

FACTUAL HISTORY

On January 11, 1999 appellant, a 52-year-old general engineer, filed an occupational disease claim alleging depression and stress due to his federal employment.¹ Appellant stopped work on November 16, 1998. The Office accepted the claim for aggravation of major depressive disorder, recurrent episode, and placed appellant on the periodic rolls for temporary total disability by letter dated February 29, 2000.

In an October 3, 2001 report, Dr. Brooke J. Thorner, a second opinion Board-certified psychiatrist, diagnosed recurrent major depression, alcohol abuse/dependence and relatively low psychosocial stressors. Dr. Thorner stated that appellant's longstanding use of alcohol complicated the assessment as "heavy alcohol use can cause depression, mask symptoms of mood disorders, and interfere with recovery." Regarding the cause of appellant's depression, Dr. Thorner reported "the increased work pressure did seem to be the precipitant of his depression." He opined "[appellant]'s clinical condition would improve with more vigorous antidepressant treatment and perhaps cognitive behavioral therapy."

In a November 13, 2001 response to an Office request for clarification, Dr. Thorner concluded "[o]n a more probable based than not, some of [appellant]'s current symptoms" were due to the accepted employment factor of an increased workload. He also opined that appellant's alcohol use was a factor and "[o]n a more probable based than not, his chronic heavy use of alcohol has affected his cognitive abilities to some extent." Dr. Thorner indicated that it would be difficult to separate the effects of appellant's chronic alcohol use from his mood disorder "[u]ntil his depression is better treated and he is sober for a few months." With regard to his disability, Dr. Thorner opined appellant's condition continued to be due to his accepted employment injury.

On June 10, 2002 an Office rehabilitation counselor referred appellant to Edwin Hill, Ph.D., a licensed clinical psychologist, for vocational assessment and a psychological evaluation. On August 1, 2002 Dr. Hill diagnosed pain disorder due to bilateral carpal tunnel syndrome, recurrent major depression, alcohol abuse in remission, and an anxiety disorder stemming from work-related stress. He reported appellant's test performance variability appeared "to be primarily a function of his chronic problems with depression and anxiety stemming from work[-]related stress and chronic extreme pain and weakness due to work-related carpal tunnel syndrome." Dr. Hill stated that appellant was "also currently trying to recover from alcohol abuse" and opined that appellant did "not appear to be psychologically stable." Further psychological and psychiatric treatment was recommended by Dr. Hill. In concluding, Dr. Hill opined the main barrier to appellant's return to work was his psychiatric and carpal tunnel problems.

In an October 8, 2003 report, Dr. Sharon Romm a second opinion Board-certified psychiatrist, reviewed the medical evidence, a statement of accepted facts and examined appellant. She concluded that appellant no longer had any residuals due to the accepted employment injury. In support of this conclusion, she stated that appellant was "no longer

¹ This was assigned claim number 14-0340056.

experiencing the stresses which caused his depression” and any symptoms appellant currently had were unrelated to the depression which was accepted in 1998. She noted that appellant was “drinking excessively, and if there is a question of whether he has any condition at all it would be considered a substance-induced mood disorder.” In an accompanying work restriction evaluation (Form OWCP-5c) Dr. Romm indicated that appellant was capable of performing his usual job and working eight hours a day without restriction.

By letter dated December 10, 2003, the Office notified appellant that it proposed to terminate his compensation benefits on the grounds that he had no further disability causally related to his July 1, 1998 employment injury.

By decision dated January 20, 2004, the Office terminated appellant’s compensation and entitlement to medical benefits on the grounds that his accepted condition had resolved. The Office noted the termination of benefits only concerned his claim for aggravation of his emotional condition and did not terminate his compensation benefits under claim number 14-0340051 for his right carpal tunnel syndrome.²

In a letter dated February 2, 2004, appellant’s counsel requested an oral hearing on the termination of compensation. Appellant contended that he was still disabled due to residuals from his employment-related accepted emotional condition.

A hearing was held on June 22, 2004 at which appellant was represented by counsel, provided testimony and submitted a March 22, 2004 report by Dr. Michael R. O’Leary, a clinical psychologist. Appellant testified that he continued to be disabled due to both his emotional condition and his carpal tunnel employment injuries. His counsel contended that there was an unresolved conflict in the medical opinion evidence and, therefore, the Office failed to meet its burden to terminate appellant’s compensation benefits. Counsel also contended that appellant remained totally disabled due to his accepted right carpal tunnel syndrome.

In the March 22, 2004 report, Dr. O’Leary, based upon a review of medical evidence and a psychological evaluation, diagnosed recurrent major depression, anxiety disorder with prominent obsessive features, stress-related psychophysiological reactions affection medical condition and alcohol dependence in partial remission. Dr. O’Leary opined that appellant’s condition was not due to his alcohol consumption as this “has been a constant for the past 20 years or more.” He noted the diagnostic testing supporting a diagnosis of major depression which he attributed to appellant’s accepted 1999 employment incidents. Dr. O’Leary noted his disagreement with Dr. Romm’s opinion and stated that she appeared “to have taken a very narrow view of [appellant]’s total clinical picture.”

By decision dated October 14, 2004, the Office hearing representative affirmed the January 20, 2004 termination decision. The hearing representative found that the Office properly determined that the weight of the medical evidence of record was represented by Dr. Romm and established that appellant no longer had any disability or residuals due to his accepted employment-related emotional condition. The hearing representative remanded the case to the

² This claim was accepted by the Office for right carpal tunnel syndrome, for which the employing establishment provided appellant with limited duty. The record contains no other evidence or information from this claim.

Office for referral for an impartial evaluation regarding appellant's claim for continuing disability and residuals, finding a conflict in medical opinion between Dr. Leary and Dr. Romm.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

ANALYSIS

The Office accepted that appellant sustained an aggravation of major depressive disorder, recurrent episode, and placed appellant on the periodic rolls for temporary total disability. In a decision dated January 20, 2004 and affirmed by a hearing representative on October 14, 2004, the Office terminated his compensation benefits effective that day, finding that the weight of medical evidence was represented by the opinion of Dr. Romm, which established that appellant had no further employment-related disability due to the accepted aggravation of major depressive disorder, recurrent episode.

The Board finds that the Office properly determined that Dr. Romm's medical opinion evaluation constituted the weight of the medical opinion evidence. Her examination was the most recent opinion of record and was based upon a proper factual and medical background. She found established that he had no medical residuals of his accepted emotional condition, that he was capable of performing his regular duty and that his current depressive condition was due to his alcohol consumption. On October 8, 2003 Dr. Romm provided a complete and thorough examination of appellant and concluded that he no longer had any residuals due to the accepted employment injury. In support of this conclusion, she stated that appellant was "no longer experiencing the stresses which caused his depression" and his ongoing symptoms and mood disorder to his excessive drinking indicating a substance abuse disorder. In an accompanying work restriction evaluation (Form OWCP-5c) Dr. Romm indicated that appellant was capable of performing his usual job and working eight hours a day without restriction. No residuals from appellant's accepted employment-related emotional condition were identified at that time, and no need for further medical treatment was recommended.

³ *Paul L. Stewart*, 54 ECAB ____ (Docket No. 03-1107, issued September 23, 2003).

⁴ *Elsie L. Price*, 54 ECAB ____ (Docket No. 02-755, issued July 23, 2003).

⁵ *James F. Weikel*, 54 ECAB ____ (Docket No. 01-1661, issued June 30, 2003).

⁶ *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 19, 2003).

Based upon the medical evidence of record, the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that he had no further disability for his regular work due to his accepted emotional condition. Dr. Thorner, in reports dated October 3 and November 13, 2001, diagnosed employment-related depression and concluded that appellant remained totally disabled due to this condition. On August 1, 2002 Dr. Hill diagnosed a pain disorder due to bilateral carpal tunnel syndrome, recurrent major depression, alcohol abuse in remission, and an anxiety disorder stemming from work-related stress. He concluded that appellant remained totally disabled and recommended further psychiatric and psychologic treatment. While both Dr. Hill and Dr. Thorner concluded that appellant was totally disabled due to his employment-related depression, they provided no medical rationale to support their conclusions that appellant's ongoing condition was due to the accepted employment factors. Dr. Thorner couched his opinion as "more probable than not" when addressing causal relationship. Without more in terms of rationale, the doctor's opinion is speculative and insufficient to establish continuing employment-related residuals.⁷ There is no more recent report indicating that appellant continued to be totally disabled.⁸ The Board finds that the Office met its burden of proof to terminate medical benefits as the medical report of Dr. Romm establishes that appellant had no residuals of his accepted emotional condition which required medical treatment at the time it terminated his benefits for his emotional condition.

Counsel contends that the Office erred in terminating appellant's compensation benefits as it failed to establish that appellant's entire employment-related disability had ceased. In support of his contention, he cited to *Cindy L. Moss*,⁹ as similar to appellant's case. The Board finds that the present claim is distinguishable from *Moss*. The Office noted in the January 20, 2004 decision that the termination of benefits only pertained to the accepted emotional condition claim and that benefits for his accepted carpal tunnel syndrome were not terminated. In *Cindy L. Moss*, the Office accepted that the employee had sustained multiple work injuries. The physician the Office relied upon in terminating benefits concluded only that she had recovered from one injury. The Board found that the Office failed to meet its burden to terminate as the medical evidence did not establish that the other injuries accepted by the Office had resolved. As noted above, the only injury accepted in this claim was for an emotional condition. The Office noted that benefits were not terminated for his right carpal tunnel syndrome filed under another claim.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective January 20, 2004.

⁷ See *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

⁸ See generally *Barry A. Smith*, Docket No. 02-1934 (issued January 23, 2004).

⁹ Docket No. 04-1386 (issued December 13, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 20 and October 14, 2004 are affirmed.¹⁰

Issued: June 15, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ The Board notes that in the October 14, 2004 decision the Office hearing representative affirmed the prior decision finding that the termination was valid; however, the hearing representative also found that a conflict of medical opinion existed based on medical evidence submitted by appellant subsequent to the termination and remanded the case to the Office for further development including referral to a referee physician. The Board has no jurisdiction to review the hearing representative's action to remand the case for further development based on an existing conflict of medical evidence, as that action is an interlocutory matter and does not represent a final decision. 20 C.F.R. § 501.2(c).