

remanded the case to the Office to determine whether appellant had any employment-related disability between November 19, 1990, when he was terminated for cause, and October 15, 1997, the date Dr. R. Scott Benson, Board-certified in psychiatry, provided an impartial evaluation for the Office.¹ The law and the facts of the case as set forth in the Board's decision are incorporated herein by reference.

The earliest dated medical evidence of record is an October 2, 1992 consultation report in which Dr. T.A. Balza² diagnosed an anxiety disorder with mild depression. The physician did not render an opinion regarding disability. The next medical evidence concerns appellant's hospitalization from October 27 to November 24, 1993 at a Veterans Administration facility in Lake City, Florida. In a discharge summary, Dr. T.S. Ganesh, a psychiatrist, diagnosed alcohol dependence and histrionic personality traits. Again, no opinion was rendered regarding disability.

On March 31, 1994 appellant came under the care of Dr. Bruce Chlopan, a clinical psychologist, and on December 21, 1994 the Office accepted that appellant sustained an employment-related post-traumatic stress disorder (PTSD) and generalized anxiety disorder. In a report dated April 3, 1995, he advised that appellant was totally disabled and had been so since January 1, 1991. Dr. Chlopan stated that, since the "severity of his symptoms was largely attributable to his work situation [and] his emotional distress interfered with his ability to deal with authority, his tolerance of expected demands of employment situations, and his basic demeanor and attitude in searching for employment."

In a second opinion evaluation dated July 12, 1995, Dr. Pankaj P. Chokhawala, a Board-certified psychiatrist, advised that appellant could work anywhere except with prisoners and questioned whether he was malingering.³ Dr. Chokhawala referred appellant to Dr. Larry Kubiak, a clinical psychologist, for psychological testing. In a July 20, 1995 report, Dr. Kubiak advised that appellant "is very well aware of the symptoms associated with PTSD and was able to almost in rote fashion identify all of the DSM-IV criteria for PTSD and how each of them are manifested in his particular situation." He stated that a very different picture, however, was present in the testing situation, finding the testing invalid. Dr. Kubiak concluded:

"In sum[mary], while there are some indications from his history and his self-report for PTSD, there are greater indications from the testing of a strong tendency to fake bad, exaggerate, and perhaps malingering in regard to those symptoms. It cannot be said definitively that he is suffering from PTSD that is disabling to the point of necessitating a permanent disability. PTSD and generalized anxiety disorder are conditions for which a number of medical and psychological treatments have proven effective over time. There is every belief that he should be able to return to gainful employment at some point and he

¹ Docket No. 00-1060 (issued December 17, 2001).

² Dr. Balza's credentials could not be ascertained.

³ Appellant's date-of-injury position was as a criminal investigator with the Office of Inspector General of the Department of Justice. He had previously worked in federal prisons.

himself indicated that he wants to have a normal life with no dependence upon medication. It is noteworthy that he was able to participate and exhibit acceptable levels of concentration to participate with the four hours of testing involved in completing this evaluation which should give some indication of his ability to participate in some level of employment if not to the extent of the stressful setting with which he has worked in the past.”

The record also contains reports from Dr. Fernando Lopez, a Board-certified psychiatrist, dating from July 19, 1995 to July 7, 1999. In a February 28, 1997 report, Dr. Lopez advised that appellant could never work again, as of January 25, 1991, stating that he could not withstand structured hours, could not communicate clearly by telephone or face-to-face, could not participate in group activities or cooperate with coworkers, could not respond appropriately to those in authority, could not interact properly in a public situation, could not organize work and complete tasks, could not maintain concentration, and could not perform a high volume of work.

Appellant was again hospitalized from August 29 to September 11, 1997. Discharge diagnoses included major depression, recurrent, post-traumatic stress disorder, alcohol abuse, rule out anxiety disorder and cocaine abuse. Appellant was treated by Dr. D.K. Vijapura, a Board-certified psychiatrist, who in a discharge summary dated September 19, 1997, noted that appellant indicated that he had a bachelor’s degree, but has “been unemployed lately.” He stated that appellant seemed “to view himself as a victim and seemed to be looking for compensation. Thus there seemed to be an issue of secondary gain also being played in the patient’s presentation as well as treatment.”

The Office found that a conflict existed between the opinions of Drs. Chlopan and Chokhawala and referred appellant, together with a statement of accepted facts, the medical record and a set of questions, to Dr. Benson, Board-certified in psychiatry, for an impartial evaluation. In reports dated October 15 and December 11, 1997, Dr. Benson advised that appellant did not currently have any objective medical evidence of either PTSD or generalized anxiety disorder. He opined that appellant had never met the criteria for a diagnosis of generalized anxiety disorder and that his PTSD had resolved. In a January 28, 1998 report, Dr. Benson reiterated that appellant’s PTSD had resolved. He advised that appellant’s current disability was in no way related to the accepted conditions and that he was able to perform the duties of the position he held at the time of his termination for cause.

Subsequent to the Board’s December 17, 2001 decision, on October 28, 2003, the Office asked that Dr. Benson to submit a supplementary report regarding whether appellant was disabled between November 19, 1990 and October 15, 1997. The Office included an addendum to the statement of accepted facts which included a description of appellant’s former job duties as a criminal investigator.

In a report dated December 16, 2003, Dr. Benson noted that determining disability prior to October 15, 1997 was difficult. He stated:

“I reviewed again the previous mental health evaluations of [appellant]. He came under the care of Dr. Chlopan after a hospitalization on November 29, 1993. Dr. Chlopan found [him] disabled from work for PTSD. That opinion continued

until an evaluation by Dr. Chok[h]awala on July 12, 1995. It was Dr. Chok[h]awala's opinion that [appellant] was not disabled at the time of his evaluation. His opinions were corroborated in a psychological assessment on July 20, 1995 conducted by Larry C. Kubiak, Ph.D. Their findings in those evaluations and their conclusions are consistent with my evaluation on October 15, 1997 and my conclusions in [appellant's] case. Given the similarities in our findings, it would be my opinion that [he] did not have employment[-]related disability from July 12, 1995."

By letter dated January 26, 2004, the Office requested that Dr. Benson provide an opinion regarding any employment-related disability between November 16, 1990 and July 12, 1995. In a report dated February 25, 2004, Dr. Benson noted his further review of the medical evidence of record. He stated:

"The conflict in these reports begins in 1993 after [appellant] was hospitalized for treatment of alcoholism at the VA Center in Lake City, Florida. He began counseling with Dr. [Chlopan] after that hospitalization. In his evaluation, Dr. [Chlopan] suggested a diagnosis of post-traumatic stress disorder. This diagnosis of post-traumatic stress disorder was accepted by the Department of Labor. It is my opinion with reasonable medical certainty that [appellant's] diagnosis of post-traumatic stress disorder does not meet strict criteria for that diagnosis. The situations he experienced at work would not meet the criteria for trauma as required for that diagnosis. The diagnosis was suggested through reverse reasoning. It was based on the assumption that [appellant's] alcohol problem was his own self-medicating treatment for his post-traumatic stress disorder. The issues Dr. [Chlopan] documented in his continued treatment of [appellant] did not focus on post-traumatic stress disorder or any conflict arising out of [his] work. More typically, they reflected on his current financial problems and his current family conflict. Dr. Lopez' psychiatric evaluations offer little data to support a finding of disability. Dr. Lopez accepts the diagnosis of PTSD and [appellant's] report of distress. Similar to Dr. [Chlopan] Dr. Lopez related [appellant's] present distress to conflict with family members and government officials. Dr. [Chlopan's] opinion that [appellant] was disabled from work for his post-traumatic stress disorder was not further addressed until the evaluation by Dr. Chok[h]awala on July 12, 1995. Dr. Chok[h]awala conducted a complete psychiatric evaluation. He did not find evidence of any psychiatric condition that would be disabling to [appellant]. This conclusion makes clear to me that, if [appellant] had a problem with post-traumatic stress disorder, it had resolved at the time of that evaluation. This conclusion is further supported by the psychological evaluation conducted by Dr. Kubiak on July 20, 1995. I was struck by the similarity of findings documented in Dr. Chok[h]awala's report compared to my evaluation of October 15, 1997.

"Another factor causing difficulty in determining the date of disability is related to the previous decisions of the Department of Labor regarding [appellant's] disability. In my review of the file, I only find evidence of a decision to accept the face validity of Dr. [Chlopan's] opinion that [appellant] has post-traumatic

stress disorder and that his post-traumatic stress disorder had caused disability continuously from November 19, 1990, the date [he] was terminated for cause. I am not aware of any other evaluation that confirmed the diagnosis of post-traumatic stress disorder. The diagnosis of post-traumatic stress disorder first appeared after [appellant] began treatment with Dr. [Chlopan] three years after he left work. By [appellant's] report, there were other evaluations that occurred during those three years. He had a psychiatric evaluation at Bellevue Hospital in New York City and follow-up treatment at the Veteran's Administration Hospital in Lake City, Florida. The treatment records that I reviewed focused primarily on [appellant's] problems with alcoholism. I am not aware of any evaluations in that time frame that documented symptoms that would meet the criteria for a diagnosis of post-traumatic stress disorder. If any evaluation suggested a diagnosis of post-traumatic stress disorder we are still left with the absence of any trauma that would satisfy the definition of 'trauma' for the diagnosis of post-traumatic stress disorder."

By decision dated May 26, 2004, the Office found that appellant had no disability for the period November 19, 1990 to October 15, 1997 causally related to his accepted conditions. The Office noted that appellant's treatment records focused on his alcoholism, and credited Dr. Benson's opinion that appellant was not.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act⁴ the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act,⁶ and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁷ Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁸

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See *Prince E. Wallace*, 52 ECAB 357 (2001).

⁶ *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

⁷ *Donald E. Ewals*, 51 ECAB 428 (2000).

⁸ *Tammy L. Medley*, 55 ECAB ____ (Docket No. 03-1861, issued December 19, 2003); see *Donald E. Ewals*, *supra* note 7.

the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁹

The Board will not require the Office to pay compensation for disability in the absence of medical opinion evidence establishing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰ Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.¹¹

ANALYSIS

In this case, appellant was terminated for cause on November 19, 1990. On November 19, 1993 he filed an occupational disease claim. On December 21, 1994 the Office accepted that he sustained an employment-related PTSD and generalized anxiety disorder. The Office, however, found that the medical evidence of record was insufficient to establish that he was totally disabled due to the accepted conditions and appellant never received wage-loss compensation. On March 26, 1998 the Office terminated his medical benefits, and this was affirmed in the December 17, 2001 Board decision.¹² The Board, however, found that a conflict existed between appellant's treating psychologist, Dr. Chlopan, and Dr. Chokhawala, who had provided a second opinion evaluation for the Office, regarding whether appellant had any employment-related disability between November 16, 1990 and October 15, 1997, the date of Dr. Benson, who provided an impartial evaluation for the Office, examined appellant.

Subsequent to the Board's remand, Dr. Benson submitted reports dated December 16, 2003, and February 25, 2004. In these reports, the physician found that the record clearly established that appellant was not disabled after July 12, 1995, explaining that he agreed with the evaluations and conclusions provided by the second opinion examiner, Dr. Chokhawala, and the psychological assessment provided by Dr. Kubiak who concluded that appellant was not disabled and questioned whether he was malingering. Dr. Benson then explained in great detail why he disagreed with the conclusions of Drs. Chlopan and Lopez that appellant had any employment-related diagnosis or disability.

The Board has carefully reviewed these reports, and the reports previously submitted by Dr. Benson, and finds that they have reliable, probative value and convincing quality with respect to his finding that appellant had no employment-related disability beginning on November 19, 1990. Dr. Benson provided a thorough factual and medical history, explained his review of the medical record in great detail, and accurately summarized the relevant medical evidence. He further supported his conclusions with medical rationale in explaining his disagreement with Dr. Chlopan's conclusions. Consequently, the Board finds that Dr. Benson's

⁹ *Manuel Gill*, 52 ECAB 282 (2001).

¹⁰ *William A. Archer*, 55 ECAB ____ (Docket No. 01-1138, issued August 27, 2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹² *Supra* note 1.

opinion is sufficiently rationalized and therefore entitled to the special weight accorded an impartial medical specialist.¹³

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he was totally disabled for the period November 19, 1990 through October 15, 1997 causally related to his accepted emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2004 be affirmed.

Issued: December 7, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹³ *Manuel Gill, supra* note 9.