recent death of his wife (who was also an employee of the [employing establishment]), his feelings about his own on-the-job injuries at the [employing establishment], and his view of certain events that occurred during his years of employ[ment] with the[employing establishment], are all major factors precipitating [appellant's] current state of emotional distress." In a report dated April 16, 1987, Dr. Smith reiterated that appellant's employment injuries were a major source of job stress, and that his "physical injuries" were one of the factors that exacerbated his condition culminating in a major depressive illness.

In a report dated March 31, 1987, Dr. David L. Seidel, a psychiatrist to whom the Office referred appellant for a second opinion evaluation, stated: "I do not think I can state with any certainty that [appellant's] present psychological condition was causally related to the injury on his job in 1979 [sic]. ... I believe [appellant] used his experience in the [employing establishment] to construct his paranoid ideation. Whether it was the job or not the job that caused that development would be difficult to say." An Office medical adviser reviewed the medical evidence on January 31, 1992 and stated that appellant's depression was related to the death of his wife, and that appellant had no employment-related psychiatric condition.

To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,<sup>1</sup> referred appellant, the case record and a statement of accepted facts to Dr. Eliot Sorel, a Board-certified psychiatrist. In a report dated June 4, 1992, Dr. Sorel, after setting forth appellant's history and findings on mental status examination, concluded that appellant "has been suffering from depression that is now improving," and that this condition was "not causally related with the job injury on December 12, 1977" but rather "related to unresolved grief and conflictual (sic) relationship with son." On October 14, 1994 the Office referred appellant, the case record and a statement of accepted facts to another psychiatrist, Dr. Barton L. Kraff, to resolve the conflict of medical opinion, as Dr. Sorel's report was no longer current. In a report dated November 17, 1994, Dr. Kraff, who is Board-certified in psychiatry, set forth appellant's history and findings on mental status examination, and reviewed results of psychological testing. Dr. Kraff diagnosed dysthymia, and stated that appellant's "employment frustrations and injuries apparently kept him from working from 1979 to 1985 but did not precipitate the major depression." He also stated that it was impossible to say that employment factors did not contribute to appellant's emotional disability, but that "the primary factor in the development of the severe depression appears to be the death of Mrs. Bell in 1985."

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<sup>1</sup> 5 U.S.C. § 8123(a) states in pertinent part "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>2</sup> The report of Dr. Sorel was entitled to special weight, and concludes that appellant's psychiatric condition of depression was not related to his December 20, 1977 employment injury, an opinion shared by Dr. Kraff, a second impartial medical specialist to whom the Office referred appellant.

The reports of Dr. David M. Zwerdling, a Board-certified psychiatrist, submitted by appellant, do not attribute appellant's psychiatric condition to his December 20, 1977 employment injury. Although Dr. Zwerdling's reports attribute appellant's psychiatric condition to other factors of employment, the Office's decision that was appealed to the Board does not adjudicate whether appellant's psychiatric condition is related to such employment factors. As the Office adjudicated only whether appellant's psychiatric condition was causally related to his December 20, 1977 employment injury, that is the only issue that can be decided by the Board on appeal.<sup>3</sup>

The decision of the Office of Workers' Compensation Programs dated November 12, 1998 is affirmed.

Dated, Washington, DC  
December 21, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>3</sup> 20 C.F.R. § 501.2(c) limits the Board's jurisdiction to "appeals from the final decision of the Office."