

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

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J.W., Appellant )  
and ) Docket No. 06-2156  
DEPARTMENT OF TRANSPORTATION, ) Issued: May 11, 2007  
FEDERAL AVIATION ADMINISTRATION, )  
Dallas, TX, Employer )  
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 19, 2006 appellant filed a timely appeal of a September 20, 2005 merit decision of the Office of Workers' Compensation Programs which terminated his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly terminated appellant's compensation effective October 30, 2004 on the grounds that he no longer had any residuals or disability causally related to his employment-related anxiety and aggravation of essential hypertension.

**FACTUAL HISTORY**

On April 19, 1972 appellant, then a 35-year-old air traffic control specialist, filed an occupational disease/traumatic injury claim. He alleged that his chronic anxiety reactions were caused by his regular work duties. Appellant described incidents which occurred from July 1970

through March 14, 1972 where he experienced extreme tension and a rapid heart beat. On March 17, 1972 he was medically disqualified from performing his duties as an air traffic controller. On March 20, 1972 he was reassigned to administrative duties in the training department. The Office accepted appellant's claim for anxiety and aggravation of essential hypertension and paid appropriate compensation.

The Office received a March 3, 2003 medical report from Dr. Myrna B. Tucker, an attending Board-certified psychiatrist. On psychological examination, she reported that appellant was very disorganized and talked a lot about the days when he worked as an air traffic controller. Dr. Tucker found it extremely difficult to follow him. She diagnosed recurrent moderate major depression, generalized anxiety disorder, panic disorder, post-traumatic stress disorder, psychotic disorder not otherwise specified, alcohol abuse and personality disorder not otherwise specified. Dr. Tucker opined that appellant was totally disabled and that his prognosis was extremely poor.

By letter dated November 13, 2003, the Office requested that Dr. Tucker review a statement of accepted facts and answer questions regarding appellant's emotional condition and causal relation between his condition and his federal employment. She did not respond.

By letter dated January 27, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Tarakumar B. Reddy, a Board-certified psychiatrist, for a second opinion medical examination. In a February 12, 2004 report, Dr. Reddy noted appellant's current symptoms related to his break up with his girlfriend about three months prior. He stated that appellant resorted to drinking six to seven beers a day and three to four hard drinks on a daily basis. Dr. Reddy reported findings on mental status examination and diagnosed recurrent to moderate anxiety disorder not otherwise specified and alcohol dependence on Axis I. He stated that appellant had psychosocial problems on Axis IV and a global assessment functioning of 65 on Axis V. Dr. Reddy deferred a diagnosis on Axis II and indicated that appellant's medical history represented a diagnosis on Axis III. He opined that appellant's emotional condition was not related to his employment rather, it was due to personal problems for which he was self-medicating with alcohol. In an accompanying work capacity evaluation (OWCP-5a Form), Dr. Reddy stated that appellant was unable to work eight hours a day due to his emotional reaction to the break up with his girlfriend.

On March 4, 2004 the Office found a conflict in the medical opinion evidence between Dr. Tucker and Dr. Reddy regarding whether appellant had continuing employment-related residuals or disability. By letter dated April 16, 2004, it referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Peter B. Polatin, a Board-certified psychiatrist, for an impartial medical examination.

In a May 3, 2004 report, Dr. Polatin provided a history of appellant's employment injury and medical treatment. On psychological examination, he reported that appellant had mild generalized anxiety disorder and recurrent major depressive disorder and alcohol dependence on Axis I. On Axis II, Dr. Polatin diagnosed personality disorder not otherwise stated but with obsessive/compulsive, negativistic, depressive disorder and schizotypal personality traits. He opined that appellant's anxiety disorder was more global and worsened after the break up of a love relationship. Dr. Polatin stated that appellant's ongoing difficulties with anxiety may be indicative of social maladjustment and not necessarily fully related to workplace issues. He

stated that appellant was most likely baseline as far as work motivation. Dr. Polatin indicated that this did not mean that he could not work, but rather he did not want to work. He related that it appeared that no meaningful motivation could be utilized other than total curbing of all benefits to motivate appellant to focus on the workplace again.

In a supplemental report dated June 28, 2004, Dr. Polatin addressed the objective, clinical, subjective and psychological findings. He stated that appellant experienced panic attacks when he saw his ex-girlfriend. Appellant did not have panic attacks when he did not see her. Dr. Polatin opined that currently there was no pervasive anxiety related to appellant's employment. He stated that his current work difficulties were certainly not related to his prior federal employment. Rather, it was more likely related to his Axis II pathology. Dr. Polatin indicated that appellant developed some level of anxiety while working as an aircraft controller but he had not worked in that capacity for an extended period of time and still continued to have these symptoms. He found that there currently was no causal relationship present. Dr. Polatin further found that appellant's emotional condition may have been aggravated by the stress of feeling that he had caused someone's death but this was a preexisting condition determined by appellant's Axis II pathology primarily with a mere exacerbation by the February 18, 1972 work-related injury.

By letter dated September 24, 2004, the Office issued a notice of proposed termination of compensation based on Dr. Polatin's medical opinion. It provided 30 days in which appellant could respond. He did not respond within the allotted time period.

In a decision dated October 29, 2004, the Office terminated appellant's compensation benefits effective October 30, 2004. On November 15, 2004 appellant requested an oral hearing before an Office hearing representative.

By decision dated September 20, 2005, an Office hearing representative affirmed the October 29, 2004 decision. The hearing representative found that Dr. Polatin's medical opinion as an impartial medical specialist constituted the weight of the medical evidence. The hearing representative stated that appellant did not submit any additional medical evidence in support of his claim of continuing employment-related residuals and disability.

#### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>2</sup>

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<sup>1</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>2</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

When there exist 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 upon a proper factual background, must be given special weight.<sup>3</sup>

## ANALYSIS

The Board finds that the Office properly determined that there was a conflict in the medical opinion evidence between Dr. Tucker, an attending physician, and Dr. Reddy, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to his accepted anxiety condition. Dr. Tucker opined that appellant continued to experience residuals and total disability due to the accepted employment injuries. Dr. Reddy opined that his emotional conditions were not causally related to his accepted employment-related conditions and that appellant's inability to work was related to his emotional reaction to the break up with his girlfriend.

The Office referred appellant to Dr. Polatin, selected as the impartial medical specialist. In a May 3, 2004 report, Dr. Polatin found that appellant had mild generalized anxiety disorder and recurrent major depressive disorder and alcohol dependence on Axis I. On Axis II, he diagnosed personality disorder not otherwise stated but with obsessive/compulsive, negativistic, depressive disorder and schizotypal personality traits. Dr. Polatin opined that appellant's anxiety disorder was more global and worsened after the break up of a love relationship. He further opined that his ongoing difficulties with anxiety may be indicative of social maladjustment and not necessarily fully related to workplace issues. Dr. Polatin stated that appellant was most likely baseline as far as work motivation. He indicated that this did not mean that he could not work, but rather he did not want to work. Dr. Polatin related that it appeared that no meaningful motivation could be utilized other than total curbing of all benefits to motivate appellant to focus on the workplace again.

In a supplemental report dated June 28, 2004, Dr. Polatin stated that appellant only experienced panic attacks when he saw his ex-girlfriend. He opined that currently there was no pervasive anxiety related to appellant's employment. Dr. Polatin indicated that his current work difficulties were certainly not related to his federal employment. Rather, it was more likely related to his Axis II pathology. He stated that appellant developed some level of anxiety while working as an aircraft controller but he had not worked in that capacity for an extended period of time and still continued to have this symptom. Dr. Polatin found that there was no causal relationship present at that time. He further found that appellant's emotional condition may have been aggravated by the stress of feeling that he had caused someone's death but this was a preexisting condition determined by appellant's Axis II pathology primarily with a mere exacerbation by the February 18, 1972 work-related injury.

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<sup>3</sup> *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

The Board finds that Dr. Polatin's opinion constitutes the special weight of the medical evidence as it is based on a proper factual and medical background and is entitled to special weight. Dr. Polatin found that appellant no longer had any residuals or disability due to the accepted employment-related anxiety.

However, at the time of the October 29, 2004 and September 20, 2005 decisions, the Office did not obtain medical evidence regarding appellant's accepted aggravation of essential hypertension. The Office based its decision to terminate benefits for the accepted anxiety condition on current reports. There are no current medical reports which address the accepted aggravation of essential hypertension. Dr. Polatin did not address the issue of whether appellant had any continuing residuals or disability causally related to his employment-related aggravation of essential hypertension. The Office did not develop the claim with respect to this accepted condition.

The Office accepted appellant's claim for aggravation of essential hypertension and the Board finds that there is no current medical evidence of record which would establish that this condition has resolved. Therefore, the Office improperly terminated appellant's compensation benefits effective October 30, 2004 with regard to his accepted aggravation of essential hypertension.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation effective October 30, 2004 on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related anxiety. The Board, however, finds that the Office improperly terminated appellant's compensation on the grounds that he no longer had any residuals or disability causally related to his accepted employment-related aggravation of essential hypertension.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 20, 2005 decision of the Office of Workers' Compensation Programs is affirmed with regard to the termination of compensation for appellant's employment-related anxiety condition and reversed regarding the termination of compensation for his employment-related aggravation of essential hypertension condition.

Issued: May 11, 2007  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board