

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

DORED SHIBA, Appellant)	
)	
and)	Docket No. 06-241
)	Issued: March 9, 2006
SOCIAL SECURITY ADMINISTRATION,)	
OFFICE OF REGIONAL CHIEF COUNSEL,)	
Chicago, IL, Employer)	
)	

Appearances:
Gordon Reisel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
 DAVID S. GERSON, Judge
 MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 7, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 24, 2005 merit decision denying his claim for employment-related Ganser's syndrome. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury.

FACTUAL HISTORY

On December 26, 2002 appellant, then a 33-year-old legal assistant, filed a traumatic injury claim alleging that he sustained a head injury on December 12, 2002 when he slipped and hit his head on the sink and floor in a restroom at work. Appellant stopped work on December 12, 2002.

In a report dated December 30, 2002, Dr. Joseph A. Bongiorno, an attending Board-certified psychiatrist and neurologist, stated that computerized axial tomography and magnetic resonance imaging testing of appellant's head and brain revealed normal results. Dr. Bongiorno diagnosed concussion and conversion disorder due to the December 12, 2002 fall.

The Office accepted that appellant sustained a concussion and paid appropriate compensation for periods of disability.¹

Dr. Bongiorno continued to treat appellant's physical and emotional condition and listed continuing problems such as headaches, dizziness, leg weakness, speech problems, depression, panic attacks and paranoia. In a report dated March 30, 2003, Dr. Ahmad Bastani, an attending Board-certified family practitioner, indicated that appellant sustained postconcussive disorder, conversion disorder, and cervical and thoracic disease including a herniated disc and muscular strain to the December 12, 2002 fall.

In March 2003, the Office referred appellant to Dr. Dixon F. Spivy, a Board-certified psychiatrist and neurologist, and Dr. Hilliard E. Slavick, a Board-certified neurologist, for second opinion evaluations. The Office requested that the physicians indicate what medical conditions appellant sustained on December 12, 2002 and whether he continued to have disabling residuals of that injury.

In a report dated April 1, 2003, Dr. Slavick indicated that appellant had a preexisting psychiatric condition which was aggravated by the December 12, 2002 fall. He stated that appellant developed a conversion disorder which was responsible for his symptoms of hesitant speech, inability to walk, body pain and dizziness.

In a report dated April 17, 2003, Dr. Spivy diagnosed somatoform disorder which preceded appellant's December 12, 2002 employment injury. He concluded that appellant's multiple symptoms and disability were due to his nonwork-related somatoform disorder rather than residuals of his December 12, 2002 injury.

By decision dated June 26, 2003, the Office terminated appellant's compensation effective June 26, 2003 on the grounds that he had no disability due to his December 12, 2002 employment injury after that date. The Office relied on the opinions of Dr. Slavick and Dr. Spivy in reaching this determination.

Appellant claimed that he sustained Ganser's syndrome due to his December 12, 2002 employment injury and submitted an August 15, 2003 report of Dr. Bongiorno in support of his claim. Dr. Bongiorno detailed his long-term treatment of appellant and described the multiple observed physical and psychological symptoms. He concluded that appellant's December 12, 2002 employment injury contributed to the development of Ganser's syndrome, a condition which was accepted in the medical literature as a dissociative disorder. Dr. Bongiorno described

¹ Appellant had previously experienced emotional conditions which had been denied by the Office as work related in prior claims, including depression, panic disorder and somatoform disorder. Dr. Bongiorno indicated that the diagnosis of conversion disorder due to the December 12, 2002 fall was not related a prior diagnosis of somatoform disorder.

Ganser's syndrome as neither a totally willful syndrome (malingering) nor a partially willful, partially unconscious syndrome (factitious disorder), but as an unconsciously-derived syndrome which can include many manifestations including depression, psychosis, anxiety and conversion symptoms.² He indicated that appellant's provision of nearly-correct answers on mental status testing was known as paralogia and constituted the central symptom of Ganser's syndrome. Dr. Bongiorno stated that appellant's other physical and psychological symptoms were consistent with the disorder. He indicated that the December 12, 2002 fall served as a "precipitator" for appellant's Ganser's syndrome and stated that the condition was totally disabling.³

By decision dated and finalized February 2, 2004, an Office hearing representative affirmed the Office's June 26, 2003 termination of appellant's compensation based on the opinions of Dr. Spivy and Dr. Slavick. The hearing representative also found that the report of Dr. Bongiorno required development of the issue of whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury.

The Office requested that Dr. Spivy provide an opinion regarding whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury. In a March 23, 2004 report, Dr. Spivy stated that appellant did not have "the so-called Ganser's syndrome" and indicated that reference should be made to an attached enclosure regarding Ganser's syndrome.⁴ He stated that because appellant did not have Ganser's syndrome he did not have any employment-related limitations. Dr. Spivy also noted, "A possible financial gain is very prominent in this case."

By decision dated May 27, 2004, the Office denied appellant's claim that he sustained Ganser's syndrome due to his December 12, 2002 employment injury.

Appellant submitted a November 29, 2004 report in which Dr. Bongiorno repeated some of the statements contained in his August 15, 2003 report. He took issue with Dr. Spivy's characterization of Ganser's syndrome as a factitious disorder. In a January 17, 2005 report, Dr. Bongiorno stated that appellant's Ganser's syndrome "had resolved as much as it is going to resolve by the end of October 2003."

By decision dated August 24, 2005, the Office affirmed its May 27, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his claim including the fact that the individual is

² Dr. Bongiorno stated that, while he earlier thought that appellant had a conversion disorder, he now realized that he had conversion symptoms rather than an actual conversion disorder.

³ He noted that other factors also contributed to the condition, including preexisting medical problems and actions of a supervisor at work.

⁴ The attached article briefly discussed Ganser's syndrome, indicating that it was a factitious disorder.

⁵ 5 U.S.C. §§ 8101-8193.

an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the compensable 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.⁷

Section 8123(a) of the Act provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁸ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.⁹

ANALYSIS

The Office accepted that appellant sustained a concussion due to a fall at work on December 12, 2002. The Office terminated appellant’s compensation effective June 23, 2003 on the grounds that he had no disability due to his December 12, 2002 employment injury after that date. The Office based its termination on the second opinion evaluations of Dr. Spivy, a Board-certified psychiatrist and neurologist, and Dr. Slavick, a Board-certified neurologist, for second opinion evaluations. Appellant later claimed that he sustained Ganser’s syndrome due to his December 12, 2002 employment injury and the Office reopened appellant’s case for development of this matter. Based on the opinion of Dr. Spivy, the Office denied appellant’s claim that he sustained Ganser’s syndrome due to his December 12, 2002 employment injury.

The Board finds that there is a conflict in the medical evidence between Dr. Bongiorno, an attending a Board-certified psychiatrist and neurologist, and Dr. Spivy, the Office physician, regarding whether appellant sustained Ganser’s syndrome due to his December 12, 2002 employment injury.¹⁰

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). The Board has held that an emotional condition related to the effects or residuals of an employment injury could be covered under the Act. See *Arnold A. Alley*, 44 ECAB 912, 921-22 (1993); *Charles J. Jenkins*, 40 ECAB 362, 367 (1988).

⁷ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

⁸ 5 U.S.C. § 8123(a).

⁹ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

¹⁰ See *supra* note 8 and 8 and accompanying text.

Appellant submitted an August 15, 2003 report in which Dr. Bongiorno concluded that his December 12, 2002 fall at work contributed to his development of Ganser's syndrome, a condition which was accepted in the medical literature as a dissociative disorder. Dr. Bongiorno described Ganser's syndrome as neither a totally willful syndrome (malingering) nor a partially willful, partially unconscious syndrome (factitious disorder), but as an unconsciously-derived syndrome which can include many manifestations including depression, psychosis, anxiety and conversion symptoms.¹¹ He indicated that appellant's provision of nearly-correct answers on mental status testing was known as paralogia and constituted the central symptom of Ganser's syndrome. Dr. Bongiorno stated that appellant's other physical and psychological symptoms were consistent with the disorder. He indicated that the December 12, 2002 fall served as a "precipitator" for appellant's Ganser's syndrome and stated that the condition was totally disabling.¹²

In contrast, Dr. Spivy stated in a March 23, 2004 report that appellant did not have "the so-called Ganser's syndrome" and indicated that reference should be made to an attached enclosure regarding Ganser's syndrome. The attached article briefly discussed Ganser's syndrome, indicating that it was a factitious disorder. He stated that because appellant did not have Ganser's syndrome he did not have any employment-related limitations. Dr. Spivy also noted, "A possible financial gain is very prominent in this case."

Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical evidence between Dr. Bongiorno and Dr. Spivy regarding whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury.¹³ On remand the Office should refer appellant, along with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on this matter. After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant's claim.

CONCLUSION

The Board finds that, due to a conflict in the medical evidence, the case is not in posture for decision regarding whether appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury.

¹¹ As noted above, the Board has held that an emotional condition related to the effects or residuals of an employment injury could be covered under the Act. *See supra* note 6.

¹² The record also contains November 29, 2004 and January 17, 2005 reports of Dr. Bongiorno who opined that appellant sustained Ganser's syndrome due to his December 12, 2002 employment injury.

¹³ *See supra* note 9 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 24, 2005 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: March 9, 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