U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES M. BOYD and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

Docket No. 01-2238; Submitted on the Record;
Issued October 16, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant had any disability for work or injury residuals requiring further medical treatment after November 8, 1997, causally related to his accepted adjustment disorder.

The Office of Workers' Compensation Programs accepted that on November 26, 1991 appellant, then a 43-year-old supervisor express mail coordinator, sustained an adjustment disorder causally related to several compensable factors of his employment. Appellant received appropriate compensation benefits.

Appellant's treating physicians and other treating health care specialists provided multiple reports over time opining that he remained totally disabled from an emotional condition due to employing establishment factors.

On May 25, 1993 the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Milton F. Gipstein, a Board-certified psychiatrist, for a second opinion evaluation.

By report dated June 15, 1993, Dr. Gipstein noted that appellant's presenting complaints, reviewed his factual and medical history, performed a mental status examination and diagnosed adjustment disorder with depressed mood. He opined in answer to Office questions that appellant's accepted condition was approximately 90 percent resolved and that he was no longer disabled as a result of the accepted condition.

In 1994 the Office subsequently referred appellant for vocational rehabilitation.

More reports addressing appellant's ongoing disability were subsequently provided from appellant's treating physicians and other health care professionals, as were vocational rehabilitation reports.

On April 28, 1997 the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Jeffrey L. Metzner, a Board-certified psychiatrist, for another second opinion examination. By reports dated May 19 and June 9, 1997, Dr. Metzner reviewed appellant's factual and medical history, noted that his presenting complaints, conducted a mental status examination and opined that, based upon his findings, appellant's current condition and poor coping skills were as a result of his personality disorder and were not due to ongoing stressors related to compensable factors in his previous employment.

On September 18, 1997 the Office advised appellant that it proposed termination of his wage-loss compensation as the weight of the medical evidence of record established that he had no further work-related disability. The Office gave appellant 30 days within which to submit additional evidence if he disagreed with the proposed action.

Appellant objected to the proposed action by letter dated September 19, 1997. He argued that he was denied a copy of Dr. Metzner's reports. By letter dated October 6, 1997, appellant through his representative again objected to the proposed termination and claimed that further medical evidence was going to be submitted. However, nothing further was forthcoming.

By decision dated October 21, 1997, the Office finalized the proposed termination of appellant's entitlement to wage loss and medical benefits based on Dr. Metzner's report. The Office found that there were "no objective findings of a disabling psychological condition."[1]

By letter dated November 3, 1997, appellant disagreed with the Office decision and requested an oral hearing before an Office hearing representative. In support he submitted an October 29, 1997 report, from a psychiatric nurse who was treating appellant.

Also in support appellant submitted a December 20, 1997 report, from Dr. Gipstein, to whom he had been sent by his representative, who now saw appellant outside of the capacity of the Office selected second opinion specialist he had been in 1993. Dr. Gipstein referred to the 1993 second opinion specialist report and incorporated it by reference, noted that the sole purpose of the present interview was updating his 1993 report, noted that no physician/patient relationship was being established and that indicated that no medical advice or treatment was being rendered. Dr. Gipstein reviewed appellant's factual and medical history, including the "fact" that appellant was wounded in Vietnam, from which he continued to experience residuals and Dr. Gipstein reexplained his conclusions from his 1993 report. Dr. Gipstein opined that no one single satisfactory job had been found for appellant, that his 1993 conclusion regarding resolution of appellant's adjustment disorder was predicated upon his attainment of gainful employment and that, as that critical milestone had never been achieved, appellant's adjustment disorder was exacerbated rather than ameliorated. Dr. Gipstein reported appellant's presenting symptoms, noted that he had regularly been seeing a psychiatric nurse for treatment and indicated that appellant stood by the diagnostic formulation he had documented in 1993. He opined that appellant continued to suffer from an adjustment disorder from contributing compensable work factors and he indicated disagreement with the findings of Dr. Metzner.

[1] The Board notes that there is no such thing as objective residuals of a psychological condition.

A hearing was held on December 8, 1998 at which appellant testified.

By decision finalized March 23, 1999, the hearing representative affirmed the October 21, 1997 termination decision, finding that the weight of the medical opinion evidence was constituted by Dr. Metzner's report. The hearing representative found that Dr. Gipstein's opinion that appellant continued to be disabled was of diminished probative value as the ongoing anxiety disorder condition was found not due to compensable factors of employment but was, rather, found to be due to the employing establishment's failure to accommodate appellant with reemployment in his present condition.

By letter dated March 3, 2000, appellant requested reconsideration. In support he submitted a February 3, 2000, updated report from Dr. Gipstein. He restated his 1993 conclusions, noted his ongoing symptoms and opined that appellant had slipped over the preceding six years. He opined that appellant had current objective findings of an adjustment disorder, indicating that appellant met the criteria in the DSM-IV[2] for an adjustment disorder, that a combat veteran with PSTD was analogous to appellant's situation, as he felt appellant had suffered an enormous, catastrophic blow to his self-esteem due to work stressors and that appellant continued to be totally and permanently disabled due to an adjustment disorder with depressed mood, without the contribution of any nonwork-related emotional conditions.

The Office then determined that a conflict in medical evidence existed between the reports of Dr. Metzner, as the current Office-selected second opinion specialist and Dr. Gipstein, now acting independently in the role of appellant's physician as chosen by his representative, and on May 31, 2000 it referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Bert S. Furmansky, a Board-certified psychiatrist, for an impartial medical examination to resolve the conflict.

By report dated June 13, 2000, Dr. Furmansky reviewed appellant's factual and medical history, noted that his complaints on presentation and noted that the discrepancies between the facts as appellant presented them and the facts as supported by the records. Dr. Furmansky noted that although appellant claimed to have been drafted out of college, Fitzsimmons Army Medical Center records revealed that he had quit high school to join the military. He noted that although appellant claimed to have fractured his left leg in a helicopter accident in Vietnam, appellant was never a helicopter mechanic in Vietnam and fractured his left leg when in an automobile accident. Dr. Furmansky noted that although appellant claimed to have been enrolled in a Master's degree program, he could not have been as he had not completed a Bachelor's degree program. Although appellant claimed that after being employed 90 days he was transferred to a position as supervisor of building and equipment, the records reflected that he actually remained in an entry level position for seven months. He noted that although appellant stated that he was a maintenance control supervisor for 17 years, the records reflected otherwise. Thereafter Dr. Furmansky indicated that appellant was transferred to the express mail manager position, about which he knew nothing and received no training and claimed that he was very uncomfortable being responsible for 135 stations without having any control over them or knowledge of the system. He further noted that after being transferred to the management

[2] The diagnostic criteria of the DSM-IV are based upon subjective presentation.

information systems office appellant was removed after 30 days and advised that the employing establishment could no longer accommodate him.

Dr. Furmansky conducted a mental status examination and testing and diagnosed "Occupational problem due to noncompensable work factors of not being accepted for a position with the [employing establishment] or elsewhere, history of generalized anxiety disorder, chronic (preexisting and cause of medical discharge from the military), history of chronic alcohol abuse and dependence, personality disorder, NOS, sociopathic and narcissistic traits, headaches, [and] gastrointestinal problems." He opined in response to the Office's direct questions that appellant was not suffering from a psychiatric condition related to any of the compensable work factors. He agreed with Dr. Metzner in that he felt appellant primarily suffered from a personality disorder, which preexisted his psychiatric condition. Dr. Furmansky further opined that appellant suffered from a service-connected chronic anxiety disorder, which was exacerbated at the time of his problems with the employing establishment and became diagnosed as a work-related adjustment disorder. Dr. Furmansky opined that the work-related aggravation of his chronic anxiety disorder was now in full remission.

Dr. Furmansky opined that significant factors had been overlooked by appellant's treating physician and Dr. Gipstein. He explained that appellant's personality disorder Axis II diagnosis was associated with appellant's fabrication of stories for self-enhancement, significantly distorting reality and manipulating others. Dr. Furmansky opined that appellant's personality disorder caused him to have a maladaptive response to certain procedures requiring accurate reporting of facts and reality. Dr. Furmansky advised that appellant's personality disorder caused him to externalize the causes of problems to others rather than to admit his own contributions to a conflict which created a very difficult situation for resolution. Both of appellant's conditions, personality disorder and chronic anxiety disorder predated the employment injury.

Dr. Furmansky disagreed with Dr. Gipstein's analogy of PTSD as a model to explain appellant's ongoing anxiety symptomatology when confronted with limits set by the employing establishment. Dr. Furmansky opined that appellant never suffered a catastrophic actual disaster to meet the criterion A under the DSM-IV. He opined that appellant's anxiety increased as a result of being caught by the employing establishment and having to face the consequences of some of his behaviors. Dr. Furmansky indicated that appellant's personality disorder consisted of traits that were antisocial such as deceitfulness, repeated lying, lack of remorse and failure to conform to social norms with respect to lawful behaviors as indicated by repeated performing of acts that were grounds for arrest. He further noted that appellant's personality disorder contained narcissistic traits such as having a grandiose sense of self-importance and exaggerating achievements and talents, a sense of entitlement, unreasonable expectations of favorable treatment and automatic gratification of his expectations, lack of empathy and an unwillingness or inability to recognize or identify with the needs of others, or to show remorse. Dr. Furmansky opined that the compelling reason for appellant's current distress resulted from his inability to manipulate the employment system of the employing establishment due to his preexisting personality disorder and he opined that appellant was not still suffering from any psychiatric condition attributable to any of the compensable work factors and was no longer disabled due to same. He noted that appellant's symptoms of anxiety and decreased stress tolerance were preexisting and were note in his medical discharge from the military service.

By decision dated July 7, 2000, the Office affirmed the March 23, 1999 Office decision, finding that the well rationalized and thorough report of the impartial medical examiner, Dr. Furmansky, constituted the weight of the medical evidence.

Thereafter appellant requested appellate review of the record,[3] but the Office was remiss in submitting the case to the Board, such that by Order dated March 27, 2001 the Board remanded the case for reassembly and for the issuance of another merit decision to protect appellant's appeal rights.

By decision dated May 9, 2001, the Office found that the weight of the medical opinion evidence of record was constituted by the impartial medical examiner's report and established that appellant was no longer suffering from the effects of his work injury or its residuals and that his current condition of personality disorder was nonwork-related and preexisted his employment injury. The Office again affirmed the March 23, 1999 decision.

The Board finds that appellant had no disability for work or injury residuals requiring further medical treatment after November 8, 1997, causally related to his accepted adjustment disorder.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] 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.[5] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[6] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[7] The Office has met its burden of proof in this case.

In the instant case, the Office's selected second opinion specialist in 1993, Dr. Gipstein, was no longer a selected second opinion specialist in 1997 as appellant independently sought Dr. Gipstein's opinion on his own, without Office direction, participation or sanction. Therefore, the 1997 report from Dr. Gipstein, must be considered to be a report from appellant's physician as opposed to a report from an Office second opinion specialist.

Additionally, the Office chose a different second opinion specialist in 1997, Dr. Metzner, who provided a thorough and well-rationalized report stating that appellant's current condition

[3] Docket No. 01-84, Order Remanding Case (issued March 27, 2001).

[4] *Harold S. McGough*, 36 ECAB 332 (1984).

[5] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[6] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[7] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

and poor coping skills were as a result of his personality disorder and were not due to ongoing stressors related to compensable factors in his previous employment.

However, in his 1997 report, Dr. Gipstein disagreed with Dr. Metzner, finding that appellant continued to experience residuals of his accepted condition, an adjustment disorder, which had been exacerbated by appellant's lack of returning to gainful employment rather than ameliorated by it. He opined that appellant continued to suffer from an adjustment disorder from contributing compensable work factors.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a 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 this case, appellant's physician, Dr. Gipstein, disagreed with the Office's selected second opinion specialist, Dr. Metzner, such that a conflict in medical evidence was properly declared and appellant was appropriately referred to a third physician for an impartial medical examination to resolve the conflict.

The impartial medical specialist, Dr. Furmansky, reviewed appellant's accurate factual and medical history, performed appropriate testing and examination and noted that his condition as an occupational problem due to noncompensable work factors of not being accepted for a position with the employing establishment or elsewhere, history of generalized anxiety disorder, chronic preexisting and cause of medical discharge from the military, history of chronic alcohol abuse and dependence, personality disorder, NOS, sociopathic and narcissistic traits, headaches and gastrointestinal problems. He determined that appellant was not suffering from a psychiatric condition related to any of the compensable work factors and he agreed with Dr. Metzner in that he felt appellant primarily suffered from a personality disorder, which preexisted his psychiatric condition. Dr. Furmansky further opined that appellant suffered from a service-connected chronic anxiety disorder, which was exacerbated at the time of his problems with the employing establishment and became diagnosed as a work-related adjustment disorder, but noted that the work-related aggravation of his chronic anxiety disorder was now in full remission.

Dr. Furmansky explained that appellant's personality disorder Axis II diagnosis was associated with appellant's fabrication of stories for self-enhancement, significantly distorting reality and manipulating others and opined that appellant's personality disorder caused him to have a maladaptive response to certain procedures requiring accurate reporting of facts and reality. He advised that appellant's personality disorder caused him to externalize the causes of problems to others rather than to admit his own contributions to a conflict which created a very difficult situation for resolution and opined that both of appellant's conditions, personality disorder and chronic anxiety disorder predated the employment injury.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[8] In this case, Dr. Furmansky's extensive and well-rationalized report was based on a proper factual and medical background and upon appropriate psychological examination and testing, such that

[8] *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

it is entitled to that special weight. Accordingly, that special weight results in it constituting the weight of the medical evidence and establishes that appellant had no further disability for work or injury residuals requiring further medical treatment after November 8, 1997, causally related to his accepted adjustment disorder.

As the only other current medical evidence of record was provided by Dr. Gipstein, who was on one side of the conflict that was resolved by the impartial medical examiner, it is insufficient to establish or even create another conflict on the issue of whether appellant continued to be disabled or had injury residuals, causally related to his 1991 accepted adjustment disorder. The Board has held that additional, repetitious or unrationalized reports from appellant's physician are insufficient to overcome the weight accorded to an impartial medical examiner's report where appellant's physician had been on one side of the conflict in medical opinion that the impartial medical examiner resolved.[9]

Accordingly, the May 9, 2001 and November 6, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 16, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

[9] *Harrison Combs, Jr.*, 45 ECAB 716 (1994).