



lifting the handle on a bailing machine.<sup>1</sup> On March 19, 1987 the Office accepted his claim for a torn rotator cuff and lumbosacral strain. Appellant received benefits for total temporary disability.

In a May 10, 1989 report, Dr. M.J. Jou, an orthopedist and appellant's treating physician, advised that appellant could return to work at least two to four hours a day with some lifting restrictions. In an April 25, 1990 report, he diagnosed chronic low back pain secondary to a muscle strain and noted that appellant was refusing any treatments other than narcotic medications for pain. Appellant advised Dr. Jou that he had relocated from Honolulu to the Big Island of Hawaii and was living on the beach. In a September 17, 1991 report, Dr. Rowlin Lichter, an Office referral orthopedic surgeon, noted that appellant complained of a spinal injury in a bizarre and emotionally packed way and that the origin of appellant's pain was not mechanical, but psychological. He concluded that appellant may have some lumbosacral injury but he clearly needed psychiatric help. Dr. Lichter diagnosed chronic pain syndrome of an unknown etiology.

The Office referred appellant for a psychiatric examination. In a March 3, 1992 report, Dr. Kwong Yen Lum, a psychiatrist, found that appellant could not sit or stand without pain, that he could not take supervision or cooperate with others or work under deadlines due to pain, irritability, anger and depression. He noted that, while much of appellant's emotional problems preexisted the 1986 injury, the accepted injury caused appellant to experience psychological problems that included post-traumatic stress syndrome, depression, dysthymia and other psychological factors that affected his physical health. Dr. Lum concluded that appellant had withdrawn from the world completely and needed in-care treatment. The Office subsequently accepted dysthymia and psychological factors affecting his physical condition.

In a July 15, 1992 report, Dr. Robert Bloomgarden, a psychiatrist, noted that appellant was a severe danger to himself and suffered from major depression, with a history of low back pain, kidney stones and chronic pain syndrome and drug abuse. In a December 27, 1994 progress note, Dr. Jou indicated that appellant was not improving because he refused treatment other than medications and lived in a remote location.

In a June 12, 1996 report, Dr. Edward Gutteling, an orthopedist, stated that appellant presented walking with a cane and markedly antalgic gait, preferred to stand and complained of pain in his lower and upper back with numbness in his left upper extremity. On examination, Dr. Gutteling found no muscle wasting, limited range of cervical motion and diffuse pain with any motion. He noted that arthrogram and x-rays of the shoulder were negative. Dr. Gutteling diagnosed chronic pain syndrome with long-standing lumbar discogenic strain and a likely psychological overlay. He concluded that appellant's principle problem was pain and that the 1986 injury precipitated his psychological problems.

In a July 5, 1996 report, Dr. Samuel Paltin, a psychiatrist and Office referral physician, wrote that, at the time of his scheduled appointment, appellant called and stated that he could not

---

<sup>1</sup> Appellant's relevant medical history included a crushed leg sustained in Vietnam and post-traumatic stress syndrome. He received a 40 percent disability rating from the Veterans Administration.

walk up to the physicians second floor office so he met appellant at his pickup in the parking lot. Dr. Paltin stated that appellant presented as a bald man covered with tattoos, many of them obscene, who had an enduring pattern of personality and character disorders that affected the way he perceived and interacted with people and events, including a feeling of getting revenge on people he perceived as doing him wrong. This led to a severe impairment in the social and occupational areas of his life. Dr. Paltin opined that the accepted injury was only “a weigh station” in a long history of deteriorating function and impaired relationships. The injury focused appellant’s attention on his problems and afforded an opportunity to identify one precipitant, but not the cause, of his present problems. He described appellant as a professional at accumulating disabilities and pensions.

In an October 17, 1996 progress note, Dr. Jou indicated that severe soft tissues injuries do not recover without treatment, which appellant refused or failed to receive. He stated that appellant’s psychological condition was limited by his physical condition.

In a December 7, 1999 report, Dr. Ramon Bagby, a Board-certified orthopedic surgeon and Office referral physician, diagnosed a right shoulder strain, resolved, a history of dysthymia and chronic pain syndrome that was not a consequence of the accepted injury but rather due to appellant’s reaction to it. Dr. Bagby stated that he found no orthopedic factors preventing appellant from returning to his date-of-injury job with no physical restrictions. In a December 7, 1999 report, Dr. Mohan Nair, a Board-certified psychiatrist and an Office referral physician, diagnosed a chronic pain disorder, poly-substance abuse, depression and personality traits of dependence and passive aggressiveness. He wrote that appellant’s central problem was a preoccupation with pain, but the pain had no organic basis and was a combination of his personality defects. Dr. Nair stated that appellant should work in order to refocus his attention.

In a September 5, 2001 report, Dr. Carol Brown, a Board-certified psychiatrist and appellant’s new treating physician, stated that appellant was suffering from severe pain in his right wrist, shoulder, cervical spine, lower back and legs with some deformity of the lower limbs. She noted that he walked with difficulty and used a cane, that he could not walk more than 30 feet without resting, had difficulty climbing stairs, could not sit down for more than 10 minutes and had difficulty sleeping due to persistent pain. Dr. Brown added that appellant was moderately depressed and occasionally explosive when in pain or frustrated with occasional flashbacks to Vietnam, his 1986 work injury and a near fatal car accident in May 2000. She diagnosed pain associated with his general medical and psychiatric condition, dysthymic disorder, post-traumatic stress disorder and personality disorder and related his condition to his work. Dr. Brown stated that appellant was totally disabled and did not do well with authority, was not able to handle complex tasks and could not work at a normal pace or produce any volume of work.

On October 22, 2001 the Office found a conflict in the medical opinion evidence as to continuing residuals of appellant’s accepted physical and psychological condition. The Office referred appellant to Dr. Gabriel Ma, a Board-certified orthopedist, and Dr. Jonathan Briskin, a Board-certified psychiatrist, for impartial medical examinations. In a December 19, 2001 report, Dr. Ma noted that appellant complained of tingling feelings in his neck, arms, legs and feet and pain in his neck and right shoulder. On examination, he found that appellant had no trigger

points or specific tenderness in his neck, limited range of motion of the cervical spine, and questioned his effort. When distracted, appellant moved his neck more freely with no indication of pain at all. Dr. Ma found appellant to be very muscular in both upper extremities but had a weak hand grip. Appellant's shoulders demonstrated abduction and forward flexion to about 90 degrees bilaterally, beyond which he experienced pain. The internal rotation was full bilaterally. Sensory testing of the upper extremities was normal bilaterally. Dr. Ma stated that examination of appellant's back indicated no external deformities and both sciatic notches were nontender. Appellant refused to stand on his tiptoes or heels and performed forward flexion to 25 to 30 degrees and no more. Extension and left and right rotation were limited to five degrees. Dr. Ma advised that new x-rays of the lumbosacral spine, hips, pelvis and shoulders were unremarkable except for a slight narrowing of the L5-S1 disc. Dr. Ma diagnosed a history of lumbosacral strain and right shoulder strain that resolved within four months of the injury. He opined that appellant should have been physically able to return to his date-of-injury job. The only recommendation for further treatment was pain management, though he recognized that appellant had psychological problems.

In a July 13, 2002 report, Dr. Briskin diagnosed post-traumatic stress disorder resulting from appellant's combat experience in Vietnam and abuse as a child by an alcoholic father. He added that post-traumatic stress disorder explained appellant's anxiety disorder and why he isolated himself and tattooed his body with images that identified with the trauma period. Dr. Briskin diagnosed a pain disorder associated with psychological and general medical factors, such as the injury in Vietnam, the 1986 work injury and two car accidents. He added that appellant's pain, which he did not feel was feigned, caused significant stress in the social and occupational areas of appellant's life. Dr. Briskin also diagnosed a dysthymic disorder, that he described as a chronic low grade depression that occasionally became a major depression when appellant experienced major stresses, such as when his house was destroyed and his girlfriend died. He stated that dysthymic disorder explained appellant's negativity and poor anger control. Dr. Briskin also diagnosed a personality disorder, which he said explained why appellant had difficulty maintaining personal relationships. He stated that appellant's psychological factors were temporarily aggravated by the 1986 work-related injury, but any ongoing influences, were a product of other influences, such as his early childhood abuse, his Vietnam experience, the death of his girlfriend and failed marriages. Dr. Briskin found that appellant's work-related aggravation ended no later than August 1987 when Dr. Jou stated that appellant had established a stable living environment and was briefly attending physical therapy. Dr. Briskin noted that appellant stated that he had a spiritual awakening after his most recent accident and participated in a local church and tutored a neighbor's children in math. Dr. Briskin added that appellant should start work on a part-time basis, but the restrictions were not due to any residuals of the accepted employment injury, but due to the other psychiatric conditions.

In a July 29, 2002 letter, the Office proposed terminating appellant's compensation benefits finding that the weight of the medical evidence rested with Dr. Ma and Dr. Briskin as the impartial examiners. The physicians found that there were no ongoing residuals of the 1986 accepted injury preventing appellant from working. In an August 12, 2002 letter, appellant disputed the proposed termination, arguing that he was unemployable due to his tattoos and several years of total disability. He inquired that if total disability was not available, could he receive partial disability or at least vocational rehabilitation.

In a September 3, 2002 decision, the Office terminated appellant's compensation benefits effective September 8, 2002.

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act,<sup>2</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

### **ANALYSIS**

The Office determined that there was a conflict in the medical opinion between Dr. Brown, appellant's attending Board-certified psychiatrist, and Dr. Paltin, an Office referral psychiatrist, as to appellant's psychiatric condition. The Office also found a conflict as to appellant's accepted physical injuries, between Dr. Jou, appellant's attending orthopedic surgeon, and Dr. Bagby, a referral specialist, who found no continuing residuals or disability. In order to resolve the medical conflicts, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Ma and Dr. Briskin for impartial medical examinations and opinions.<sup>6</sup>

In situations 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.<sup>7</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinions of Dr. Ma and Dr. Briskin, the impartial medical specialists selected to resolve the conflicts in the medical opinion. The reports of Drs. Ma and Briskin establish that appellant had no residual disability due to his 1986 employment injury after September 8, 2002.

The Board has carefully reviewed the opinions of Dr. Ma and Dr. Briskin and finds that they have reliability, probative value and convincing quality with respect to their stated

---

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>4</sup> *Id.*

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> 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).

<sup>7</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

conclusions regarding appellant's physical and psychiatric conditions. Their opinions were based on proper factual and medical histories, an accurate statement of accepted facts and the physicians provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Dr. Ma and Dr. Briskin provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing. Dr. Ma provided medical rationale for his opinion by explaining that appellant's physical injuries should have resolved within four months following the accepted injury. The diagnostic x-rays were found to be unremarkable. On examination he found that appellant had no trigger points or specific tenderness in his neck, a full range of motion in the cervical spine. Dr. Ma questioned appellant's effort, noting that when distracted, he showed no signs of pain yet refused to stand on his tiptoes. Based on his examination, Dr. Ma opined that appellant's accepted right shoulder and lumbosacral strains resolved within four months of the accepted injury.

Dr. Briskin explained that while appellant continued to have psychological problems, the aggravation of these conditions caused by the 1986 accepted injury had resolved long ago and that his remaining emotional problems are caused by other factors, such as his abusive childhood, Vietnam experience, failed marriages and the death of his girlfriend. Dr. Briskin identified August 1987 as the time when the employment-related aggravation of appellant's psychiatric condition ceased.

### **CONCLUSION**

As the reports of the impartial examiners are well rationalized and based on proper medical histories, they are entitled to the special weight of medical opinion. The Board finds that the Office met its burden of proof to terminate appellant's compensation effective September 8, 2002.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 3, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: February 11, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member