

appellant had established any continuing disability or residuals after September 16, 1995 causally related to his accepted employment injury of nonpsychotic organic brain syndrome.¹ The law and the facts as set forth in the previous Board decision and order is incorporated herein by reference.

Subsequent to the Board's July 12, 1999 decision, on November 8, 1999 the Office referred appellant, along with a set of questions, a statement of accepted facts and the medical record, to Dr. Dominick Addario, Board-certified in psychiatry, for an impartial medical evaluation. In a notice dated November 17, 1999, the Office proposed to suspend appellant's compensation benefits pursuant to 5 U.S.C. § 8123, on the grounds that he refused to participate in the scheduled examination. In a decision dated December 7, 1999, the Office finalized the suspension of benefits.

On January 5, 1999 appellant, through his representative, requested a hearing that was held on August 2, 2000. By decision dated October 26, 2000 and finalized October 30, 2000, an Office hearing representative affirmed the prior decision, finding that the suspension would remain in place until the obstruction ended. He found no conflict of interest and determined that appellant should be referred to a psychiatrist for an impartial evaluation.

By letter dated September 6, 2001, appellant's representative indicated that he would cooperate with an impartial evaluation. On January 8, 2002 the Office referred appellant, along with a set of questions, a statement of accepted facts and the medical record, to Dr. Matthew Zetumer, a Board-certified psychiatrist, who examined appellant on February 26, 2002. Dr. Zetumer, however, withdrew from the case and advised the Office that he would not provide a report.

On April 23, 2002 the Office referred appellant, along with a set of questions, a statement of accepted facts and the medical record, to Dr. Addario. By letter dated May 2, 2002, appellant's representative again advised the Office that appellant would not keep the scheduled appointment with Dr. Addario. In a May 7, 2002 letter, the Office informed appellant that Dr. Zetumer was unable to provide the Office with a medical report and therefore another impartial evaluation was needed and appellant was required to keep the scheduled appointment with Dr. Addario.

By report dated May 16, 2002, Dr. Addario noted his review of the statement of accepted facts, medical records and his examination and testing of appellant. He noted the history of a motor vehicle/pedestrian accident in November 1997 and subsequent subdural hematoma in January 1998. Dr. Addario diagnosed an identity problem, stating that appellant over-identified with the prior history of injury and disability and personality disorder, mixed, schizotypal and paranoid. Regarding whether appellant continued to suffer residuals of the accepted

¹ Docket No. 99-73. The Office had relied on the opinion of Dr. David M. Reiss, a psychiatrist, as an impartial examiner, to resolve a conflict in medical opinion regarding whether appellant had any continuing residuals of his accepted nonpsychotic organic brain syndrome due to styrene exposure. The Board found that as Dr. Reiss was not Board-certified as required under Office procedures, he could not be considered an impartial specialist and his report could not be accorded special weight. The Board further found his report to be ambiguous and not well rationalized. By order dated November 30, 1999, the Board denied appellant's August 9, 1999 request for reconsideration.

nonpsychotic organic brain syndrome caused by styrene exposure, Dr. Addario stated that while there may have been periods of paranoid ideations which “may or may not” have been related to the styrene exposure, he advised that it could not be identified at the time of his examination and stated that his examination and testing would not support a diagnosis of dementia but that there was contradictory evidence of record as to whether appellant had an organic brain syndrome or cognitive disorder. Dr. Addario advised that the intervening pedestrian accident and subsequent subdural hematoma would have obscured any residual cognitive deficits and advised that appellant should have neuropsychological testing to determine if he had actual dementia.

On October 4, 2002 the Office referred appellant to Dr. Thomas J. Wegman, Ph.D., a neuropsychologist. Also on that date, the Office requested that appellant furnish medical records regarding the motor vehicle accident that occurred in 1997. By letter dated November 5, 2002, appellant’s representative related that appellant had been struck by a car on November 4, 1997 while crossing the street and sustained four fractures that required surgery and rehabilitation. She stated that on January 12, 1998 he was admitted to the hospital with a subdural hematoma.²

In a report dated December 9, 2002, Dr. Wegman noted his review of the medical records and reported the history of styrene exposure and appellant’s report regarding the 1997 motor vehicle/pedestrian accident and subdural hematoma in January 1998, as well as his findings on examination and testing. He found normal memory for both recent and remote events and noted that a large number of the tests administered to appellant were sensitive to incomplete effort and exaggeration. He advised that appellant’s responses were more likely associated with psychological factors rather than an intentional effort to do poorly and advised that, while the test data at face value suggested generally impaired neuropsychological functioning, the scores were of questionable validity, noting that appellant sustained head trauma in a motor vehicle accident as a child, had been exposed to chemicals while working in his son’s printing shop and sustained an injury in November 1997, when he was hit by a car with the subsequent January 1998 subdural hematoma which, he opined, was likely caused by the motor vehicle/pedestrian accident. Dr. Wegman continued that the neuropsychological testing results were more likely attributable to the hematoma than to any other event. He further noted that the preponderance of the mental health professionals who examined appellant found a significant psychiatric impairment above and beyond that seen in styrene exposure, which also contributed to his test results. In discussing testing specific to styrene exposure, the physician opined that its neurotoxic effects had resolved prior to 1995 and that appellant’s motor impairment was likely due to the subdural hematoma. He concluded that appellant no longer suffered residuals of the styrene exposure and any ongoing symptoms of dizziness and vertigo were age related.

Appellant submitted medical evidence regarding hospitalizations in November 1997 and January 1998, at Sharp Memorial Hospital.³ A trauma service report dated November 4, 1997, provided a history that appellant was crossing the street when he was hit by a car, sustaining a

² Appellant’s representative also wrote to the Office on a number of occasions complaining about Dr. Addario’s report and requesting that it be changed. She also furnished a copy of a letter to the California Board of Medical Examiners in which she complained about the physician.

³ These were received by the Office on March 14, 2003.

tibia-fibula fracture of his right leg, laceration of his right little finger and bruises on his left shoulder and forehead. He underwent closed reduction of the leg fracture by Dr. Michael Lenihan, a Board-certified orthopedist. In reports dated January 12, 1998, Dr. Glenn Silverman, Board-certified in emergency medicine and Dr. George Mueller, a Board-certified surgeon, noted the history of the November 4, 1997 accident. It was noted that a computerized tomography (CT) scan was done in November 1997 and reported as normal⁴ and that appellant had initially been in a rehabilitation facility following the November 1997 accident but was at home and had a four to five day history of lethargy with progressive left-sided weakness. A January 12, 1998 head CT scan was read by Dr. Russell Low, Board-certified in diagnostic radiology. He compared it with a November 4, 1997 study and found interval development of a large right-sided subdural hematoma. Appellant underwent surgical evacuation by Dr. Justin Renaudin, Board-certified in neurosurgery, on January 13, 1998 for an acute clot in the right frontal area and a chronic subdural hematoma in the right parietal area. Dr. Lenihan saw appellant in consultation on January 13, 1998. His assessment was status post right tibial surgery with fracture brace, doing satisfactorily, pubic symphysis, mild and status post subdural hematoma evacuation with residual left-sided weakness. On January 14, 1998 appellant was seen in consultation by Dr. Jerome Stenehjem, Board-certified in physical medicine and rehabilitation, who noted examination findings of delays in speech and in determining time and place as well as some slowing and dyscoordination, greatest on the left, with mild left-sided ataxia. His impression was status post craniotomy for subdural hematoma, mild left hemiparesis, mild confusion with cognitive delays and slowing and decreased speech fluency, mild apraxia and right tibial-fibula fracture and right femur fracture. Appellant was discharged to home on January 16, 1998.

On April 17, 2003 the Office forwarded Dr. Wegman's report and the hospitalization records to Dr. Addario for review. In a supplementary report dated October 1, 2003, Dr. Addario noted his review of this evidence. He advised that the Sharp Memorial Hospital records substantiated that appellant had a subdural hematoma with cognitive and psychological effects and opined that the subdural hematoma was a result of the November 4, 1997 pedestrian accident. Dr. Addario noted that Dr. Wegman agreed with his conclusion that appellant did not have a diagnosable cognitive disorder on an organic basis and that the neuropsychological disorder appellant had developed following the styrene exposure had progressively cleared.

By decision dated April 6, 2004, the Office accorded special weight to the opinion of Dr. Addario as referee examiner and denied appellant's claim that he had any continuing disability after September 16, 1995 causally related to his employment injury.

LEGAL PRECEDENT

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had any disability causally related to his accepted injuries.⁵ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical

⁴ A copy of the November 1997 CT scan is not in the record.

⁵ See *Manuel Gill*, 52 ECAB 282 (2001).

evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸ Furthermore, 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.⁹

Regarding how far the range of compensable consequences is carried once the primary injury is causally connected with the employment, Larson notes that when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of "direct and natural results" and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.¹⁰ Once the work connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.¹¹

ANALYSIS

In the instant case, finding that a conflict of medical opinion existed regarding whether appellant had continuing disability or residuals after September 16, 1995, the Office initially referred appellant to Dr. Zetumer, a Board-certified psychiatrist, to provide an impartial evaluation. Dr. Zetumer, however, withdrew from the case for personal reasons and did not provide a report to the Office. The Office then referred appellant to Dr. Addario, also Board-certified in psychiatry. When the impartial medical specialist's report is not forthcoming, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question. Unless

⁶ *Id.*

⁷ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹⁰ A. Larson, *The Law of Workers' Compensation* § 10.01 (2000); see *Raymond A. Nester*, 50 ECAB 173 (1998).

¹¹ *Id.*; *Charles W. Downey*, 54 ECAB ____ (Docket No. 02-218, issued February 24, 2003).

this procedure is carried out by the Office, the intent of section 8123(a) will be circumvented.¹² Thus, as a report from Dr. Zetumer was not forthcoming, the referral to Dr. Addario was proper.

In a comprehensive report dated May 16, 2002, Dr. Addario noted his review of the medical record, the history of injury and appellant's subsequent motor vehicle/pedestrian accident in November 1997 and subdural hematoma in 1998. Dr. Addario reported his findings on examination and testing and diagnosed an identity problem and personality disorder. He advised that his examination did not support a diagnosis of dementia and noted that the November 1997 accident and subsequent subdural hematoma obscured appellant's condition. He concluded that to fully resolve the issue of whether appellant had residuals of his employment-related injury, neuropsychological testing was needed. Appellant was then referred to Dr. Wegman, who provided comprehensive psychological testing and, in a report dated December 9, 2002, advised that the neurotoxic effects of the employment-related styrene exposure had resolved prior to 1995 and that appellant's motor impairment was likely due to the subdural hematoma. He concluded that appellant no longer suffered residuals of the styrene exposure and any ongoing symptoms of dizziness and vertigo were age related.

Following an Office request that he review the hospital records submitted by appellant and Dr. Wegman's report, in a supplementary report dated October 1, 2003, Dr. Addario noted that the hospital records substantiated that the subdural hematoma, which he felt was the result of the November 1997 pedestrian accident, caused cognitive and psychological effects. He concluded that appellant did not have a diagnosable cognitive disorder on an organic basis and that the neuropsychological disorder appellant had developed following the employment-related styrene exposure had progressively cleared.

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.¹³ The Board finds that the opinion of the impartial examiner Dr. Addario is entitled to special weight as he provided thorough, well-rationalized reports in which he noted his review of the medical record, the statement of accepted facts and questions provided as well as findings from his examination and testing of appellant, as well as his review of the neuropsychological testing performed at his request by Dr. Wegman.

While appellant submitted medical evidence regarding his hospitalizations in 1997 and 1998, this evidence was in regard to the motor vehicle/pedestrian accident that occurred on November 4, 1997 and the subsequent subdural hematoma suffered by appellant in January 1998. These reports therefore are of no probative value regarding whether appellant had continuing residuals of his employment injury as they constitute evidence of an intervening injury that was not a "direct and natural" result of the styrene exposure.¹⁴ Appellant therefore

¹² See *Roger W. Griffith*, 51 ECAB 491, 505 (2000); *Harold Travis*, 30 ECAB 1071 (1979).

¹³ *Solomon Polen*, 51 ECAB 341 (2000).

¹⁴ *Supra* note 10.

failed to establish that he had continuing residuals of his accepted nonpsychotic organic brain syndrome due to styrene exposure.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he was entitled to compensation benefits after September 16, 1995, the date his compensation was terminated.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 6, 2004 be affirmed.

Issued: March 9, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member