

blunt trauma. On September 8, 2000 the Board affirmed the denial of his claim for a recurrence of disability on and after August 3, 1996 due to his accepted June 10, 1996 employment injury.² The Board found that the special weight of the medical evidence was with the medical opinion of Dr. Rajendra P. Ghandi, a Board-certified neurologist selected as the impartial medical specialist. A conflict in medical opinion was created between Dr. Roger Blair, a Board-certified neurologist and clinical neurophysiologist serving as a second opinion specialist, and Dr. Charles D. Marable, a Board-certified neurologist serving as appellant's physician, as to whether appellant's disability commencing August 3, 1996 was causally related to the June 10, 1996 employment injury. Dr. Ghandi concluded that appellant's recurrence of disability was not causally related to the accepted employment injury.³ The facts and the history contained in the prior appeal are incorporated by reference.

On July 3, 2001 the Office received appellant's request for reconsideration.⁴ He submitted a report dated May 30, 1999 from Dr. Thomas A. Mitchell, a treating Board-certified neurologist; an August 5, 2001 report by Dr. Ninan T. Mathew, a treating physician;⁵ a January 22, 2001 report by Dr. M. Walid Asfour, a Board-certified neurologist; and a July 26, 1999 report by Dr. Charles D. Marable, a Board-certified neurologist.

Dr. Mitchell noted that appellant was in an employment-related automobile accident on June 10, 1996. On July 26, 1999 appellant "had an episode of loss of consciousness" while driving his personal vehicle, which was totaled. Dr. Mitchell stated that appellant's examination and history appeared most consistent with a June 10, 1996 injury "with subsequent postconcussion syndrome which includes automatic symptoms frequently." Dr. Mitchell noted that patients with a postconcussive syndrome could experience changes in temperament and personality, suffer from anxiety, have vascular headaches, as well as autonomic instability with presyncopal and syncopal episodes. Dr. Mitchell attributed appellant's postconcussion syndrome, vascular headaches and syncopal and presyncopal episodes to the June 10, 1996 employment injury.

Dr. Marable diagnosed a postconcussive head injury with headaches. He opined that appellant would need long-term care due to the "significant amount of headaches" and noted "he may have a possibility of seizure from the head injury and he will need to be followed for lifetime."

² Docket No. 99-852 (issued September 8, 2000).

³ As the initial impartial medical specialist, Dr. Michael R. Seals was not Board-certified in neurology, the Board found that the Office properly referred appellant to a second impartial medical specialist, Dr. Ghandi, to resolve the existing conflict in medical opinion evidence as Dr. Seals was prohibited from serving as an impartial medical specialist. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (August 1994).

⁴ In a letter dated June 28, 2001, appellant's congressional representative forwarded his request for reconsideration with supporting evidence.

⁵ The Board notes that, while Dr. Mathew's letterhead indicated the physician is "FRCP," the Board is unable to confirm that Dr. Mathew is Board-certified either by the American Board of Medical Specialties or the American Medical Association. On July 24, 2004 the Office received a *curriculum vitae* indicating that Dr. Mathew is Board-certified in Canada.

Dr. Asfour diagnosed chronic severe post-traumatic headache. He noted that appellant was involved in an automobile accident on June 10, 1996 and currently worked one to two days a week at the employing establishment when he did not have headaches or nausea. Dr. Asfour opined that appellant was unable to return to full-duty work.

Dr. Mathew noted that appellant had been treated “for recurrent severe headache, which is predominantly bitemporal, bifrontal.” He diagnosed post-traumatic migraine associated with a previous history of seizures, post-traumatic. Dr. Mathew reported that appellant had a history of a head injury following which he experienced seizures and developed headaches. He stated “I feel very strongly that it is related to his injury.”

By decision dated September 19, 2001, the Office denied modification of its prior decisions denying the claim.

On October 5, 2001 the Office received appellant’s reconsideration request.⁶

By decision dated January 2, 2002, the Office denied modification of the September 19, 2001 decision.

In a letter dated July 12, 2002, appellant requested reconsideration and submitted a March 7, 2002 report from Dr. Marable and a March 19, 2002 report from Dr. Mathew. Dr. Marable noted appellant’s employment injury and medical history, including a nonemployment-related automobile accident on July 26, 1996. He stated:

“It was felt at that time that the injury he sustained on June 10, 1996 was responsible for his postconcussive head injury. It is also felt the syncopal episode that occurred on July 26, 1996 was a generalized seizure activity. Please note the 24-hour ambulatory EEG [electroencephalogram] was normal.”

Dr. Marable indicated that appellant had a seizure disorder from his clinical history and the head trauma was the precipitating event for him to develop seizures. He diagnosed postconcussive headaches, postconcussive head injury and postconcussive syncopal episode or postconcussive partial complex seizures going to a generalized seizure disorder. Dr. Marable noted that appellant’s black out spells, nausea and headaches occurred subsequent to the June 10, 1996 employment injury.

On March 19, 2002 Dr. Mathew diagnosed migraine, depression and postconcussive syndrome. He noted that appellant related that he sustained a concussion in 1996 and his last syncopal episode was in 1998. Appellant related that he was under “a lot of stress at the time we saw him.”

By decision dated October 17, 2002, the Office denied modification of the January 2, 2002 decision.

⁶ In a letter October 1, 2001, appellant’s congressional representative forwarded his request for reconsideration with supporting evidence.

In a letter dated August 21, 2003, appellant requested reconsideration and submitted a March 7, 2002 report from Dr. Marable, a March 19, 2002 report of Dr. Mathew and reports dated January 4 and February 7, 2002 by Dr. Thomas E. DePorter, a treating Board-certified psychiatrist.

Dr. DePorter diagnosed possible migraine headaches, history of a concussion in 1996 and closed head injury as a child, intermittent explosive disorder, alcohol abuse by history, moderate recurrent major depression and possible personality disorder and/or organic mood disorder secondary to two head injuries. Under assessment, Dr. DePorter stated:

“[Appellant] has multiple problems. He has a long-standing anger control problem, which I believe is more genetic or temperamental than related to head injury though it may have been exacerbated by his childhood head injury. It sounds as if he has an alcohol abuse problem as well. No doubt he suffers from depression probably most likely situational related to his poor frustration tolerance and problems related to his poor anger control. I have no opinion about the episodes of loss of consciousness associated with nausea and sweating that have occurred since the head injury.”

On February 7, 2002 Dr. DePorter noted that appellant listed some inaccuracies in his prior report he wanted clarified or corrected. Appellant stated that his chief complaint was recurring headaches associated with nausea with hot flashes and sweating, not the blackouts he had subsequent to his concussion.

On March 30, 2004 Dr. Marable stated that it was his “contention that in response to [appellant]’s postconcussive head injury, [appellant] had a possible generalized seizure disorder.” He diagnosed vascular or postconcussive headaches and possible partial complex to generalized seizures secondary to head injury and opined that appellant was unable to perform his date-of-injury duties.

By decision dated July 20, 2004, the Office denied modification of the October 17, 2002 decision.

In a letter dated September 29, 2004, appellant again requested reconsideration. By decision dated October 25, 2004, the Office found the evidence insufficient to warrant modification of the July 20, 2004 decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office’s regulations provides, in pertinent part:

“Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁷

⁷ 20 C.F.R. § 10.5(x).

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.⁸ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁹ Moreover, the physician's conclusion must be supported by sound medical reasoning.¹⁰

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.¹¹ The opinion of the specialist properly chosen to resolve the conflict will be given special weight if sufficiently well rationalized and based on a proper factual background.¹²

ANALYSIS

In the prior appeal, the Board found the weight of medical opinion represented by Dr. Ghandi, a Board-certified neurologist, selected to resolve the conflict in the medical opinion evidence regarding whether appellant's recurrence of disability was related to his accepted June 10, 1996 employment injury. The Board affirmed the denial of appellant's claim for a recurrence of disability beginning August 3, 1996.

Appellant submitted additional medical evidence from Dr. Marable, Dr. Asfour, Dr. DePorter, Dr. Mathew and Dr. Mitchell.

Dr. Marable submitted three additional reports following the Board's September 8, 2000 decision. He generally supported a postconcussive head injury due to the accepted injury, essentially repeating his prior opinion on causal relationship. The reports from a physician who was on one side of a resolved conflict of medical opinion are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹³ The Board finds that Dr. Marable's additional reports are insufficient to overcome the weight properly accorded Dr. Ghandi's opinion as he did not provide sufficient explanation for his stated conclusions in light of the normal EEG and MRI scan studies.

⁸ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁹ Section 10.104(a), (b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

¹⁰ *Robert H. St. Onge*, *supra* note 8.

¹¹ *Richard L. Rhodes*, 50 ECAB 259 (1999).

¹² *Sherry A. Hunt*, 49 ECAB 467 (1998).

¹³ *Richard O'Brien*, 53 ECAB 234 (2001); *Michael Hughes*, 52 ECAB 387 (2001).

Dr. Asfour, Dr. Mitchell and Dr. DePorter provided reports on appellant's condition but did not specifically address the issue of appellant's disability for work beginning August 3, 1996 or address appellant's accepted head contusion and blunt trauma injury. These reports are of diminished probative value as to whether appellant sustained a recurrence of total disability on and after August 3, 1996.

In a May 30, 1999 report, Dr. Mitchell noted that appellant was in an employment-related automobile injury on June 10, 1996 and in a nonemployment-related automobile accident on July 26, 1999. He stated that appellant's examination and history "appear to be most consistent" with the June 10, 1996 injury "with subsequent postconcussion syndrome which includes automatic symptoms frequently." He diagnosed postconcussion vascular headaches and associated presyncopal and syncopal episodes due to the June 10, 1996 employment injury. Dr. Mitchell, however, failed to provide adequate medical rationale explaining how these diagnoses were related to the accepted head contusion and blunt trauma. In reaching his opinion that these conditions were employment related, Dr. Mitchell opined that appellant's history and examination appeared to most consistent with the June 10, 1996 employment injury. Medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁴ Dr. Mitchell's report is insufficient to create a conflict with that of Dr. Ghandi.¹⁵ The Board finds that appellant has failed to establish that he sustained a recurrence of disability on and after August 3, 1996.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on and after August 3, 1996 causally related to his accepted June 10, 1996 employment injury.

¹⁴ *Michael R. Shaffer*, 55 ECAB ____ (Docket No. 04-233, issued March 12, 2004).

¹⁵ *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 25 and July 20, 2004 is affirmed.

Issued: June 1, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board