

**United States Department of Labor
Employees' Compensation Appeals Board**

**SHAWN I. BUNNEY, Administrator for the
Estate of DR. ROBERT E. BUNNEY, Appellant**

and

**DEPARTMENT OF COMMERCE, NATIONAL
OCEANIC & ATMOSPHERIC
ADMINISTRATION, Anchorage, AL,
Employer**

**Docket No. 03-2146
Issued: June 17, 2004**

Appearances:
Shawn I. Bunney, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Member
MICHAEL E. GROOM, Member

JURISDICTION

On August 25, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' decision dated August 27, 2002, which found that the employee was not entitled to disability compensation from December 4, 1987 through October 10, 1988. Because appellant filed his appeal within one year of the Office's last merit decision on August 27, 2002, the Board has jurisdiction to review the merits of the claim.

ISSUE

The issue is whether appellant established that the employee was disabled from his work-related condition of depressive disorder from December 4, 1987 through October 10, 1988.

FACTUAL HISTORY

The case is on appeal to the Board for the third time.¹ In the first appeal, the Board found that the Office's failure to reopen appellant's claim for further review under 5 U.S.C. § 8128 constituted an abuse of discretion. The Board found that appellant submitted medical reports from Dr. Richard Ries, a Board-certified psychiatrist, and Dr. Hyman Silver, a clinical psychologist, addressing causation which were relevant to the employee's emotional claim and were not previously considered by the Office. The Board set aside the Office's May 18 1998 decision and remanded the case for the Office to review the claim on the merits.

In the May 18, 1998 merit decision, the Office denied appellant's claim, but modified its June 10, 1994 decision to reflect that the employee had not established that the factors which he identified as causing his emotional condition occurred within the performance of duty.

In the second appeal, the Board found that the May 28, 1995 medical opinion of Dr. Silver that the employee's emotional condition was due, in part, to the long hours of work he performed and the deadlines he had to meet was sufficient to require further development of the medical evidence. The Board set aside the Office's May 18, 1998 decision and remanded the case for the Office to forward the case record with a statement of accepted facts to an appropriate physician to determine whether the employee's emotional condition and disability after his resignation on December 4, 1987 was causally related to compensable factors of his employment.

In his claim for an occupational disease Form CA-2, dated August 10, 1991, the employee stated that he became aware that he had work-related mental depression in October 1988. In a statement, the employee stated that he first sought professional counseling with Sue Fazekas, Ph.D.,² and that his 10 consultations with her over the following two years, helped him realize that his depressive state arose from his federal employment. The employee stated that, by the time he resigned in December 1987, he found himself putting in the maximum amount of hours yet his ability to concentrate on a given project or to bring it to completion was extremely limited. The employee stated:

“Today, I still have difficulty focusing on any one project. I am extremely limited in the amount of work I can accomplish and procrastinate or avoid any high pressure project. I believe this state of paralysis is a result of the stress and pressure I experienced while working excessive hours to keep up with my regularly and specially assigned duties while manager of the Anchorage office.”

In a report dated August 6, 1992, Ms. Fazekas stated that she first saw the employee on October 11, 1988. She opined that his depression was work related. Ms. Fazekas stated that the

¹ Docket No. 96-448 (issued February 18, 1998); Docket No. 99-1910 (issued January 2, 2001). The facts and history surrounding the prior appeal are set forth in the prior decisions and are hereby incorporated by reference. The employee died on December 18, 1993.

² The Office and the Board had previously found that Ms. Fazekas had not documented that she was a “physician” pursuant to the requirements of the Federal Employees’ Compensation Act.

employee said that because of the stressors involved and his feeling of inability to perform work at a reasonable level of aptitude the only option for him was to leave his position.

In reports dated September 19, 1994 and May 2, 1995, Dr. Richard K. Reis, a Board-certified psychiatrist, stated that he saw the employee in the late 1980s or early 1990s for about one year to treat him for depression, paranoia and alcoholism and the “content was clearly around old job trauma as in his personal statement.” He checked the “yes” box that the employee’s condition was work related and that the employee had post-traumatic stress syndrome features consisting of depression and alcoholism around job issues.

In a May 28, 1995 report, Dr. Silver could not interview the employee but reviewed the medical records. He diagnosed major depressive disorder. Dr. Silver stated:

“When [the employee] finally left [the employing establishment], he was an emotionally ravaged human being. From a highly capable -- and certainly creative -- administrator, confident and extremely successful, he had become a pitifully altered man who would soon be described by a doctor as looking ‘much older than his years.’ [The employee] was no longer able to work in anything approximating the position of authority and excellence he had formerly attained. His self-esteem was extremely compromised, he was unable to concentrate and felt that any work he could attempt would need to be highly structured. The employee[’s] confidence had been reduced to nothing.

“The employee was completely disabled for work, with the exception of short attempts, after he left his job at NOAA in 1987, until his death. As I have opined in the strongest terms possible, his serious emotional illness was entirely work related and other life stressors such as family concerns were a negligible contributor to his condition.”

In a report dated March 28, 2001, Dr. Sharon Romm, a Board-certified neurologist and plastic surgeon with a specialty in psychiatry, reviewed the statement of accepted facts and medical reports of record. She noted that because she had not interviewed the employee, she could only make provisional diagnoses. Dr. Romm stated that it appeared that the employee had a major depressive disorder and nicotine alcohol dependence. She stated that it was unclear whether the employee had an underlying psychotic disorder. Dr. Romm stated that it appeared that the employee’s emotional condition and disability were related to compensable employment factors consisting of his reaction to working overtime or extra hours and his reaction to meeting deadlines. She stated that she was “at a loss” to explain why the employee did not seek any treatment until October 11, 1988. Dr. Romm noted the possibility that the employee “simply suffered with his symptoms and something at that time inspired him to seek treatment.” She stated that just because the employee did not seek treatment was not enough reason to state that he was not suffering from his condition. Dr. Romm opined that the employee’s alcoholism was not caused by his work situation.

By decision dated April 24, 2001, the Office accepted the claim for major depressive disorder. The Office informed appellant that the employee was entitled to wage-loss compensation from the time he entered a nonpay status until the date of his death.

By decision dated October 17, 2001, the Office informed the employee's estate that it would pay compensation from October 11, 1988 to December 17, 1993. The Office denied compensation from December 4, 1987 to October 10, 1988 because the employee did not begin to consult a mental health professional until October 11, 1988. The Office stated that no medical evidence substantiated that the employee was totally disabled from work during that period.

By letter dated November 14, 2001, appellant requested an oral hearing before an Office hearing representative which was held on July 10, 2002. He contended that Dr. Silver's opinion established that appellant was totally disabled from December 1987 through October 1988. Appellant noted that Dr. Romm's opinion supported that of Dr. Silver.

By decision dated August 27, 2002, the Office hearing representative affirmed the Office's October 17, 2001 decision.

LEGAL PRECEDENT

To establish a period of disability, appellant must submit evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

ANALYSIS

The Office accepted that the employee was disabled due to factors of his federal employment from October 11, 1988 until his death. The Office denied compensation from December 4, 1987, the date the employee stopped work, until October 11, 1988, the date he first sought treatment for the accepted condition. The Board finds that the evidence which supports that the employee was disabled after October 11, 1988 also supports that he was disabled from December 1987 to October 11, 1988.

The employee explained in an attachment to his occupational claim that, when he resigned from the employing establishment in December 1987, he had difficulty concentrating and completing work projects. He resigned because he could no longer perform his job. Because the employee did not seek medical treatment until October 11, 1988, no medical report is dated during the relevant time period of December 4, 1987 to October 11, 1988. Although the record contains reports from a number of physicians, only the reports of Dr. Silver and Dr. Romm address the issue of the employee's disability during this time period.

Dr. Silver did address the issue in question: whether the employee was disabled prior to October 11, 1988. He stated that the employee was "completely disabled for work" and with the

³ See *Carolyn F. Allen*, 47ECAB 240, 245 (1995); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

exception of short attempts after he left his job at the employing establishment in 1987, he was disabled until his death. Dr. Silver explained his opinion by noting that, when the employee left the employing establishment in December 1987, he was emotionally ravaged and no longer able to work in his position. He explained that the employee's work had compromised his self-esteem, which resulted in an inability to concentrate on his work. Dr. Silver explained that the employee was transformed from being a highly competent manager to incapacity for continued work.

In a March 28, 2001 report, Dr. Romm, an Office referral physician, was asked to explain whether the employee's condition and disability after December 1987 were work related. She opined that the employee's depression was work related based on her review of the employee's medical history. Dr. Romm stated that she was unable to explain why the employee did not seek medical treatment until October 11, 1988, but the fact that he did not seek treatment "was not enough reason" to state that he did not have the condition prior to the date of treatment.

The reports of Dr. Silver and Dr. Romm were the basis for acceptance of the claim and payment of disability benefits after October 11, 1988. Neither Dr. Silver nor Dr. Romm opined that appellant was able to work prior to October 11, 1988. Their opinions regarding the employee's disability for work support a finding that he was disabled for the same employment-related reasons from his retirement until his death. There is no medical evidence of record which disputes that appellant was disabled during the relevant time period.

CONCLUSION

The medical evidence of record establishes that the employee was disabled due to his work-related condition of depressive disorder from December 4, 1987 through October 10, 1988. This case will be remanded for payment of all appropriate compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2002 decision of the Office of Workers' Compensation be reversed.

Issued: June 17, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member