U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT GUZMAN and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, East Haven, CT

Docket No. 01-225; Submitted on the Record;
Issued January 18, 2002

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation; and (2) whether appellant had any continuing disability or residuals after October 5, 1999 causally related to his November 12, 1995 work injury.

The Office accepted that on November 12, 1995 appellant, then a 29-year-old electronics technician, sustained a cervical sprain and left shoulder strain and impingement syndrome, while he was attempting to lift a heavy steel manhole cover. On August 9, 1996 appellant underwent arthroscopic surgery on his left shoulder and began receiving appropriate compensation.

Appellant was referred to Dr. David N. Greenblum, a Board-certified psychiatrist and neurologist, along with a statement of accepted facts and the medical evidence of record, for a second opinion examination. In a report dated April 21, 1999, Dr. Greenblum stated: "[Appellant's] related history of depression following his chronic pain condition is consistent with depression following an industrial injury resulting in chronic pain." He stated that appellant was suffering from severe depression, which would interfere with his ability to work.

The Office also referred appellant to Dr. Donald E. Pearson, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated July 19, 1999, Dr. Pearson opined that appellant's impingement syndrome of the left shoulder had resolved. He stated that appellant's main complaints were subjective with no significant objective findings. Dr. Pearson also indicated that appellant could return to work with virtually no restrictions, except no lifting more than 25 pounds and no repetitive overhead work.

The Office also received an August 19, 1999 supplemental report from Dr. Greenblum. After reading Dr. Pearson's July 19, 1999 report, he revised his opinion and stated:

> "[Appellant's] major depression as related to his chronic pain appears to be less related to his industrial injury and more towards underlying factors in his

personality. These underlying factors are related to his family problems and his own unique personality."

Dr. Pearson added that the major factors contributing to appellant's chronic pain syndrome are not related to the 1995 industrial injury.

The Office issued a notice of proposed termination on August 31, 1999 based on the July 19, 1999 report from Dr. Pearson and the August 19, 1999 supplemental report from Dr. Greenblum, which indicated that appellant's injury-related disability and condition had ceased.

By decision dated October 5, 1999, the Office finalized the proposed termination of compensation.

Appellant requested an oral hearing, which was held on February 29, 2000.

In support of his claim, appellant submitted a March 30, 2000 telephone deposition from Dr. Jose R. Gonzalez, a Board-certified psychiatrist, who stated:

"I believe that the accident in the workplace was the most important factor that triggered the onset of the depression, which led to the dissolution of the marriage and which has led to the present situation of an individual who has chronic pain syndrome."

The Office also received a March 20, 2000 telephone deposition from Dr. Stanley Golovac, who examined appellant on January 7, 2000 and found that he had a "sensory deficit of the upper left arm, left shoulder, left forearm and left hand, consistent with some type of impingement from a nerve or nerve root structure in the cervical area." When asked whether appellant's sensory deficits and his diagnosis were related to the November 12, 1995 work injury, Dr. Golovac stated: "Having not had any symptomology prior to this accident, to develop something spontaneously without an event would be highly unlikely."

On September 20, 1999 Dr. Gonzalez indicated that he disagreed with Dr. Greenblum's opinion, stating that a major contributing factor to appellant's depression was his industrial injury. Dr. Gonzalez added that appellant had no history of psychiatric treatment before his November 12, 1995 injury and that as a consequence of the pain following the accident, he developed a clinical depression which presented a heavy burden on his marriage. Dr. Gonzalez also noted that Dr. Greenblum himself agreed that none of appellant's physicians had ever suggested that appellant was malingering or exhibiting signs of a factitious medical condition.

On July 24, 2000 the Office hearing representative found that the Office properly terminated appellant' compensation on the grounds that the accepted work injuries had resolved.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,[1] once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.[3] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.[4] In order to prevail, 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.[5]

The Board finds that the weight of the medical evidence in this case establishes that appellant's employment-related cervical, left shoulder sprains and impingement syndrome have resolved.

In his July 19, 1999 report, Dr. Pearson concluded that there were no objective findings of a current condition related to the cervical and lumbar strains that occurred on November 12, 1995. He stated that there was no evidence of objectivity in the examination. Dr. Pearson concluded that the effects of the November 12, 1995 employment injury had ceased. His opinion was based on an accurate factual and medical history and a thorough examination of appellant. Dr. Pearson also offered medical reasoning to support his conclusion.

Appellant submitted a March 20, 2000 telephone deposition from Dr. Golovac. He diagnosed appellant with cervicalgia with left arm radiculopathy, which was not accepted as related to the November 12, 1995 work injury. Therefore, Dr. Golovac's report is insufficient to show that appellant has any work-related physical disability.

The Board finds, however, that the medical reports regarding appellant's emotional condition have created a conflict in the medical opinion evidence regarding whether appellant's depression is causally related to his work injuries.

Dr. Gonzalez opined in his telephone deposition that the November 12, 1995 incident was "the most important factor that triggered" appellant's depression due to chronic pain. Dr. Greenblum, who initially found appellant's depression related to the accepted injury, revised his opinion on August 19, 1999 and stated that appellant's depression due to chronic pain from his work injury was more related to personality factors and family problems.

Inasmuch as Dr. Gonzalez was appellant's physician and Dr. Greenblum was the Office's referral physician, their opinions have created a conflict in the medical opinion

[1] 5 U.S.C. §§ 8101-8193.

[2] *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

[3] *Id*.

[4] *Virginia Davis-Banks*, 44 ECAB 389 (1993).

[5] *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

evidence, which must be resolved pursuant to section 8123(a) of the Act.[6] Thus, the Board will remand this case to the Office to resolve the conflict.

The July 24, 2000 decision of the Office of Workers' Compensation Programs is affirmed and the case is remanded for further development to resolve the issue of whether appellant developed consequential injury.

Dated, Washington, DC
January 18, 2002

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[6] 5 U.S.C. § 8123(a) (if there is disagreement between the physician making the examination for the government and the physician of the employee, the Office shall appoint a third physician who shall make an examination).