

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THEODORE R. VALDEZ and DEPARTMENT OF DEFENSE,
DEFENSE CONTRACT ADMINISTRATION, El Segundo, CA

*Docket No. 02-1598; Submitted on the Record;
Issued November 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability in May 1991; and (2) whether he suffers psychiatric residuals.

In the first appeal of this case,¹ the Board found that the Office of Workers' Compensation Programs had not met its burden of proof to justify rescinding acceptance of appellant's claim. The Office had accepted appellant's claim for adjustment disorder with mixed emotional features. Appellant later claimed a recurrence of disability beginning May 19, 1991, but in a decision dated September 14, 1992 the Office determined that appellant's initial claim of an employment injury was founded on work-connected events that were not compensable under the Federal Employees' Compensation Act. The Board reversed the rescission because the Office failed to consider two factors previously found to be compensable. By not addressing these prior findings, the Office had not met its burden of proof.

In the second appeal of this case,² the Board found that there was a conflict in medical opinion necessitating referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a). The Office referral psychiatrist had reported that appellant had no currently diagnosable psychiatric condition, had never suffered from a disabling psychiatric or psychological condition and was not disabled when he stopped work in May 1991. No current psychiatric treatment was required or recommended. Appellant's attending clinical psychologist disagreed. Having supported appellant's claim of recurrence, he reported that treatment of the industrial injury was continuing and that the claimed emotional condition in May 1991 occurred solely and exclusively secondary to accepted employment factors. The Board remanded the case for referral to a referee medical specialist to resolve the conflict. The facts of this case as set forth in the Board's prior opinions are hereby incorporated by reference.

¹ Docket No. 93-1685 (issued March 7, 1995).

² Docket No. 00-1722 (issued June 7, 2001).

On remand the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Jerome H. Franklin, a Board-certified psychiatrist, to resolve the outstanding conflict.

In a report dated January 21, 2001, Dr. Franklin stated that he saw appellant obtaining the history and making a diagnosis. He reviewed the statement of accepted facts, summarized the medical record and described his interview with appellant. Dr. Franklin related appellant's current work status, current medical treatment, current symptomatology, general health, social history, history of present illness, past history, medical history and mental status evaluation. He reported the following principal diagnosis: "(1) Occupational problem. (2) No acute psychiatric diagnosis at the present time. (3) History of possible substance abuse, sustained partial remission."

Dr. Franklin explained that, while appellant was exposed to situational stress prior to leaving work in May 1991, stress did not interfere with his ability to function at his usual and customary job. Appellant indicated that he was doing a superior job; therefore, by definition, he did not appear to have been disabled as a result of the acute situational stress. The situational stress led to his being very angry but not disabled. Appellant's attending physician described no clinical anxiety or depression on November 17, 1989, when appellant was working on a full-time basis. Based on this and the history obtain from appellant, Dr. Franklin concluded that appellant had no clinical anxiety or depression during the course of his employment.

Appellant stopped work on the advice of his physicians, who allegedly told him he would have a stroke if he continued under the same circumstances, but there was no indication from the records that appellant's blood pressure was at dangerous levels. Further, there was nothing to indicate "and absolutely no proof" to support the diagnosis of psychological factors affecting physical condition. Dr. Franklin added:

"As noted, [appellant] did perceive situational stress during the course of his employment but that situational stress did not lead to a specific diagnosis nor did it lead to work-related disability. [Appellant] was always capable of performing his usual and customary job and by his own admission would have continued doing so had he not been transferred. Once again, his reason for leaving the job was based on the fact that his doctors were afraid that were he to stay in that situation, his condition would have become worse and he might have had a stroke. Of course, this is all speculation and in fact [appellant] never developed a stroke. Furthermore, there appear to have other serious factors affecting his overall condition and performance in the form of alcohol abuse that do not seem to have been taken into serious consideration by any of his treating physicians.... Unquestionably, this would have had an effect on his work status and may well have been responsible for the periods of time that he missed from work. This is a common side effect of alcohol abuse."

In a decision dated May 16, 2002, the Office found that the weight of the medical evidence, as represented by the opinion of Dr. Franklin, established that appellant was not suffering from a disabling psychological condition when he stopped working in May 1991 and had no injury-related residuals.

The Board finds that appellant did not sustain a recurrence of disability in May 1991 and suffers no psychiatric residuals.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.³

As the Board found in the last appeal, a conflict arose between the Office referral psychiatrist and appellant's attending clinical psychologist on the issues of recurrence and continuing residuals. Section 8123(a) of the Act provides in 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."⁴

To resolve the conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Franklin, a Board-certified psychiatrist, who concluded that appellant was exposed to situational stress prior to leaving work in May 1991, but this stress lead to no clinical anxiety or depression or specific diagnosis, nor did it interfere with appellant's ability to function at his usual and customary job.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to a referee medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁵

The Board finds that Dr. Franklin's opinion is based on a proper factual and medical background and is sufficiently well rationalized that it must be accorded special weight in resolving the conflicts in this case. As the weight of the medical evidence establishes that appellant sustained no recurrence of disability in May 1991 and that he suffers no psychiatric residuals, the Board will affirm the Office's May 16, 2002 decision.

³ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁴ 5 U.S.C. § 8123(a).

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The May 16, 2002 Office of Workers' Compensation Programs' decision is hereby affirmed.

Dated, Washington, DC
November 8, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member