U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALAN J. CARELL and DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, Salem, OR

Docket No. 01-1514; Submitted on the Record;
Issued October 10, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO, MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating benefits effective February 8, 1999; and (2) whether appellant has established continuing disability after February 8, 1999.

On July 9, 1987 appellant filed an occupational disease claim alleging that on November 10, 1986 he first realized that his psychological condition was employment related.[1] The Office accepted the claim for depression and major affective disorder and placed him on the automatic rolls to temporary total disability by letter dated January 19, 1988.

On January 11, 1989 and June 20, 1990 the Office reduced appellant's compensation based upon appellant's actual wages as part-time English instructor effective September 21, 1987.

In a report dated July 7, 1997, Dr. Harold Boverman, a second opinion Board-certified psychiatrist, diagnosed "a long[-]standing personality disorder" and that "psychological stressors, from his point of view, are major and identified as those related to his job with the National Guard. From my point of view, the current major stressor is the lack of resolution regarding the conflict with the National Guard."

In response to the Office's request for clarification, Dr. Boverman concluded that appellant's condition was "permanent, but not because of the particulars of the original external situation." He also opined that the employment factors aggravated appellant's preexisting condition and did "not believe that any of them aggravated his condition any more than it would have been aggravated by ordinary living circumstances."

On July 17, 1998 the Office issued a proposed notice of termination of benefits.

[1] The employing establishment terminated appellant's employment effective July 19, 1987.

Appellant's representative disagreed with the proposal to terminate his benefits and submitted evidence and argument in support of his request by letter dated August 13, 1998.

In a report dated August 13, 1998, Dr. George W. Tinker, an attending clinical psychologist, diagnosed appellant as severely depressed and opined that "the proposed termination of his medical claim is premature." Dr. Tinker further opined that, even though "the incidents occurred [10] years ago, the lack of satisfactory closure and reinstatement of status and benefits have contributed to the ongoing relationship between his psychological condition and the workplace stress."

On December 3, 1998 the Office referred appellant to Dr. Eric E. Goranson, a Board-certified psychiatrist, to resolve the conflict in the medical opinion evidence between Dr. Harold Broverman, the second opinion Board-certified psychiatrist, and Dr. Tinker, the attending psychologist, regarding the issue of whether appellant continued to suffer from residuals of his accepted condition.

In his report dated December 15, 1998, Dr. Goranson, based upon a review of the medical evidence, statement of accepted facts and examination, concluded that "the aggravation is more a result of the personality disorder rather than as a result of the alleged problems in the workplace." He further opined that appellant did not have "a diagnosis that is related to the workplace" and diagnosed a "mixed personality disorder with obsessive-compulsive, passive-aggressive and paranoid traits" unrelated to his federal employment. Dr. Goranson also concluded that he "saw little evidence of psychosocial stressors today other than those that are created by [appellant] in his struggles to maintain his contact in a hostile antagonistic struggle with the National Guard with respect to this claim."

By decision dated February 8, 1999, the Office finalized the termination of appellant's compensation benefits on the basis that appellant had no residual disability due to his accepted employment injury.

In a letter dated February 7, 2000, appellant's representative requested reconsideration and submitted medical evidence in support of his request.

In a January 30, 2000 report, Dr. Tinker diagnosed depression, personality disorder, obesity, job-related stress, hypertension, psoriatic arthritis, job-related back, knee and neck injuries and irritable bowl. The psychologist opined that appellant's psoriatic arthritis, hypertension, chronic pain and irritable bowel syndrome were due to his job-related depression and stress. Dr. Tinker opined that appellant was "not psychologically stationary" and that his "depression continuous because of the unresolved issues surrounding his employment and his fear of encountering a similar situation."

In a report dated January 31, 2000, Dr. Kenneth G. Paltrow, a Board-certified psychiatrist, diagnosed recurrent and severe depression without psychotic features due to stressors of appellant's federal employment. Dr. Paltrow opined there were no nonwork

stressors and concluded appellant was disabled and continued to suffer "residuals from employment factors (stressors) considered to have occurred while in the performance of duty." In support of his conclusion, the psychiatrist noted:

> "[Appellant] could not return to the work setting where he experienced stressors which caused the disorder. His belief that he lost his reputation, that he never expects to get out of dispair, that he feels hopeless and out-gunned, precludes returning to that work site."

By decision dated May 16, 2000, the Office denied modification of the prior decision.

Once the Office accepts 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.

In the present case, the Office based its decision to terminate appellant's compensation as of December 15, 1998 report of Dr. Goranson's referee medical opinion. When there are opposing medical reports of virtually equal weight, the case must be referred to an impartial medical specialist to resolve the conflict in the medical opinion.[2] The opinion of the impartial medical specialist, if based on a proper factual background and sufficiently well rationalized, must be given special weight.[3] After reviewing appellant's medical records, the statement of accepted facts and indicating findings on examination, Dr. Goranson opined that appellant did not have "a diagnosis that is related to the workplace" and appellant's "mixed personality disorder with obsessive-compulsive, passive-aggressive and paranoid traits" was unrelated to his federal employment. Dr. Goranson further opined that he "saw little evidence of psychosocial stressors today other than those created by [appellant] in his struggles to maintain his contact in a hostile antagonistic struggle" with the employing establishment on his claim.

The Board finds that Dr. Goranson's opinion is sufficiently probative and well rationalized to merit the special weight accorded a referee medical examiner. Therefore, the Office properly relied on Dr. Goranson's opinion that appellant's accepted psychiatric condition, depression and major affective disorder, had resolved. Therefore, the Office's finding that his opinion represented the weight of the medical evidence in its February 8, 1999 termination decision was correct.

The Board finds that appellant has not established continuing disability after February 8, 1999 due to his accepted employment injury.

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[2] Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f 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." *See* 5 U.S.C. § 8123(a); *Melvina Jackson*, 38 ECAB 443 (1987).

[3] *Jane B. Roanhaus*, 42 ECAB 288 (1990).

After termination or modification of benefits, the burden for reinstating compensation shifts to appellant. 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.[4]

Causal relationship must be established by rationalized medical opinion evidence. The medical evidence appellant submitted following the Office's February 8, 1999 termination decision was not sufficient to meet this burden. The reports submitted by Dr. Tinker fail to provide a rationalized, probative opinion that appellant continued to suffer residual disability from his accepted psychiatric condition. Dr. Tinker attributed appellant psoriatic arthritis, hypertension, chronic pain and irritable bowel syndrome to appellant's employment-related depression and stress based on his findings and conclusions in previous reports. Dr. Tinker also diagnosed additional psychiatric conditions, which had never been accepted by the Office and for which he did not provide sufficient medical documentation. Thus, his opinion is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.[5]

Following the Office's February 8, 1999 decision, appellant submitted several reports, which included a January 30, 2000 report from his psychologist and a January 31, 2000 report from Dr. Paltrow.

The Board finds that the January 30, 2000 report from Dr. Tinker, which concluded that appellant's depression was due to "unresolved issues surrounding his employment and his fear of encountering a similar situation" is insufficient to support any continuing disability due to his accepted employment injury. The Board has held that an additional report from a claimant's treating physician who had been on one side of a conflict, which was to be resolved by the impartial medical specialist is insufficient to overcome the weight accorded the impartial medical specialist's report or to create a new conflict.[6]

The medical report of record from Dr. Paltrow does not contain sufficient medical rationale to support the notion that appellant continued to suffer from the effects of his accepted employment injury. In his report, Dr. Paltrow attributed appellant's severe and recurrent depression to his federal employment. Furthermore, the psychiatrist opined that appellant continued to suffer "residuals from employment factors (stressors) considered to have occurred while in the performance of duty." While Dr. Paltrow attributes appellant's current disability to his employment injury, he failed to provide medical reasoning explaining why he believes that the accepted employment events and the fact that appellant has not worked at the employing establishment since July 19, 1987, continue to affect appellant's mental and emotional conditions. The only reason Dr. Paltrow gave for appellant's continuing disability was that appellant was unable to return to the employing establishment. Therefore, this report is

[4] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

[5] *William C. Thomas,* 45 ECAB 591 (1994).

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

insufficient to meet appellant's burden of proof in establishing continuing disability causally related to his accepted employment factors.

As appellant has failed to submit the necessary rationalized medical opinion evidence based on a proper factual background, he has failed to meet his burden of proof in establishing continuing disability causally related to his federal employment.

The May 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 10, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member