

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAM N. ABRAHAM and DEPARTMENT OF THE NAVY,
NAVAL AIR SYSTEMS COMMAND, Point Mugu, CA

*Docket No. 98-1185; Oral Argument Held November 21, 2000;
Issued January 5, 2001*

Appearances: *Sam N. Abraham, pro se; Sheldon G. Turley, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on August 16, 1997.

The Office accepted appellant's claim for permanent aggravation of atypical depression. Appellant began receiving temporary total disability benefits in May 1985. At the oral argument appellant submitted a supplemental brief to support his claim. By order dated November 21, 2000, the record was left open for the Director to reply. The Director responded on November 29, 2000.

Of the four physicians to whom the Office referred appellant, only Dr. David P. Bedrin, a Board-certified psychiatrist and neurologist, addressed the cause of appellant's emotional condition.

In a report dated January 31, 1997, Dr. Bedrin considered appellant's history of injury, administered a mental status examination and diagnosed a depressive disorder not otherwise specified by history and a personality disorder not otherwise specified. He found some discrepancy in appellant's account of his medical history. Appellant stated that he did not have mental health treatment prior to 1984, did not drink and was on excellent terms with his wife, but other records indicate that he had electroconvulsive treatment for depression in his twenties, he drank beer on occasion and he had had marital problems. Further, appellant had problems that his father was always comparing him to his brothers and criticizing him for not being as successful as they were.

Dr. Bedrin stated that appellant's personality disorder was nonindustrially related and was a totally preexisting condition "being, by definition, from late adolescence or early adulthood." He stated that it appeared "to be secondary to problems or situations and events

which were in [appellant's] formative years at home such as with the father and other family members." Dr. Bedrin also stated that appellant's depressive disorder was not substantiated by objective findings. He found appellant's mental status to be normal and stated that appellant's depression from 1984 appeared to be secondary to his preexisting depression from his early twenties as well as problems from his personality disorder. Dr. Bedrin stated that appellant's emotional flare-ups at work including yelling at his supervisors appeared to be secondary to his preexisting personality disorder.

He also opined that appellant was overmedicated and that his medication intake should be supervised. Dr. Bedrin concluded that appellant could perform his date-of-injury job but because he was heavily medicated, should not work around machinery.

In a report dated July 15, 1997, Dr. Tom Prinz, appellant's treating and educational psychologist, disagreed with Dr. Bedrin. Dr. Prinz stated that "one could argue that [appellant's] difficulty in handling his unfair working conditions in 1984 could partially be due to a preexisting condition, but not that his entire problems at this time are due to the preexisting condition." Dr. Prinz added that appellant's "subsequent depression and attempt to alleviate said condition with medications have undoubtedly contributed to the many health conditions that he is currently experiencing."

By decision dated July 28, 1997, the Office terminated appellant's compensation on August 16, 1997, stating that the weight of the medical evidence showed that appellant no longer had residuals of his work injury.

By letter dated August 26, 1997, appellant requested reconsideration of the Office's decision and submitted the August 18, 1997 report of Dr. John A. Cervantes, a Board-certified psychiatrist and neurologist, who diagnosed major recurrent, severe depression, with a significant cultural overlay, which precluded an accurate diagnosis.

Dr. Cervantes did not believe that appellant was exaggerating his symptoms. Rather, because of his different, Egyptian cultural background, he communicated differently. He stated that he believed appellant's "alleged" histrionic personality traits were based solely on his Arabic roots. Dr. Cervantes added that "cross cultural diagnosis of personality disorders is extremely difficult to ascertain" and he believed appellant was "relating to various stresses in a very culturally specified way." He opined that appellant's chronic major depression was permanent and that he was unable to work.

By decision dated September 23, 1997, the Office denied appellant's request for modification.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In this case, Dr. Bedrin's January 31, 1997 referral opinion constitutes the weight of the medical evidence. Dr. Bedrin considered appellant's history of injury, a statement of accepted facts and all the medical records. He opined that appellant's personality disorder was not work related but was a preexisting condition being "by definition" from late adolescence or early adulthood. Dr. Bedrin stated that appellant's personality disorder developed as a result of problems or situations and events in appellant's formative years at home with his father and other family members. He considered that appellant had electroconvulsive treatment for depression in his twenties. Dr. Bedrin opined that appellant's depressive disorder was not substantiated by objective findings, but was based on appellant's history. He emphasized that appellant's mental status was normal. Dr. Bedrin added that appellant's depression from 1984 on appeared to be secondary to his preexisting depression from his early twenties as well as problems arising from his personality disorder.

Dr. Bedrin opined that appellant was overmedicated, which was connected with his personality disorder. He opined that appellant could perform his date-of-injury job if he were not so heavily medicated.

Dr. Bedrin concluded that appellant had no residuals of his work-related depression; based on the fact that his mental status examination "was entirely within normal limits," appellant was capable of working "full-time in some capacity."

Dr. Prinz's July 15, 1997 medical opinion is not probative because Dr. Prinz, an educational psychologist, is not a physician within the meaning of the Act.³

Dr. Cervantes' September 11, 1997 medical opinion is insufficient to counter Dr. Bedrin's opinion because Dr. Cervantes did not provide a rationalized medical opinion explaining how appellant's current depression resulted from his employment. His opinion that appellant's alleged histrionic personality traits derived from his Arabic background and, therefore, he was not exaggerating his symptoms does not constitute a medical rationale addressing causation.⁴ Absent the appropriate medical rationale addressing causation, Dr. Cervantes' opinion is not probative.⁵

¹ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

² *Larry Warner*, 43 ECAB 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

³ *See Arnold A. Alley*, 44 ECAB 912, 921 (1993); 5 U.S.C. § 8101(2).

⁴ The medical reports of appellant's treating physician, Dr. Richard M. Deamer, a Board-certified psychiatrist and neurologist with a specialty in child and adolescence psychiatry are dated from May 18, 1990 through March 7, 1991; Dr. Deamer at that time attributed appellant's depression to factors of his federal employment, but his opinion is not current enough to support appellant's claim.

⁵ *See Arlonia B. Taylor*, 44 ECAB 591, 596 n.3 (1993).

Inasmuch as Dr. Bedrin's opinion is complete and well rationalized, attributes appellant's depressive and personality disorders to preexisting emotional conditions originating in his adolescence and not to his employment, his opinion justifies the Office's termination of benefits.⁶

The September 23 and July 27, 1997 decision of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 5, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ Although the Office initially accepted appellant's condition for "permanent" aggravation of atypical depression, the use of the word "permanent" is a term of art which denotes that at a given time a doctor's opinion may establish that an appellant's condition is permanent or lasting or has stabilized as defined by the Act. If subsequent evidence shows that appellant's medical condition has improved or appellant has recovered, the term permanent may be changed to temporary or may no longer be applicable. *See Joseph R. Waples*, 44 ECAB 936, 940 (1993). Moreover, if the aggravation of a condition, in this case, appellant's depression, is temporary and leaves no permanent residuals as stated by Dr. Bedrin, compensation is not payable for periods after the aggravation has ceased. *See Gary R. Sieber*, 46 ECAB 215, 222 (1994).