

FACTUAL HISTORY

Appellant, a 46-year-old air traffic control specialist, has an accepted claim (02-0724203) for adjustment reaction with mixed emotional features, which arose on or about January 31, 1997. He was involved in an air traffic incident on January 19, 1997. Less than two weeks later appellant learned from his employer that he would be held accountable for the January 19, 1997 incident. The Office accepted that on January 31, 1997 appellant was distraught and traumatized after becoming aware that he was primarily responsible for an operational deviation of airspace. He was totally disabled from February 1 to March 5, 1997. For both medical and personnel reasons, appellant was unable to resume his regular duties.² He returned to work March 6, 1997, but had a recurrence of disability on March 24, 1997. On April 8, 1997 appellant returned to work performing administrative duties. He continued to work in this capacity for approximately 15 months.

Appellant stopped working on July 15, 1998 and subsequently filed a claim for recurrence of disability. The Office found that appellant sustained a new injury on or about April 18, 1997. It accepted the claim (02-0752787) for panic disorder with agoraphobic features and aggravation of employment-related condition of adjustment disorder with mixed emotional features of anxiety and depression. The Office subsequently accepted a depressive disorder. In accepting this April 18, 1997 new injury, the Office found that appellant established a single compensable factor. Appellant had been “assigned to the task of updating and maintaining the IDS-4 system, and was assigned the additional task of translating raw data from the original flight check summaries into an easier-to-read format.” The Office determined that these new work tasks resulted in a medical condition.

For his original January 31, 1997 injury, appellant received wage-loss compensation pursuant to a February 9, 1998 loss of wage-earning capacity determination.³ Regarding the April 18, 1997 injury, he received wage-loss compensation for total disability beginning July 16, 1998.⁴ Appellant continued to receive regular compensation payments on both claims through July 2003.⁵

Dr. Stephen O. Mueller, a Board-certified psychiatrist, submitted a February 26, 2003 report wherein he noted that he had been treating appellant since December 2000. He further indicated that he saw appellant on a monthly basis for a panic disorder that initially arose in January 1997 when appellant worked as an air traffic controller. According to Dr. Mueller, this panic disorder resulted in a work-related disability for which appellant was actively seeking

² The January 19, 1997 operational deviation was one of several such incidents appellant had been involved in over a two-and-a-half-year period. As a result of this string of incidents, the employing establishment decertified appellant from performing any operational positions effective February 3, 1997.

³ Appellant was compensated for the loss of premium pay due to his April 8, 1997 assignment of administrative duties, which effectively represented an eight percent reduction in wages from his date-of-injury pay rate.

⁴ The Office placed appellant on the periodic compensation rolls effective December 5, 1999.

⁵ The Office combined the two emotional condition claim files, and claim number 02-0724203 was designated the master case file.

treatment. Appellant's treatment included weekly psychotherapy sessions and medication. Dr. Mueller diagnosed panic disorder with agoraphobia and recurrent major depression. He also stated that appellant remained totally disabled from any employment.

In a March 1, 2003 report, Dr. Patricia E. Pirrello, Ph.D., a clinical psychologist, advised that she treated appellant on a weekly to bi-weekly basis since November 21, 2000. She also noted that appellant was receiving psychiatric care from Dr. Mueller. Dr. Pirrello indicated a familiarity with appellant's medical history dating back to 1997. She diagnosed panic disorder with agoraphobia and major depression, single episode, severe, without psychotic features. These diagnoses reportedly reflected the "psychological trauma" appellant "suffered during his employment...." Dr. Pirrello further stated that the onset of symptoms followed the work-related conditions that precipitated appellant's initial panic attacks and depression in 1997. She also noted that appellant's symptoms had been maintained and exacerbated by his daily struggles to contend with issues related to his employment and subsequent disability. Dr. Pirrello reported that appellant's prognosis remained guarded and that his progress had been very slow. She also noted that appellant had not received any significant relief from anxiety symptoms with psychotropic medications. Dr. Pirrello stated that appellant's panic attacks and depression kept him totally disabled from employment. She also recommended that he remain under psychiatric care and in psychotherapy.

Dr. Edmund Casper, a Board-certified psychiatrist and Office referral physician, examined appellant on March 11, 2003. In a March 25, 2003 report, Dr. Casper diagnosed moderate chronic major depression and panic attacks with agoraphobia, by history. He explained that appellant currently suffered from major depression primarily and that this condition was not attributable to the adjustment disorder or stress reaction that appellant suffered while employed as an air traffic controller or during his subsequent employment in 1997 and 1998. Dr. Casper further indicated that while appellant's major depression currently prevented him from working full time, appellant was able to work two to four hours a day. He further noted that with appropriate treatment and rehabilitation appellant could work an eight-hour day.

In a May 1, 2003 report, Dr. Pirrello reviewed Dr. Casper's findings and explained that appellant's original diagnosis of adjustment disorder with anxiety and depression was exacerbated by further employment exposure, which included a significant shift in the nature and demands of his tasks at work. She advised that because of the additional stressors and severity of symptoms, appellant's prior diagnosis of adjustment disorder was no longer accurate. Dr. Pirrello stated that appellant's current diagnoses of major depression and panic disorder with agoraphobia trace directly back to workplace injuries.

The Office found a conflict of medical opinion and referred appellant to Dr. Bert S. Furmansky, a Board-certified psychiatrist, for an impartial medical evaluation. In a report dated May 7, 2003, Dr. Furmansky diagnosed panic disorder with agoraphobia and mild to moderate major depressive disorder, without psychosis. As to the cause of appellant's current condition, he opined that appellant was "no longer disturbed" by the events surrounding the January 19, 1997 air traffic operational error and subsequent administrative review process on January 31, 1997. Dr. Furmansky also indicated that appellant's difficulties associated with his IDS-4 assignment permanently aggravated his preexisting job adjustment problems, which manifested as panic disorder and adjustment disorder with mixed factors of depression and

anxiety. He stated that the aggravation was permanent because after almost five years and a major relocation to Colorado in 2000, appellant's exacerbated symptoms had not diminished. According to Dr. Furmansky, there were no residuals of the January 1997 injury, but appellant continued to suffer residuals of his subsequent injury stemming from his IDS-4 duties. This latter injury he advised should be reclassified as major depressive disorder. Although appellant remained permanently disabled from performing the duties of an air traffic control specialist, his disability was not a function of the January 1997 employment injury. Dr. Furmansky indicated that appellant could currently work a maximum of three hours per day.

Dr. Mueller submitted a May 20, 2003 report in which he noted his disagreement with Dr. Casper's opinion that appellant's "current condition [was] unrelated to compensable work factors." According to Dr. Mueller, appellant remained totally disabled.

On June 10, 2003 Dr. Pirrello noted her disagreement with Dr. Furmansky's opinion that appellant was no longer disturbed by the original compensable factor that occurred in January 1997.

By decision dated July 2, 2003, the Office terminated wage-loss compensation and medical benefits relevant to appellant's January 31, 1997 injury under claim number 02-0724203. The Office based its decision on Dr. Furmansky's May 7, 2003 independent medical evaluation.⁶ The termination of benefits was effective July 12, 2003. Appellant continues to receive wage-loss compensation and medical benefits due to his April 18, 1997 employment injury under claim number 02-0752787.

The Office subsequently denied modification by decisions dated February 1, 2005 and May 10, 2006.⁷

Dr. Arthur C. Roberts, a Board-certified psychiatrist and Office referral physician, examined appellant on January 16, 2007. He diagnosed anxiety disorder with generalized anxiety and panic attacks. Dr. Roberts indicated that appellant could not work an eight-hour day, but possibly could return to some job. Dr. Robert's provided a supplemental report dated March 6, 2007 regarding certain part-time (four hours), limited-duty work appellant might be able to perform.

Appellant filed another request for reconsideration on May 9, 2007. He submitted an April 27, 2007 report from Dr. Mueller, who had reviewed Dr. Robert's recent report. Dr. Mueller diagnosed generalized anxiety, panic disorder and major depression, which he related to appellant's January 31, 1997 employment injury. He disagreed with Dr. Robert's assessment that appellant could begin working four hours a day. Dr. Mueller was of the opinion that appellant remained totally disabled from gainful employment.

In a decision dated July 30, 2007, the Office denied modification of its prior decisions. It noted that Dr. Furmansky's May 7, 2003 independent medical evaluation represented the weight

⁶ The Office had previously issued a May 21, 2003 notice of proposed termination of compensation.

⁷ Appellant did not submit any additional medical evidence with either of his two requests for reconsideration.

of the medical evidence regarding whether appellant still had residuals of the January 31, 1997 employment injury.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁸ 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.⁹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.¹⁰ 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.¹¹

ANALYSIS

The Office properly found that a conflict of medical opinion arose between appellant's physicians, Drs. Mueller and Pirrello, and the Office referral physician, Dr. Casper. The Office properly referred appellant to an impartial medical examiner to resolve the issue of whether there were any remaining residuals of the accepted employment injuries.¹² Dr. Furmansky, the impartial medical examiner, found that appellant was no longer disturbed by the incidents surrounding his January 19, 1997 operational deviation. The impartial medical examiner further indicated that appellant's current medical condition and associated disability stemmed from the difficulties appellant subsequently encountered with his IDS-4 assignment. This latter employment incident, according to Dr. Furmansky, permanently aggravated appellant's preexisting panic disorder and adjustment disorder, which condition subsequently evolved into appellant's present-day major depressive disorder. Dr. Furmansky was unequivocal in his opinion that appellant had no current disability or other residuals of the January 1997 employment injury.

Dr. Roberts' January 16 and March 6, 2007 reports did not specifically address the issue of whether appellant had continuing disability or residuals associated with his previously accepted January 31, 1997 employment injury. As such, Dr. Roberts' reports do not overcome the impartial medical examiner's May 7, 2003 report. Dr. Furmansky's May 7, 2003 impartial medical evaluation has special weight over Dr. Mueller's April 27, 2007 reiteration of his earlier position that appellant's psychiatric condition remains causally related to the January 31, 1997

⁸ *Curtis Hall*, 45 ECAB 316 (1994).

⁹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹⁰ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

¹¹ *Calvin S. Mays*, 39 ECAB 993 (1988).

¹² The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a) (2000); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

employment injury. Dr. Mueller was on one side of the conflict that Dr. Furmansky was called upon to resolve in May 2003. Therefore, Dr. Mueller's April 27, 2007 reiteration of his prior opinion is insufficient to outweigh the impartial medical examiner's report and insufficient to create a new conflict.¹³

The Board finds that the Office properly accorded determinative weight to Dr. Furmansky's May 7, 2003 findings, as he was the impartial medical examiner.¹⁴ Dr. Furmansky's opinion is sufficiently well rationalized and based upon a proper factual background. The weight of the medical evidence establishes that appellant no longer has employment-related disability or residuals due to his January 31, 1997 employment injury. The Office, therefore, met its burden of proof to terminate appellant's compensation and medical benefits effective July 12, 2003.

CONCLUSION

The Office met its burden to terminate compensation and medical benefits effective July 12, 2003.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹³ *Kathryn E. Demarsh*, 56 ECAB 677, 684 (2005).

¹⁴ Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).