

Office commenced payment for temporary total disability compensation.¹ By decision dated January 28, 1997, the Office terminated appellant's compensation. By decisions dated January 29, 1998 and February 10, 1999, the Office affirmed the termination of compensation.

In a March 5, 2001 decision,² the Board affirmed the Office's termination of medical benefits for the conditions of head contusion and cervical strain but reversed the Office's termination of compensation benefits for the condition of chronic pain syndrome. The Board found that Dr. Robert DeSilverio, the Office's second opinion physician had provided statements which were inherently contradictory, thus his report was unrationalized and of diminished probative value. The complete facts of this case are set forth in the Board's March 5, 2001 decision and are herein incorporated by reference. Appellant's entitlement to disability compensation was restored.

On April 5, 2001 the Office found that there was a conflict in the medical evidence between appellant's treating physicians Dr. Leonard M. Paul, a psychologist, Dr. James F. Bonner a psychiatrist and Dr. DeSilverio, the Office's second opinion physician, regarding whether appellant continued to have residual disability stemming from his accepted chronic pain syndrome condition. The Office then referred appellant to Dr. Perry A. Berman, Board-certified in psychiatry and neurology for an impartial medical evaluation.

In a report dated September 26, 2001, Dr. Berman stated findings on examination, reviewed the medical history and statement of accepted facts and concluded:

“The reader must understand, that, if there is a medical cause for pain, then there is no basis for this diagnosis and it is wrong to provide it. However in the case of [appellant], no one has yet discovered a physical basis for the pain that [appellant] continuously reports and certainly not one which could be caused by the bump to his head. This is crucial to understanding what the psychiatric diagnosis implies. It means that there is no physical cause for the pain and therefore one cannot attribute his continuous and allegedly disabling pain to anything physical, including the prior accepted contusion or sprain of his neck. Neither of those conditions cause him to suffer pain now. We actually do not know why he experiences pain, and unfortunately can't determine whether he really does experience pain. We accept that he is not lying or fabricating, however, that too, has not been proven or dis-proven....”

* * *

“The diagnosis of [p]lain [d]isorder is not caused by his head injury. [Appellant] does not experience pain in all the various body areas he reports due to any injury to his head, or to any physical causation. He may have aches and pains related to other conditions such as the myofasciitis diagnosed, but that did not result from a

¹ By decision dated November 9, 1992, the Board set aside and remanded a July 7, 1991 Office decision terminating authorization for treatment with his attending physician. Docket No. 92-85 (issued November 9, 1992).

² Docket No. 99-1347 (issued March 5, 2001).

head bump. Some of his pain comes from disuse, lack of exercise, lack of activity and a need to perceive himself as injured. Note that saying he has a pain disorder means he does not have a physical injury to explain his pain. However, he does not accept that concept, and is not willing to explore what psychological causation is causing his pain.

“The causation of his pain syndrom[e] was not aggravated, precipitated, accelerated or proximately caused by factors of employment as described in the [statement of accepted facts].

“[Appellant’s] pain syndrome is not due to residuals of the July 28, 1986 injury at work. He does not now experience pain as a result of any injury at work.”

Dr. Berman believed that appellant could be gainfully employed if he were challenged to engage in activities which would keep him physically active.

In a notice of proposed termination dated October 11, 2001, the Office stated that Dr. Berman’s opinion was that of an impartial medical examiner sufficient to resolve the conflict in the medical evidence and constituted the weight of the medical evidence. Appellant submitted an October 23, 2001 opinion from Dr. James F. Bonner, Board-certified in psychiatry and neurology and his treating physician, who advised that he continued to suffer residuals from his accepted chronic pain syndrome condition. He stated:

“It is my medical opinion within a reasonable degree of medical certainty that [appellant] continued to exhibit signs and symptoms of chronic pain syndrome secondary to contusion of the head with cervical and thoracic strain/sprain as a direct result of a work-related incident that began on July 28, 1986. [Appellant] also exhibits signs of anxiety and depression secondary to his chronic pain syndrome. He will continue to require ongoing medical care and will continue to require medication treatment. In addition, [appellant] remains totally disabled.”

By decision dated November 13, 2001, the Office terminated appellant’s compensation benefits, finding that Dr. Berman’s opinion that appellant no longer has any condition or disability due to residuals of his July 28, 1986 employment injury represented the weight of the medical evidence.

By letter dated November 9, 2001, appellant requested an oral hearing, which was held on July 30, 2002. Appellant submitted reports dated March 4 and April 24, 2002 from Dr. Bonner, who indicated in his March 4, 2002 report that appellant continued to have complaints of spinal pain and rib pain and stated:

“I have reviewed the 16-page report of Perry Berman which has done everything to prevent [appellant’s] chronic pain syndrome from being related to his work injury. He also indicates that [appellant] has no physical impairment, although objectively when tested in 1998 through a functional capacity evaluation he was found to be objectively physically impaired and he also was found to be reliable and valid in that testing. [Appellant] continues to require medications including Clinoril, Darvocet, and Neurontin, and has always presented himself in a

nonstaggering, nonslurring fashion, and has always been sincere with his expression of his complaints and physical limitations.”

By decision dated October 24, 2002, an Office hearing representative affirmed the November 13, 2001 Office decision.

By letter dated October 17, 2003, appellant requested reconsideration. Appellant submitted reports dated March 26, October 7 and September 23, 2003, and December 18, 2002 from Dr. Bonner, in which he essentially reiterated his previous findings and conclusions.

By decision dated January 21, 2004, the Office denied modification of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disabling condition has ceased or lessened in order to justify termination or modification of compensation benefits.³ After it has determined that an employee has a condition causally related to his or her federal employment, the Office may not terminate compensation without establishing that the condition has ceased or that it is no longer related to the employment.⁴

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 the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁵

ANALYSIS -- ISSUE 1

In this case, the Office determined that a conflict existed in the medical evidence between Dr. Paul appellant’s treating psychologist, Dr. Bonner, appellant’s treating psychiatrist, and Dr. DeSilverio, the Office’s second opinion physician. The Office thereafter based its decision to terminate appellant’s compensation on the reports of Dr. Berman, the independent medical examiner.

The Board finds that Dr. Berman’s report does not establish that the residuals of appellant’s accepted chronic pain syndrome had ceased. To the contrary, Dr. Berman opined that appellant did continue to have a diagnosed chronic pain syndrome. Dr. Berman explained that appellant’s diagnosis was a psychiatric condition, not based upon a physical injury. This portion of Dr. Berman’s opinion comports with the findings of Dr. Bonner, appellant’s treating physician. While Dr. Berman disagreed with the finding that appellant’s pain syndrome was caused by the employment injury, his opinion indicates his failure to accept the statement of accepted facts as the basis of his opinion. Dr. Berman points out in his report that he is unable to determine what in fact caused appellant’s pain syndrome. As such Dr. Berman’s opinions suffer

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ *Barbara J. Warren*, 51 ECAB 413 (2000).

the same deficiencies as the report from Dr. DeSilverio, which the Board discounted on prior appeal. While Dr. Berman states that appellant continues to have residuals of the accepted condition, he does not offer a rationalized medical opinion, based upon the statement of accepted facts, which explains why the residuals of the chronic pain syndrome are no longer related to the accepted injury. Although he explains that appellant has recovered from his physical injuries, he also states that the pain syndrome diagnosis is not dependent upon a physical injury. He does not explain, however, why appellant's accepted psychiatric condition has either resolved or is no longer related to the accepted employment injury.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits for the accepted condition of chronic pain syndrome.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2004 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 28, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member