

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAWRENCE E. DELOACH and DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE, Little Rock, AR

*Docket No. 02-733 & 02-1529; Submitted on the Record;  
Issued December 20, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant's diabetes, hypersomnia, rhinitis, kidney disorder and asthma are causally related to factors of his employment.

On November 8, 1991 appellant, then 43 years old, filed a claim for stress, arthritis, hypertension, depression and post-traumatic stress disorder which he attributed to factors of his employment as a criminal investigator. Appellant last worked in August 1991.

After referrals for second opinion evaluations in psychiatry, internal medicine and orthopedic surgery, the Office of Workers' Compensation Programs accepted that appellant sustained post-traumatic stress disorder, lumbar disc syndrome, cervical spondylosis, traumatic arthritis of the right ankle, degenerative joint disease of the right foot and aggravation of essential hypertension. The Office later also accepted aggravation of rotator cuff disease, and aggravation of arthritis of the right knee, shoulders, right wrist and right thumb.<sup>1</sup>

On November 23, 1991 the first day appellant was in a leave-without-pay status, the Office began payment of compensation for temporary total disability. The employing establishment terminated appellant from its rolls effective April 30, 1993.

By decision dated March 30, 1999, the Office found that the medical evidence did not support that appellant's diabetes was causally related to his federal employment. The Office noted that it had paid some claims for prescriptions for control of diabetes, and found that further medications for diabetes were not payable.

By letter dated April 19, 1999, appellant requested reconsideration of the Office's March 30, 1999 decision. The Office found that there was a conflict of medical opinion as to whether appellant's diabetes was causally related to his employment. To resolve this conflict,

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<sup>1</sup> The orthopedic injuries were the result of traumatic injuries to appellant's shoulder on June 14, 1983 and to his right ankle and knee on May 18, 1983.

the Office referred appellant, the case record and a statement of accepted facts to Dr. Kent Hensley, a Board-certified internist.

By decision dated August 12, 1999, the Office found that the weight of the medical evidence, represented by the reports of Dr. Hensley, established that appellant's diabetes was not causally related to his employment.

Appellant requested reconsideration.

By decision dated November 12, 1999, the Office found that appellant's August 16, 1999 request for reconsideration was insufficient to warrant modification of its prior decision. By decision dated December 27, 1999, the Office found that appellant's December 20, 1999 request for reconsideration was insufficient to warrant review of its prior decisions.

By letter dated December 29, 1999, appellant requested reconsideration and submitted a report from his attending Board-certified psychiatrist, Dr. Joe F. Bradley. By decision dated February 23, 2000, the Office found that Dr. Hensley's reports constituted the weight of the medical evidence.

By letter dated August 14, 2000, appellant requested reconsideration, contending that his diabetes resulted from muscle damage related to his accepted employment injuries. By decision dated September 18, 2000, the Office found that appellant's request was insufficient to warrant modification of its prior decisions.

By letter dated November 20, 2000, appellant requested reconsideration, and submitted a September 26, 2000 report from his attending Board-certified internist, Dr. Stephen Snyder, addressing the relationship between appellant's muscle damage and his diabetes.

By decision dated November 3, 2000, the Office found that the reports of Dr. Hensley constituted the weight of the medical evidence, and that appellant's request for reconsideration was not sufficient to warrant modification of its prior decisions.

By letter dated November 20, 2000, appellant requested reconsideration. By decision dated February 28, 2001, the Office found that appellant's request raised the same unsubstantiated arguments and was insufficient to warrant review of its prior decisions.

By letter dated September 4, 2001, appellant requested reconsideration, and submitted additional medical evidence including reports of magnetic resonance imaging (MRI) scans of his right shoulder and lumbar spine done in May 2001.

By decision dated December 28, 2001, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

By letter dated February 12, 2002, appellant requested an Office decision whether his chronic hypersomnia, rhinitis, kidney disorder and asthma were causally related to his employment.

By decision dated March 7, 2002, the Office found that appellant's chronic hypersomnia, rhinitis, kidney disorder and asthma were not causally related to his employment. The Office found that it may have paid for medications to treat these conditions in the past, but that such payment did not constitute acceptance of the conditions.

The Board finds that the weight of the medical evidence establishes that appellant's diabetes is not causally related to his employment.

There was a conflict of medical opinion as to whether appellant's diabetes is causally related to his employment. In a February 15, 1999 report, Dr. Snyder stated that employment-related depressive symptoms resulted in hyperphagia with weight gain, which contributed to appellant's obesity, which was "a primary factor that influences adult onset diabetes." Dr. Snyder also stated that the diuretics prescribed for appellant's hypertension and that steroids and nonsteroidal anti-inflammatory drugs prescribed for appellant's arthritis elevate blood sugar. Dr. Snyder concluded that "work[-]related stress precipitated, accelerated and has permanently aggravated [appellant's] diabetes." In a report dated February 22, 1999, Dr. Bradley stated that appellant's "work-related maladies" elevated his blood sugar, as did his use of diuretics, steroids and anti-inflammatory medications.

An Office medical adviser reviewed the medical evidence on March 24, 1999 and stated:

"While weight gain may well result from hyperphagia, and depressive symptoms may be associated with hyperphagia, PTSD [post-traumatic stress disorder] is not generally recognized as a cause of morbid obesity and/or diabetes. The record indicates the claimant has been overweight for years prior to the diabetes, with a weight as much as 252 pounds as early as September 2, 1986, and a weight of 333 pounds by December 19, 1991 (height of 5'11"). History is lacking as to the presence or absence of obesity in the family, but the claimant most likely has a familial associated primary obesity disorder, rather than a job-related obesity. It is not clear as to the date of onset of the diabetes (type 2), but a blood sugar on July 20, 1992 was normal at 95 mgm percent (N=70-110) and there is a physician's note of 'Questionable Diabetes' as of February 2, 1994. Dr. Snyder mentions diabetes as of February 23, 1993. Therefore, in my opinion, since there are indications that the claimant had obesity problems for years, the weight problem is not a result of the PTSD, but rather the natural progression of obesity. As far as the medication question, there is little evidence in the record to support significant use of chlorthiazides, and the steroid use was not prolonged, thus casting great doubt on a causal relationship."

The Board has found that an Office medical adviser can create a conflict of medical opinion, especially in cases where the diagnosis is clearly established and the issue is whether factors of employment caused or aggravated the diagnosed condition.<sup>2</sup> To resolve the conflict of medical opinion between the Office medical adviser and appellant's attending physicians, the

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<sup>2</sup> *Melvina Jackson*, 38 ECAB 443 (1987).

Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,<sup>3</sup> referred appellant to Dr. Hensley, a Board-certified internist.

In a report dated July 13, 1999, Dr. Hensley reviewed the prior medical evidence, and set forth appellant's history, symptoms and findings on physical examination and diagnostic testing. Dr. Hensley concluded:

"This patient has diabetes mellitus, type II. This diagnosis is based on the presence of multiple fasting blood sugars greater than 140. His diabetes has developed in association with exogenous obesity. A review of his records reveals that his weight has gradually increased throughout his adult life. Dr. William Blankenship in a note dated October 25, 1988 states that the patient had at that time 'moderate exogenous obesity.' His weight on September 28, 1988 was 292 and weight on December 9, 1988 was 280. The patient subsequently went off work on July 30, 1991.

"After review of the case record, the statement of accepted facts, the patient's history as provided, and the physical examination and subsequent testing, it is my opinion that this patient's diabetes, which has developed in association with obesity, was not caused, aggravated, accelerated, or precipitated by his employment and associated stresses. His current diabetic disease is considered mild and in itself results in no functional limitation. He would profit greatly from weight reduction and I would anticipate with significant weight reduction that his diabetic medications can be reduced if not stopped all together. He appears to have reasonable current control."

By letter dated July 22, 1999, the Office requested a supplemental report from Dr. Hensley addressing the cause of appellant's weight gain. In a report dated July 22, 1999, Dr. Hensley stated:

"In my opinion, this patient's weight gain developed gradually over many years as a result of personal choice. In my opinion, his weight gain was unrelated to the accepted medical conditions as described in my original report. Furthermore, it is my opinion that the medications utilized for treatment of his accepted medical conditions did not significantly aggravate his weight gain. Amitriptyline has been associated in some patients with weight gain, but it also has been associated in some patients with weight loss. Therefore, it is my opinion that this particular drug as well as his other medications played no role in his developing obesity. His arthritic condition would certainly interfere with physical activity but, in my opinion, physical inactivity is inadequate to explain his weight gain to his current 338½ pounds."

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<sup>3</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>4</sup>

The Board finds that Dr. Hensley's report was based on a proper factual background and contains sufficient rationale to constitute the weight of the medical evidence. Dr. Hensley explained why he believed appellant's diabetes was related to his obesity, and why his obesity was not related to his accepted conditions or the medications prescribed for those conditions.

A September 26, 2000 report from Dr. Snyder posited a new theory how appellant's diabetes was related to his employment: it began with insulin resistant muscles, which were contributed to by residuals of appellant's employment injuries to his musculoskeletal system and by his large muscle mass from participating in mandatory employment-related physical fitness from 1978 to 1991. Dr. Snyder concluded that the "gradual degenerative process" of the accepted musculoskeletal injuries "established the causal relationship of diabetes to [appellant's] former employment." This new theory, advanced only after appellant's claim for diabetes was denied by the Office, is too speculative to meet appellant's burden of proof. Dr. Snyder provided no explanation how the elevated enzymes or the skeletal muscle damage caused appellant's diabetes, or why he believed appellant's diabetes began with insulin resistant muscles.

The Board finds that appellant has not established that his rhinitis and asthma conditions are causally related to his employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.<sup>5</sup>

There is no medical evidence that appellant has asthma. In a report dated December 10, 1998, Dr. Snyder's diagnoses included acute sinusitis and acute bronchitis, but Dr. Snyder did not attribute these conditions to appellant's employment. The fact that the Office may have paid expenses related to treatment of these or other conditions does not constitute acceptance of such conditions.<sup>6</sup>

The Board finds that appellant has not established that he has a kidney disorder that is causally related to his employment.

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<sup>4</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>5</sup> *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>6</sup> *Louis G. Psyra*, 39 ECAB 264 (1987).

In reports dated January 10, 1996 and October 2, 1997, Dr. Bradley stated that the medications for appellant's arthritis damaged his kidneys, but did not state what medications were involved. Dr. Snyder mentioned a renal disorder in a September 28, 1998 report. The case record does not contain a firm diagnosis of a kidney condition, or a rationalized medical opinion on the causal relation between such condition and appellant's employment. Appellant has not met his burden of proof on this condition.

The Board finds that further development is needed on the issue of whether appellant has a sleep disorder causally related to his employment.

In a report dated October 18, 1991, Dr. Bradley stated that since July 1991 appellant had been so tense he was only sleeping about four hours per night. Dr. S. Michael Jones diagnosed a sleep disturbance in a December 19, 1991 report. Dr. Philip H. Johnson diagnosed sleep apnea in a February 21, 1994 report, as did Dr. Snyder in a March 23, 1993 report. In a report dated October 16, 1998, Dr. Bradley stated that appellant's post-traumatic stress disorder had exacerbated his sleep apnea. In a report dated December 30, 1999, Dr. Bradley stated that appellant's sleep disturbance was a physical symptom caused by psychological factors including his post-traumatic stress disorder, and also stated that appellant's employment-related conditions had precipitated latent conditions such as sleep apnea "that very likely would not have manifested themselves at this time if it were not for the patient's employment and subsequent stress and disability therefrom."

In a report dated August 10, 1992, Dr. Warren Douglas, the Board-certified psychiatrist to whom the Office referred appellant for a second opinion evaluation, indicated that appellant's post-traumatic stress disorder had affected his sleep problem, and that difficulty sleeping was one of appellant's symptoms of post-traumatic stress disorder, which is an accepted condition. Dr. Douglas stated: "I did not include sleep disorder in the diagnoses because it has not been proven with a sleep study, but I strongly suspect it is present."

Although there is no rationalized medical report, the medical evidence suggests that appellant has a sleep disorder related to his accepted post-traumatic stress disorder. The Office should consider further development as recommended by Dr. Douglas, and should issue a decision whether appellant has a sleep disorder causally related to his employment.

The December 28, 2001 decision of the Office of Workers' Compensation Programs is affirmed. The March 7, 2002 Office decision is affirmed in part, and set aside in part as described in the above decision of the Board.

Dated, Washington, DC  
December 20, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member