

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDUARDO N. SIGUEL and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH, Bethesda, MD

*Docket No. 02-1905; Submitted on the Record;
Issued November 12, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained disability after June 16, 1978 due to his employment injury.

This is the second appeal in the present case.¹ In a November 20, 2001 decision, the Board set aside an April 3, 1998 decision of the Office of Workers' Compensation Programs and remanded the case for further development. The Board determined that the Office properly terminated appellant's compensation after June 16, 1978 based on the well-rationalized February 20, 1991 opinion of Dr. Bernard Aserkoff, a Board-certified internist specializing in gastroenterology.² The Board found that appellant submitted additional medical evidence from attending physicians which created a new conflict in the medical opinion evidence regarding whether he had employment-related disability after June 16, 1978.³ The Board explained that, given it had found the Office properly relied on the opinion of Dr. Aserkoff to terminate appellant's compensation effective June 16, 1978, the burden shifted to appellant to establish that he was entitled to compensation after that date. The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

¹ Docket No. 98-2175.

² The Office had accepted that appellant sustained a temporary aggravation of preexisting Crohn's disease due to the stress of his work duties, which included managing the collection of data relating to drug usage and treatment, extensive travel and having discrimination suits filed against him and his agency. Appellant stopped working for the employing establishment on June 16, 1978.

³ Appellant submitted several reports, including those dated January and February 9, 1993, in which Dr. Peter Schlesinger, an attending Board-certified internist, determined that he continued to have residuals of his employment injury. Appellant also submitted several reports, including a report dated November 4, 1993, in which Dr. Robert Lerman, an attending Board-certified internist specializing in nutrition, determined that he continued to have disability after June 16, 1978 due to his accepted employment injury. In contrast to the opinion of appellant's attending physicians, Dr. Aserkoff determined that appellant ceased to have disability due to his accepted employment injury after June 16, 1978.

On remand the Office referred appellant and the case record to Dr. Joseph J. Genovese, Jr., a Board-certified internist specializing in gastroenterology, for an impartial medical examination and an opinion regarding whether appellant had employment-related disability after June 16, 1978. By decision dated June 12, 2002, the Office denied appellant's claim that he sustained employment-related disability after June 16, 1978. The Office determined that the weight of the medical evidence rested with Dr. Genovese, the impartial medical specialist selected to resolve the conflict in the medical evidence.

The Board finds that the case is not in posture for decision regarding whether appellant sustained disability after June 16, 1978 due to his employment injury.

As noted above, the Office properly terminated appellant's compensation effective June 16, 1978. In accordance with the Board's November 20, 2001 decision, the Office then properly referred appellant and the case record to Dr. Genovese, a Board-certified internist specializing in gastroenterology, because appellant had submitted evidence after the Office's termination which created a new conflict in the medical evidence regarding whether he had employment-related disability after June 16, 1978.⁴

In a situation where there exist 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 upon a proper factual background, must be given special weight.⁵ However, in a situation where the opinion of an impartial medical examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.⁶

In his May 2, 2002 report, Dr. Genovese provided a brief summary of appellant's medical history. He indicated that he examined appellant and stated that he appeared to have ongoing Crohn's ileocolitis with partial small bowel obstruction and some degree of mal-absorption. With regard to appellant's employment-related disability, Dr. Genovese stated:

"In my opinion, the claimant did not have employment-related disability. My reading of the medical literature indicates the connection between stress and Crohn's disease is not clear. Stress may exacerbate symptoms of Crohn's, but in my opinion, the direct relationship of a stressful event and the natural history of Crohn's is unknown. Given that he left employment in June 16, 1978, my opinion would be that there is no employment-related disability after leaving employment."

⁴ Section 8123(a) of the Act provides 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." 5 U.S.C. § 8123(a).

⁵ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁶ *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

The Board finds that the opinion of Dr. Genovese is in need of clarification and elaboration. Despite the fact that appellant has had extensive treatment for Crohn's disease for well over 25 years, Dr. Genovese provided only a cursory review of appellant's factual and medical history. Although he indicated that he examined appellant, he did not provide any notable findings of this examination, nor did Dr. Genovese discuss the nature of the accepted employment injury in any detail, including the work stressors which were accepted as aggravating appellant's preexisting Crohn's disease. He did not provide any extensive medical rationale in support of his opinion that appellant's employment-related disability ended when he stopped work on June 16, 1978.⁷ For example, he did not adequately explain why appellant's disability would not continue for at least some period after he stopped being exposed to employment factors on June 16, 1978.

Therefore, in order to resolve the continuing conflict in the medical opinion, the case will be remanded to the Office for referral of the case record, a statement of accepted facts, and, if necessary, appellant, to Dr. Genovese for a supplemental report regarding whether appellant had employment-related disability after June 16, 1978. If Dr. Genovese is unwilling or unable to clarify and elaborate on his opinion, the case should be referred to another appropriate impartial medical examiner.⁸ After such further development as the Office deems necessary, an appropriate decision should be issued.

The decision of the Office of Workers' Compensation Programs dated June 12, 2002 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
November 12, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Dr. Genovese discussed medical literature which cast doubt upon the link between stress and Crohn's disease, but it has been accepted that stress aggravated appellant's preexisting Crohn's disease.

⁸ See *Harold Travis*, 30 ECAB 1071, 1078-79 (1979).