

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VAUGHN D. STRICKLAND and DEPARTMENT OF TRANSPORTATION,
SOUTHERN REGIONAL OFFICE - FAA, Atlanta, GA

*Docket No. 00-2071; Submitted on the Record;
Issued July 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective March 6, 1994; and (2) whether appellant met his burden of proof to establish that he had a work-related psychiatric condition on or after March 6, 1994 causally related to his accepted January 1, 1974 emotional disorder.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective March 6, 1994.

On May 1, 1975 appellant, then a 37-year-old air traffic controller, filed a claim for occupational illness alleging that his involvement in a systems error between two civil air carriers in January 1974 and witnessing other "near misses" while on duty resulted in a loss of concentration, nervousness and tension. Sleep problems and nightmares involving aircraft crashes also occurred. Appellant stopped working on March 13, 1975.

The Office accepted appellant's claim for depression and placed appellant on the periodic rolls.

On July 16, 1979 appellant returned to work as an air traffic control specialist. His compensation was adjusted accordingly.

In a letter dated January 25, 1994, the Office proposed to terminate appellant's compensation benefits based on the medical reports from Dr. Theodore J. Marshall, appellant's attending psychiatrist. After reviewing appellant's February 9, 1994 letter, the Office terminated his compensation benefits effective March 6, 1994. Appellant requested an oral hearing and submitted additional medical reports and arguments in support of his claim. In a decision dated April 3, 1995 and finalized April 7, 1995, the Office hearing representative affirmed the termination of compensation benefits. Appellant, through counsel, requested reconsideration

and submitted additional arguments and medical evidence in support of his claim. In decisions dated June 13, 1996,¹ November 12, 1997 and June 4, 1999, the Office found that the arguments and evidence submitted were insufficient to warrant modification of its prior decisions.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² 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.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

In this case, the record contains numerous medical reports and progress notes from appellant's treating physician, Dr. Marshall. In a December 13, 1982 medical report, he noted that appellant changed shifts every week and reported trouble sleeping. Some residual anxiety at work was noted but was manageable. Martial disturbance was also noted. In a July 23, 1985 report, Dr. Marshall summarized appellant's sessions every six months from June 24, 1983 until his last visit of June 19, 1985. He found on June 19, 1985 that appellant was calm and appropriate with appellant not having lost any time from work and coping with work shakedown on a new computer. Appellant stated that he was less troubled by stress or problems at work. His sleep problem continued with good results with the medication. Appellant stated that he has had no problems with his past retroperitoneal fibrosis, no further trouble with "ulcers" which he now thought represented "nerves." Dr. Marshall stated that he observed that appellant talked as if he was more relaxed about his work and he talked about his previous stress as if it were something in the past. He opined that appellant was doing very well, with the only problem being sleep disturbance. Dr. Marshall noted that appellant was gainfully employed in a job which was less stressful than that of an air traffic controller and was doing a less demanding type of work. He stated that he lacked the expertise to be able to state that appellant could safely return to air traffic control work, but advised that over the course of the last several years, appellant has adjusted very nicely and has not had any psychological symptoms.

In an August 23, 1988 report, Dr. Marshall noted that he continued to see appellant as an outpatient every six months. He advised that, in general, appellant continued to function rather well in air traffic control, working in communications rather than in direct air traffic control activity. Appellant's only symptom was a relatively minor sleep disturbance, although he reported the prescribed medication helped adequately control this problem. Objectively,

¹ In a June 3, 1996 decision, the Office denied appellant's reconsideration request. In a letter dated June 10, 1996, the Office honored appellant's request for reconsideration.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

appellant appeared to be in an excellent mood, cheerful, relaxed, alert, oriented, coherent, relevant, not psychotic, not depressed and having a good facial expression. Appellant was not troubled by any problems with his immediate family or others who were away from home. Dr. Marshall stated that appellant was advised that he could buy the prescribed sleep medication over the counter without a prescription and that his minor sleep disturbances really did not require the services of a psychiatrist. Appellant responded that he felt he was benefitting by his biannual visits with Dr. Marshall. Dr. Marshall opined that appellant could continue to work in air traffic control communications, apparently without posing any hazards to others. From a functioning standpoint, appellant was doing very well. Dr. Marshall reiterated that he lacked the expertise to predict whether appellant should be returned to active air traffic control duties.

In an August 12, 1991 report, Dr. Marshall stated that he counseled appellant about termination of his care as appellant has recovered completely from his original depression. No prescriptions were written as appellant was no longer on any medications from him. No return appointment plan. Final diagnosis: recovered of sleep problem.

In a December 12, 1993 report, Dr. Marshall stated that he last saw appellant on August 12, 1991. He noted that appellant had been hospitalized for phlebitis, but was able to return to work half time for a week and then full time. Appellant stated that he felt great, except for some residual swelling in his left leg. Dr. Marshall stated that appellant has had no problems with work from a psychiatric sense. Objectively, appellant was oriented, coherent, relevant, without any depression he could find and was functioning well at work. Affect was clearly good. Appellant reported no sleep problems any longer. Dr. Marshall related that appellant was counseled in terms of termination of care, nothing that he had completely recovered from his original depression. No prescriptions were written and appellant was no longer on any medications.

The record further contains a December 1, 1994 report from Dr. William H. Biggers, a Board-certified psychiatrist, who noted a history of anxiety and depression stemming from involvement in and witnessing numerous system errors, involving near-misses. He conducted a mental status examination noting that appellant clearly presented a depressive façade and described objective signs of depression as well as demonstrating subjective signs of depression. Dr. Biggers concluded that, based on his evaluation of appellant, appellant continued to suffer from a major depressive illness, which had its onset in 1973 and continues unabated. He opined that appellant needed to be under the continued care of a psychiatrist and returned to a medication regimen, including antidepressant medication. Dr. Biggers further opined that, based on the history from the onset of the illness and the illness at the present time, appellant's major depression was the same illness that he suffered in 1973 and was accepted as job related at that time.

In a December 6, 1994 report, Dr. Thomas D. Schutte, a psychologist, noted a history of injury and administered the Beck Anxiety and Depression Scales, which indicated that appellant was experiencing moderate depression and extreme anxiety. The Minnesota Multiphasic Personality Inventory (MMPI -- 2) indicated that appellant had a profile of a "High-Point Pair 2/3." Dr. Schutte stated that, after 15 psychotherapy sessions, the characteristics of the above test results apply to appellant both at his own admission and to his clinical observations. Under

DSM-IV, he diagnosed a dysthymic disorder, late onset and partner relational problem under Axis I; gastrointestinal problems under Axis II and treat of disability compensation loss under Axis IV. Dr. Schutte opined that appellant needed long-term psychotherapy to eradicate his long-standing moderate depression and to improve his marital relationship. He further opined that appellant could never handle the stress involved in being an air traffic controller.

The Board finds that the weight of the medical opinion evidence rests with Dr. Marshall's well-rationalized narrative reports. He provided a history of injury and appellant's medical history and treated appellant for over 10 years. In a December 13, 1982 report, Dr. Marshall indicated that appellant's current sleep trouble was due to rotation shifts. In his August 23, 1988 report, Dr. Marshall advised that appellant could buy the drug for minor sleep disturbance over the counter without a prescription and that appellant did not require the services of a psychiatrist. In his August 12, 1991 report, Dr. Marshall advised that appellant was counseled about termination of his care as appellant has completely recovered from his original depression. Final diagnosis was recovered of sleep problem. In his December 6, 1993 report, Dr. Marshall stated that he last saw appellant August 12, 1991 and reiterated that appellant had recovered completely from his original depression and had no problems with work from a psychiatric sense. As Dr. Marshall specifically stated that appellant had recovered from his original depression based on his observation of appellant and history of injury, the Office properly relied upon Dr. Marshall's December 6, 1993 report in terminating appellant's benefits. Accordingly, the Office met its burden of proof to terminate appellant's compensation benefits effective March 6, 1994.

After termination or modification of benefits, the burden for reinstating compensation benefits shifts to appellant. Appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.⁶ The issue in this case is whether appellant had further employment-related disability after March 6, 1994.⁷

In support of his claim for continuing disability, appellant requested reconsideration of the Office's decision and presented medical evidence in support of his claim. A May 21, 1996 affidavit from Dr. Schutte along with treatment records were submitted. In his affidavit, Dr. Schutte stated that prior to his retirement he saw appellant for 26 sessions, the last session being January 27, 1996. He related that after he first gave appellant the Beck Depression Scale, the Beck Anxiety Scale and the MMPI-II testing in March 1994 he repeated the same testing on May 8, 1995. The testing revealed dysthymia or a depressive neurosis, in which a person has mild-to-moderate ups and downs which are long term in nature. Dr. Schutte stated that such diagnosis requires the patient to have had these symptoms for at least two years and opined that appellant fit this profile. A clinic analysis questionnaire conducted December 15, 1995 revealed depression. Dr. Schutte stated that appellant was suffering from chronic depression and that there was a pretty good case for dysthymia superimposed on post-traumatic stress disorder, as defined in The Diagnostic Statistical Manual IV. He based his opinion on having read

⁶ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁷ *Ronald M. Cokes*, 46 ECAB 967 (1995).

documentation presented by appellant. Dr. Schutte opined that it was unlikely that appellant's condition could have stopped and gone completely away in December 1993 and returned in all its ramifications when he began treating appellant on March 4, 1994. He stated that, perhaps at the time Dr. Marshall saw appellant, he was on the good side or he was experiencing less symptoms of depression. Dr. Schutte stated that appellant would not be able to function under a stressed environment, such as an air traffic controller. He opined that appellant had not completely recovered from his work-related depression and continued to need treatment.

In a May 29, 1997 report, Dr. Steven P. Doheny, a Board-certified psychiatrist, reviewed appellant's medical reports and past psychiatric history, noted the history of injury and interviewed appellant. An Axis I diagnostic impression was post-traumatic stress disorder and dysthymia along with an Axis IV impression of impairment in relationship functioning and social functioning. Dr. Doheny opined that appellant's current psychiatric problems were causally related to his accepted 1975 injury. He stated that it was clear from Dr. Marshall's notes that appellant was not capable of performing high-stress air traffic controller work, but that he was stabilized at a maximum medical impairment psychiatrically and did not require further treatment in order to continue to function adequately in his flight service station work. Dr. Doheny also opined that appellant's current psychiatric problems were causally related to his accepted 1975 injury. He related that appellant's overall symptoms since the work incident were consistent with the diagnosis of post-traumatic stress disorder and the process of the disorder. Appellant had significant symptoms, even in 1977 when he was hospitalized by Dr. Marshall and Dr. Marshall's reports after four years of treatment in 1981 clearly state that appellant had limitations in terms of the amount of stress he could tolerate. Dr. Doheny noted that in 1981 Dr. Marshall was already concluding that there was no need for psychiatric treatment, which essentially meant that appellant's ability to tolerate the stress of his original job could never be improved. He noted that all of Dr. Marshall's subsequent notes indicate that appellant was managing his current job as a flight service station worker adequately and could not handle increased stress. Dr. Doheny stated that his own evaluation of appellant revealed that appellant continues to have residual symptoms in the forms of sleep disturbance, nightmares, anxiety when trigger effects in the environment force him to recall the pressures of air traffic control work and his continued distancing and alienation from others, which are the hallmark of the syndrome. He stated that it was clear that appellant developed the syndrome while at work, it has been ongoing to the present day and has been unremitting. Dr. Doheny noted that the syndrome has subsided through the years of therapy to allow appellant to take his current level job and function adequately. He opined that appellant never recovered from the stress-related psychiatric condition he developed in 1975 and it still effects him to this day. Dr. Doheny advised that recovery would never be achieved, only stabilization to a certain degree. He stated that appellant had shown a fortunate outcome, being able to recover to the degree that he has in that he is still able to work in a field affiliated with aviation without developing overwhelming symptoms. Dr. Doheny advised that he would not construe that stabilization in appellant's problem should in any way be construed as recovery and advised against appellant returning or attempting to return to air traffic control as it would quite predictably represent stress that he could not manage and he would surely decompensate into more severe symptomatology and require higher levels of psychiatric intervention, such as that required in the past.

In an October 18, 1998 report, Dr. John W. Hutcheson, a clinical psychologist, stated that he reviewed numerous reports from appellant's attending physicians along with the two MMPI-II profiles. He stated that he was in agreement with the report from Dr. Doheny, that review of the records indicated that appellant had a work-related stress injury which has resulted in the syndrome of post-traumatic stress disorder. Dr. Hutcheson further stated his agreement with Dr. Doheny that there was no evidence in review of the records that appellant ever sufficiently recovered capacity to function in his original work assignment as an air traffic controller. Therefore, Dr. Hutcheson concluded that appellant's psychiatric problems are causally related to the 1975 injury. He indicated that the two MMPI-II profiles were consistent with evidence of an affective disorder, namely depression though they are also seen in post-traumatic stress disorder. Dr. Hutcheson opined that appellant was clearly experiencing post-traumatic stress disorder causally related to his work as an air traffic controller, as noted in view of reports. He further opined that appellant's symptoms continue to persist in spite of what may have been stated by Dr. Marshall.

Drs. Doheny and Hutcheson expressed disagreement with the diagnosis of depression made by Dr. Marshall and accepted by the Office. The condition of post-traumatic stress disorder has not been accepted by the Office in this case. Drs. Doheny and Hutcheson have not provided sufficient medical rationale to explain how the employment incidents of 1975 caused or contributed to appellant's condition or disability after March 6, 1994. Their reports rely in great part on the treatment notes of Dr. Marshall, to the extent that they recognize that appellant stabilized and was able to function without requiring further treatment. Their reports are not well explained in addressing, after his release by Dr. Marshall, how appellant's psychiatric symptoms relate to the accepted incidents at work in 1975. Their explanation focuses solely on a new medical diagnosis. The Board finds, however, that these reports are not well rationalized as to the issue of causal relation. Similarly, Dr. Schutte's reports diagnosed a chronic depression. His reports are speculative in addressing Dr. Marshall's medical notes and findings and fail to provide adequate rationale explaining appellant's continuing disability.

The decision of the Office of Workers' Compensation Programs dated June 4, 1999 is hereby affirmed.

Dated, Washington, DC
July 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member