

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RODNEY D. CRAWFORD and DEPARTMENT OF LABOR,
HARPERS FERRY JOB CORPS CENTER, Harpers Ferry, WV

*Docket No. 99-2000; Submitted on the Record;
Issued May 9, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On February 21, 1996 appellant, then a 19-year-old trainee, filed a claim for an injury he sustained in a train crash on February 16, 1996. The accident occurred when an oncoming train crashed into the train he was riding in and his car in the train caught on fire, spraying diesel fuel and generating deadly fumes and smoke. Appellant testified that although he could barely breathe and was in a state of shock, he managed to get out of the car. Appellant saw his fellow passengers, some of whom he knew and were his friends, struggling to get out of the car and some of them died or sustained injuries. The Office accepted appellant's claim for smoke inhalation, cervical, lumbar and bilateral shoulder strains and post-traumatic stress disorder. Appellant received ongoing temporary total disability benefits.

In July 1994, appellant was hit on the head with a brick. The discharge summary from Albert Einstein Medical Center dated July 28, 1994 stated that appellant was hit on the head with a brick on July 18, 1994 loss consciousness for three to five minutes and of two computerized axial tomography (CAT) scans taken, the second showed bilateral lobe contusions. The records stated that appellant gradually improved and was released on July 23, 1994 but subsequently had a syncopal episode with a loss of consciousness for three to five minutes and a severe, ongoing headache which prompted him to return on July 25, 1994 to the emergency room for treatment. The discharge summary stated that a CAT scan taken on July 25, 1994 showed an increase in the size of the bilateral frontal hemorrhage and a CAT scan on July 27, 1994 showed no change. The hospital's final conclusion was bilateral frontal lobe contusion with assault.

Appellant was also hospitalized for a month in 1994 for back pain as a result of a motor vehicle accident. On September 5, 1996 appellant was assaulted with a gun on the back of his head.

In a report dated September 9, 1996, Dr. Burton S. Weiss, a Board-certified psychiatrist and neurologist, considered appellant's history of injury and performed a mental examination and a neurobehavioral examination with results of 29 to 30. He diagnosed adjustment disorder with mixed anxiety and depression and post-traumatic stress disorder. Dr. Weiss thought appellant might be exaggerating his symptoms and that he might be addicted to Xanax but stated that he did not demonstrated symptoms and signs of withdrawal.

In an October 2, 1996 progress note, Dr. Weiss stated that appellant was taking Zoloft but stated that it had not helped, that he was still very "very anxious, fearful and startle[d] easily" and that only Xanax helped him.

In a progress note dated October 9, 1996, Dr. Weiss noted that appellant did not keep his appointment that day and did not call to cancel. He stated that he thought appellant was addicted to Xanax and needed a drug rehabilitation program. Dr. Weiss stated that he did not think appellant's Xanax problem was accident related and he believed that appellant was significantly exaggerating the psychiatric consequences of his accident.

In a report dated January 30, 1997, the referral physician, Dr. Gladys S. Fenichel, a Board-certified psychiatrist and neurologist, considered appellant's history of injury, reviewed the July 1994 CAT scan and performed a mental examination. She considered that appellant stated that he was nervous "a lot," that he had "butterflies," felt sick to his stomach, sometimes had nightmares and sometimes heard voices in his head. Dr. Fenichel considered that appellant told her that he had friends in the train accident and that he continued to see people, who had been on the train everyday. She also considered that appellant requested Xanax and said he had been buying Xanax in the street. Dr. Fenichel considered that a "CHMC" referral note prior to appellant's working at the employing establishment which described appellant's behavior as "immature, demanding and deceitful and it was likely that he would be terminated for disciplinary reasons prior to completion of the program." Dr. Fenichel stated that a predominate theme during appellant's evaluation was his request for Xanax. She stated:

"[Appellant] displayed some symptoms of post-traumatic stress disorder. It is clear [he] was involved in a life threatening accident and he did see seriously injured people. [His] presentation, however, did not suggest post-traumatic stress disorder. Although he presented as slow, confused and scared, it is noteworthy that none of the objective tests have shown any brain abnormality and the test administered by Dr. Weiss was within normal limits with a score of 29 [to] 30. [Appellant] stated that he is no 'drug addict' although he asked for Xanax at least four times...."

Dr. Fenichel opined that appellant's psychiatric condition was not related to the February 16, 1996 train accident. She stated that appellant had a preexisting history of a head injury, a history of a chaotic family background and a chaotic living situation. Dr. Fenichel opined that the psychiatric effects of his work injury had ceased and he did not require further treatment. She noted that, appellant's treating physician, Dr. Robert A. Naseef, a psychologist, stated that appellant could return to work at the employing establishment and she agreed but stated that appellant should not return to Harpers Ferry where the train accident occurred. She

stated that appellant was capable of employment or training. Dr. Fenichel stated that her opinion was compatible with Dr. Naseef's opinion.

In a report dated February 5, 1997, a referral physician, Dr. Steven J. Valentino, an osteopath, considered appellant's history of injury, performed a physical examination and reviewed the July 1994 CAT scans. He diagnosed resolved lumbar strain, sprain and resolved strain of the bilateral shoulders. Further, Dr. Valentino concluded that appellant recovered from his February 16, 1996 train accident and did not require further treatment. He stated that appellant could return to his usual work without restriction.

In a report dated February 11, 1997, appellant's treating physician, Dr. Guy W. Fried, a Board-certified physiatrist, performed a physical examination and diagnosed lumbosacral strain and sprain. He opined that appellant could return to full-time work but might be better working in Pennsylvania rather than at the exact site he had previously worked.

In a report dated March 21, 1997, Dr. Naseef stated that his current clinical impression of appellant was compatible with Dr. Fenichel's January 30, 1997 report and opined that appellant could return to the employing establishment or a similar highly structured program. He stated that after appellant's termination from the day hospital treatment program at Magee Rehabilitation Hospital *i.e.*, approximately on September 27, 1996, appellant "seemed to regress." Dr. Naseef stated that appellant's attendance at scheduled appointments became erratic and appellant "seemed confused and worried more of the time." He stated that appellant continued to have somatic complaints, particularly headaches and heard whispering in his head. Dr. Naseef stated that appellant needed structure in his life and he presented much better when he had it. He stated that appellant continued to have symptoms of post-traumatic stress disorder but that these symptoms had lessened and would not stop him from returning to the employing establishment at a location other than Harpers Ferry, as long as he was able to travel by bus. Dr. Naseef stated that appellant continued to require mental health care and his treatment would be most effective if he was concurrently in a structured program such as the employing establishment.

In response to the Office's request for clarification of her January 1997 report, in a report dated April 15, 1997, Dr. Finichel stated that during her last examination of appellant, he "was attempting to demonstrate how he had problems related to the Harpers Ferry accident." She stated that his attempt was "not convincing" based on his overall representation. Dr. Finichel stated that appellant repeatedly asked for Xanax, he did not follow treatment recommendations and he was identified by the employing establishment as unlikely to complete the program because of his immature, demanding, deceitful and self-indulgent behavior and disciplinary problems. She stated:

"[Appellant] did experience an event that could cause post-traumatic stress disorder. Individuals who experience truly traumatic events can develop post-traumatic stress disorder. It is my opinion, [that] [appellant] did not develop post-traumatic stress disorder in response to the incident of February 16, 1996. It is my opinion that [his] ongoing problems related to his preexisting history of a head injury, his preexisting history of having a chaotic family background and a chaotic living situation."

On June 30, 1997 the Office proposed to terminate appellant's benefits and medical care, stating that the medical evidence demonstrated that the orthopedic and psychiatric effects of the work injury had ceased. The Office stated that it relied on Drs. Valentino and Fenichel's reports.

Appellant submitted additional medical evidence including a report from Dr. Naseef dated July 29, 1997 and a progress note dated July 17, 1997. In his July 29, 1997 report, Dr. Naseef stated that his appointment with appellant on July 17, 1997 was "extremely alarming." He stated that appellant was having auditory and visual hallucinations related to the accident and that appellant was disorganized and disoriented. Dr. Naseef stated that appellant made an appointment to return to his office on July 24, 1997 with his mother but on July 24, 1997 appellant's mother called stating that appellant could not leave the house because of his fears and the appointment was rescheduled. He stated that appellant had "regressed significantly" and required psychiatric care and "most probably" hospitalization. Dr. Naseef stated that appellant could no longer work.

In his July 17, 1997 progress note, Dr. Naseef stated that appellant recalled visions of his roommate on the bus and was afraid the bus would crash, that appellant said he could not sleep in his room because he felt closed in as on the train and stated that he slept on the sofa next to the window. Dr. Naseef said that appellant did not want his newborn baby to live, that he did not want the baby to go through "what he went through" and that the baby's mother, whom he was not married to would not allow him to see the baby perceiving he was dangerous. He also said that appellant heard voices in his head, whispers which became audible and told him that the baby would be in an accident. Appellant submitted some documents contemporary to the train accident dated February 16, 1996 describing the circumstances and his emergency medical treatment.

By letter dated July 29, 1997, appellant's attorney at the time stated that he was unable to work as shown by Dr. Naseef's July 29, 1997 report, stating that appellant had regressed significantly, was having auditory and visual hallucinations related to the accident and could no longer return to his job training activities. Appellant's attorney stated that the facts in the memorandum to the Director in the pretermination notice were inaccurate in that the memorandum said that appellant "was able to crawl out of a hole in the train before it became engulfed in flames and smoke" was not true and noted that the emergency medical report stated that appellant was "caught 1 [to] 2 [minutes] in a smoke filled car" and other records indicated that the train car was filled with "copious smoke."

The attorney also stated that Dr. Fenichel's notes that appellant's family ate "takeout food most of the time" and a CMHC referral stating that appellant would have trouble in the employing establishment was irrelevant to the injuries appellant sustained in the train accident. The attorney stated that Dr. Fenichel's January 27, 1997 opinion that her report was compatible with Dr. Naseef's report was no longer valid since he no longer thought appellant could work. Further, the attorney stated that Dr. Fenichel acknowledged that appellant had "visual and auditory hallucinations" of his friends, who died on the train, that her report did not explain the origins of these hallucinations and Dr. Naseef believed appellant's hallucinations resulted from the train crash.

In a note dated August 8, 1997, the district medical adviser stated that Dr. Naseef did not describe the specific occurrences and content of “these “hallucinations” or any attempt to determine if they were “hallucinations. The district medical adviser stated that Dr. Fenichel stated that, appellant’s current psychological problems were due to nonwork-related head trauma and a chaotic lifestyle and that there was no evidence of post-traumatic stress syndrome during her examination. The district medical adviser stated that appellant’s regression with “hallucinations” appeared to have been precipitated by the pretermination notice rather than the train accident as loss of funds would further affect chaotic lifestyle. The district medical adviser stated that there were no physical effects of the work injury and “merely taking the patient’s word he developed hallucinations after a pretermination notice [was] not convincing for an established diagnosis.”

By decision dated August 8, 1997, the Office terminated appellant’s compensation and medical benefits.

By letter dated August 18, 1997, appellant requested an oral hearing before an Office hearing representative, which was held on February 22, 1999. He was not present at the hearing but his attorney presented his case and reiterated earlier arguments that Dr. Fenichel’s reports were contradictory, not well rationalized and mischaracterize some of the evidence. His attorney noted that Dr. Fenichel stated that appellant had post-concussion syndrome from a July 1994 head injury but the Albert E. Einstein Medical Center discharge summary stated that appellant had bilateral frontal lobe contusion, secondary to assault. Further, the attorney noted that there was no evidence appellant had ongoing symptoms or received ongoing treatment after that episode. Appellant’s attorney noted that Dr. Weiss’ reports showed no evidence of any damage related to the July 1994 incident. His attorney stated that Dr. Fenichel’s reports were inconsistent in that in her first report she stated that appellant had symptoms of post-traumatic stress syndrome although he did not present as such but she agreed with Dr. Naseef that appellant should not return to work at Harpers Ferry and should avoid using a train and in her second report stated that appellant never had post-traumatic stress syndrome.

Further, appellant submitted his deposition taken on October 17, 1998 by General Motors Corporation, a defendant in the case related to the train accident in the district court. In the deposition, appellant described the train accident in great detail told the dates his babies were born, April 21 and June 1997 and described his education, up to the eleventh grade. Appellant explained that in high school he won basketball trophies in the basketball league and was also in a track league. He also explained how after the February 16, 1996 train accident, he found it hard to live at his parents having smashed his bedroom windows one night and thrown the television out the window thinking he was on the train. Appellant described problems living with his two girlfriends, one of whom had to go live in a shelter because of an injury she suffered. He stated that he gets headaches, his back hurts and he gets “real panicky” or “real mad” and wanted to take his “anger out,” but also did not want to hurt or kill anyone. A lawyer representing Sumitomo Corporation also deposed appellant, asking him questions about the train accident.

By decision dated May 4, 1999, the Office hearing representative affirmed the Office’s August 8, 1997 decision.

By letter dated May 17, 1999, appellant requested reconsideration of the Office's decision and submitted a deposition of Dr. Naseef dated November 6, 1998 and a report from Dr. Naseef dated June 9, 1998. In his deposition, he stated appellant had a history of being verbally abused by his father in that appellant was constantly being told that he was stupid and retarded. Dr. Naseef stated that prior to February 11, 1996 appellant led a relatively normal life for somebody in his cultural, socioeconomic group with some added problems as in his abuse by his father. He stated that when he first treated appellant, his symptoms including insomnia, flashbacks and nightmares were consistent with post-traumatic stress syndrome, not with frontal lobe brain injury. Dr. Naseef said that appellant had worked for the employing establishment for a month prior to the train accident, loved his job and had made friends. He also stated that appellant did not have a stable place to sleep, that sometimes he would stay at his parents, sometimes stay with an aunt, sometimes sleep with a girlfriend and sometimes in somebody's car. Dr. Naseef explained that at his parent's house appellant could only sleep in a very small bedroom but he would wake up feeling like he was in a train so sometimes he slept on the sofa or he would sleep on a park bench. He did not believe appellant was addicted to Xanax but abused his prescription.

Dr. Naseef stated that in November 1996 he believed that appellant could return to his usual work in a few months. When asked what might have contributed to appellant's regression in July 1997, Dr. Naseef stated that it might have been his unstable sleeping arrangement and the fact he became the father of two babies born out of wedlock within a month [actually a few months] of each other from different mothers, which would have given him extra responsibility and stress. He stated that although appellant had only known some of his companions on the train a month, he felt very close to them. Dr. Naseef believed that part of the reason appellant had trouble recovering from his post-traumatic stress syndrome was that appellant did not have support or structure as in taking his medication properly. He opined that appellant required further medical treatment. Dr. Naseef said he was "not sure" whether appellant still had post-traumatic stress syndrome from the February 16, 1996 train accident. He also said appellant was at the stage he was at in March 1997 and could return to his usual job.

In his June 9, 1998 report, Dr. Naseef summarized his treatment of appellant, stating that he found appellant could return to work in November 1996 but appellant seemed to regress once his daily treatment program at Magee Rehabilitation ended. He stated that appellant's attendance at scheduled therapy appointments became erratic and appellant was confused and worried most of the time when previously he had "shown clarity of thought." Dr. Naseef stated that when he saw appellant in July 1997 appellant had regressed and was no longer capable of returning to work as he was disorganized and disoriented. He stated that appellant's pattern of erratic and disorganized behavior continued until the present and that at times appellant seemed clear and improving but overall he was impaired in his daily functioning. Dr. Naseef stated that nightmares, flashbacks, panic attacks and lack of consistent shelter continued to be regular, if not daily problems. He stated that appellant was severely injured in the February 16, 1996 train crash and his life "continued to be impacted dramatically from the date of the incident." Dr. Naseef stated:

"Metaphorically, [appellant]'s life jumped off the track along with the train he was traveling home in on that holiday weekend.... Despite [his and the case manager's] concerted and coordinated efforts, appellant was unable to resume his

previous level of functioning despite his desire and efforts to do so. At crucial points, factors in his environment undermined his efforts to do as outlined in this report. [Appellant] is a person, who desperately needed a program like the Job Corps, but tragically the injuries he suffered in the accident disrupted the progress he had seemed to be making there and the hope he had developed for a meaningful and productive life.”

Dr. Naseef stated that clinically, recovery from post-traumatic stress syndrome “takes longer for those who have experienced previous traumas or those whose life situations are less than stable and supportive” He noted that appellant had encountered and survived multiple problems including having a history of childhood abuse, that he had some progress but also suffered significant setbacks in his recovery from the accident and his prognosis was guarded to poor.

By decision dated May 24, 1999, 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

The Board finds that the Office met its burden of proof to terminate medical benefits for the accepted physical conditions. In the present case, the February 5, 1997 opinion of the referral physician, Dr. Valentino, that appellant had physically recovered from the February 16, 1996 employment injury is well reasoned and uncontradicted and constitutes the weight of the medical evidence.

The Board finds that the Office has not met its burden of proof to terminate appellant’s compensation benefits. The January 30 and April 15, 1997 reports of the referral physician, Dr. Fenichel, who addressed appellant’s psychiatric condition, in which she stated appellant could return to work was contradictory, inconsistent and not based on evidence on the record. Her opinion, therefore, is not well rationalized and is not probative. In her January 30, 1997 report, Dr. Fenichel considered that appellant told her that he had hallucinations of his friends on the train everyday. She also considered that he was nervous “a lot,” had nightmares and heard voices in his head. Dr. Fenichel stated that appellant displayed some symptoms of post-traumatic stress disorder but stated that his presentation did not “suggest” post-traumatic stress disorder. She said there was no abnormality of the brain on Dr. Weiss’ tests and his cognitive test score showed 29 to 30. Dr. Fenichel concluded that appellant’s psychiatric condition was not causally related to the train accident but stated that he had a preexisting history of a head injury and a history of a chaotic family background and a chaotic living situation. She stated that

¹ *Wallace B. Page*, 46 ECAB 227, 29-30 (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).

her opinion was compatible with Dr. Naseef's opinion that appellant could return to work but not to work at Harpers Ferry.

Dr. Fenichel's diagnosis of appellant's condition is unclear as she stated appellant had symptoms of post-traumatic stress disorder but the condition had ceased. Further, the evidence of record does not show appellant had any residuals from his head injury after his discharge from the hospital on July 25, 1994. There is also no evidence that shows that prior to the accident because appellant's father verbally abused him by telling him he was retarded or stupid when he was a child, he had a preexisting psychological problem. Similarly, the evidence of record does not indicate that appellant had an unstable sleeping arrangement prior to the February 16, 1996 train accident. The fact that he fathered two children within a short time of each other does not in itself show he had any psychological problem prior to February 16, 1996. In his September 9, 1996 report, Dr. Weiss upon considering the cognitive test he performed, diagnosed, in part, post-traumatic stress syndrome. Dr. Fenichel also did not state which diagnostic tests of the brain performed by Dr. Weiss she relied on.

In her April 15, 1997 report, Dr. Fenichel's attempt to clarify her January 1997 report only made her opinion more inconsistent. In her April 15, 1997 report, contrary to the Office's finding, she stated that appellant did not develop post-traumatic stress disorder in response to the February 16, 1996 incident and his ongoing problems were related to his preexisting history of a head injury and a chaotic family background and a chaotic living situation. She did not address the connection between appellant having hallucinations of people on the train and his prior family history. Her opinion was also no longer compatible with Dr. Weiss' July 1997 opinion that appellant could not work. Dr. Fenichel's opinion, therefore, is not well-rationalized and did not justify the Office's termination of benefits.

Further, the opinion of appellant's treating physician, Dr. Naseef, is inconsistent and unclear. In his March 1997 opinion, he stated that appellant could return to work subject to not riding a train and not working at Harpers Ferry. In his July 19, 1997 opinion, Dr. Naseef noted that appellant had significantly regressed and was having hallucinations and hearing voices related to the train accident. He stated that appellant could no longer return to work, required psychiatric care and "most probably" required hospitalization. At his deposition dated November 6, 1998, Dr. Naseef stated that appellant's unstable sleeping arrangement and the complications of his fathering two babies within a month of each other might have contributed to his regression. He stated that part of the trouble appellant had, recovering from his post-traumatic stress syndrome was that he did not have support or structure as in taking his medication properly. Although in his July 1997 report, which apparently was the last time he treated appellant, he continued to have hallucinations, fears and worries associated with the train accident, at the deposition Dr. Naseef stated that he was "not sure" appellant continued to suffer from post-traumatic stress syndrome. He also stated at the deposition that appellant could return to work but did not explain what made his opinion change since July 1997 when he opined appellant could not return to work.

In his August 8, 1997 opinion, the district medical adviser adopted Dr. Fenichel's conclusions without any rationalized explanation and added his own opinion that appellant "regressed" in July 1997 because he had received the pretermination notice. His opinion is also not well rationalized.

Because there is no well-rationalized medical opinion of record establishing that appellant recovered from his post-traumatic stress syndrome and is able to work, the Office has not justified its termination of appellant's compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated May 24 and May 3, 1999 are hereby affirmed with respect to the finding that there are no residuals from the accepted physical conditions. The termination of compensation is reversed due to the Office's failure to meet its burden with respect to the accepted emotional condition.

Dated, Washington, DC
May 9, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member