



aggravation of schizoaffective disorder and polysubstance abuse disorder.<sup>1</sup> It paid wage-loss compensation and medical benefits. Appellant stopped work on July 27, 1995.

In a November 21, 2005 work capacity evaluation form for psychiatric/psychological conditions, Dr. Frank J. Greene, appellant's treating Board-certified psychiatrist, stated that appellant was not competent to return to his usual job as he could not cope with other people. He noted that appellant had bypass surgery and was also suffering from schizoaffective bipolar disorder. Dr. Greene indicated that appellant would never be able to work eight hours a day.

On December 21, 2006 the Office referred appellant to Dr. Michael H. Gotlib, a Board-certified psychiatrist, for a second opinion. In a January 30, 2007 report, Dr. Gotlib noted that appellant had a long psychiatric history going back to the mid-1990s. He noted that, as appellant has been off of work for a length of time, he believed that his aggravation had resolved. Dr. Gotlib did note that appellant continues to have a diagnosis of schizoaffective disorder and is not capable of holding a job at this point in time due to his present symptoms and should continue his current treatment. He further noted that, although appellant reported some substance abuse history in the past, he does not use any substances at this time and does not show any evidence of substance abuse now.

In a June 20, 2007 letter, Dr. Greene stated that he has been seeing appellant since November 16, 2006. He noted that appellant gave his history as having conflict on his job at the employing establishment, where he last worked in 1995. Dr. Greene stated that he tried to work in 2000, but "got into it with several people due to angry outbursts" and had to leave work. He noted that appellant "continues to be preoccupied with the harassment and injustices that he suffered at the [employing establishment]." Dr. Greene concluded that appellant was disabled and unable to work. He opined that the cause of his disability is "the conditions under which he suffered at the [the employing establishment.]" In an August 28, 2007 report, Dr. Greene noted that he continued to feel that appellant suffered from bipolar disorder which was significantly aggravated by his employment at the employing establishment. He noted that appellant continued to be preoccupied with the events that occurred during his employment and that it was his perception that these events aggravated and continue to aggravate his bipolar disorder. Dr. Greene noted that, even though appellant had been removed from all work factors since 1995, his bipolar disorder continues to be aggravated by his accepted work factors. He concluded, "As to why this is, I am not quite sure, however, some people in spite of our best efforts, never fully regain adequate control of their illness."

In order to resolve the conflict between Dr. Greene and Dr. Gotlib with regards to whether appellant had any continuing disability causally related to his employment, the Office

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<sup>1</sup> In a statement of accepted facts dated September 19, 2006, the claims examiner noted that the following were compensable factors of appellant's employment: (1) that appellant had to case 18 letters a minute; (2) that a supervisor called appellant a child in a man's body; (3) that, when in late 1993 appellant asked his supervisor to go home due to back pain, his supervisor told him to take another pain pill and continue working (appellant objected as the pills were narcotic and the supervisor let him go home) and on November 25, 1995 a supervisor told a coworker that appellant had been arrested for drug possession and was in jail (appellant alleged that he had initiated legal action claiming slander).

referred him to Dr. Michael Freedman, a Board-certified psychiatrist, for an impartial medical examination.

In an undated note received on April 21, 2008, Dr. Greene indicated that he was seeing appellant on a regular basis, that he suffers from bipolar disorder which was significantly aggravated by his employment and that he continues to be preoccupied with the events that occurred during his employment. He noted that appellant went for an independent examination on January 30, 2007, that he was disturbed by this examination and that he stated that the doctor saw him for no more than five minutes.

In a report dated April 29, 2008, Dr. Freedman indicated that there was no objective finding that appellant was disabled from his employment on a psychiatric basis. He reported that considering his overall feelings, he doubted that appellant would function at the employment within the employing establishment, but that he appeared to have the mental capacity to work at any other job for which he might otherwise be qualified. Dr. Freedman questioned how successful any attempts to return him to work would be. He further reported that appellant's current medication appeared to have his symptoms in control. Dr. Freedman opined that there were likely significant personality-related issues and that one's personality or character structure is something that develops earlier in their life and is quite solidified by the time they reach their mid to late teens. He opined that one's employment or other situations in adult life do not change one's personality. Dr. Freedman suspected appellant had some passive, aggressive, manipulative and histrionic personality features. He restated that psychological testing could be considered if there is a desire to further assess appellant's underlying personality. Dr. Freedman opined that, if he was to assume that there was some aggravation of his underlying schizoaffective and bipolar disorders as a result of his employment, he would not expect these symptoms to continue unabated. He noted that, if an individual's difficulties are significantly situationally based, one would expect a prompt and marked improvement within days to a few weeks after being removed from the situation. Dr. Freedman then stated that, if appellant continued to experience various symptoms in spite of the fact that it had been approximately 13 years since he last worked for the employing establishment, then one has to look to other areas as a reason for his ongoing symptoms. In a June 27, 2008 updated report, he stated that appellant's work-related aggravation of polysubstance abuse disorder and aggravation of schizoaffective disorder have ceased based on his examination findings and review of the records. Dr. Freedman opined that, if one makes the assumption that there ever was any work-related aggravation of a polysubstance abuse disorder and/or schizoaffective disorder, the aggravation ceased by the time he saw appellant on April 29, 2008.

On August 26, 2008 the Office issued a notice of proposed termination wherein it recommended that appellant's compensation and medical benefits be terminated for the reason that his work-related conditions have resolved. Appellant submitted no new evidence to challenge the proposed decision.

By decision dated October 2, 2008, the Office finalized the termination of appellant's compensation and medical benefits effective October 1, 2008. On October 21, 2008 appellant requested an oral hearing.

In a letter dated March 4, 2009, appellant, through his representative, noted that he was changing his request for an oral hearing to a request for review of the written record, reviewed the evidence and alleged that the burden of proof to terminate benefits had not been met. Appellant's representative stated that in support of his request he was submitting a new report by Dr. Greene dated January 24, 2009. No such report is in the record. However, appellant did submit a January 19, 2009 report by Dr. Habib Vaziri, a Board-certified psychiatrist, who noted that he has seen appellant on four occasions and that he had obtained a detailed history from him. Dr. Vaziri listed his assessments as "syndrome of bipolar disorder? With psychotic feature"; schizoaffective disorder; impulse control disorder; mixed personality disorder, not otherwise specified and morbid obesity. He found, "Stressors are moderate remote serious conflict at work in my judgment has greatly contributed to the precipitation of his psychiatric disorder and has continually perpetuated his symptomatology and continues to this day." Dr. Vaziri stated:

"Dr. Greene had competently managed appellant's case and that it was surprising that he kept him out of the hospital. He noted that appellant harbored a significant amount of symptomatology and has become more pronounced because he feels he has been abused by worker's compensation by sending him to different physicians to assess him. Dr. Vaziri concluded, 'Considering his history background and information it is my considered opinion that diagnostically [appellant] is struggling with what was aforementioned. Furthermore, it is my considered opinion that the trauma of his work situation and continuation of the dilemmas has and continues to be a major precipitating factor for continuation of his discontent and aggravation of his symptomatology.' He noted that he advised appellant that continuation of his treatment is paramount and that he needs the management of pharmacology and management of his discontentment in the form of supportive therapy."

In a May 14, 2009 decision, the hearing representative found that the Office met its burden of proof in terminating appellant's compensation and medical benefits and affirmed its October 2, 2008 decision.

### **LEGAL PRECEDENT**

After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>3</sup>

Section 8123(a) provides that, 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.<sup>4</sup> Where a case is referred to an impartial

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<sup>2</sup> *B.K.*, 60 ECAB \_\_\_\_ Docket No. 08-2002 (issued June 16, 2009).

<sup>3</sup> *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *James F. Weikel*, 54 ECAB 660 (2003).

<sup>4</sup> *Regina T. Pellicchia*, 53 ECAB 155 (2001).

medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>5</sup>

### ANALYSIS

The Office accepted appellant's claim for aggravation of schizoaffective disorder and polysubstance abuse disorder and placed him on the periodic rolls. The burden is on the Office to support termination of his compensation and termination of medical benefits.<sup>6</sup> The question is whether the Office has met its burden to establish that appellant's accepted condition has resolved.

Appellant's treating Board-certified psychiatrist, Dr. Greene, stated that appellant was not competent to return to his usual job. In his June 20, 2007 report, he stated that appellant continued to be preoccupied with harassment and injustices that he suffered at the employing establishment and was disabled from work. Dr. Greene opined that the cause of his disability was the conditions at the employing establishment. In an August 28, 2007 report, he opined that appellant continued to suffer from bipolar disorder. Dr. Greene opined that, even though appellant had been removed from all work factors since 1995, his bipolar disorder continued to be aggravated by his accepted work factors. The second opinion psychiatrist, Dr. Gotlib, disagreed, noting that although appellant continued to have a diagnosis of schizoaffective disorder and was not capable of holding a job at this point, appellant had been off of work for a length of time such that he believed that his aggravation caused by his employment had resolved. The Board finds that the Office properly found a conflict in medical opinion and in order to resolve the conflict in the medical evidence, the Office referred appellant to Dr. Freedman for an impartial medical examination. Dr. Freedman opined in his reports that appellant's work-related aggravation of polysubstance abuse disorder and aggravation of schizoaffective disorder had ceased based on his examination findings and review of the records. He explained that, if any individual's difficulties are significantly situationally based, one would expect a marked improvement within days to a few weeks after being removed from the situation. Dr. Freedman noted that, as appellant continued to experience various symptoms in spite of the fact that it has been approximately 13 years since he last worked for the employing establishment, then one has to look for another reason for his ongoing symptoms. He suggested the affects of appellant's underlying personality was the cause, which was not altered by employment or other life situations, as one's personality is solidified by the late teens. Dr. Freedman concluded that, at the time of his examination, the work-related aggravation of appellant's employment conditions had ceased.

The Board finds that Dr. Freedman's opinion that appellant no longer has residuals from his work accepted condition is based on a proper factual and medical background and is well rationalized. His report, therefore, constitutes the special weight of the medical opinion evidence

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<sup>5</sup> *V.G.*, 59 ECAB \_\_\_ (Docket No. 07-2179, issued July 14, 2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>6</sup> *James M. Frasher*, 53 ECAB 794 (2002).

afforded an impartial medical specialist.<sup>7</sup> The Board, therefore, finds that the Office met its burden of proof to terminate appellant's compensation benefits on October 1, 2008.

Following the termination, appellant submitted a January 19, 2009 report by Dr. Vaziri wherein he opined that the trauma from appellant's work situation and continuation of the dilemmas continued to be a major precipitating factor for continuation of his discontent and aggravation of his symptomatology. The Board notes that Dr. Vaziri makes vague references to appellant's work situation but does not discuss whether he has any continuing emotional condition causally related to the accepted compensable factors of employment nor does he discuss appellant's employment in any detail. He does not provide a detailed explanation as to why appellant's current condition is due to his "remote" employment rather than other factors. The Board finds that Dr. Freedman's opinion that appellant was no longer disabled or experiencing residuals from his employment injury continues to represent the special weight of the medical evidence accorded an impartial medial specialist.<sup>8</sup>

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation effective October 1, 2008 on the grounds that he no longer had any residuals related to his accepted injury.

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<sup>7</sup> See *B.T.*, 60 ECAB \_\_\_\_ (Docket No. 08-1885, issued June 3, 2009).

<sup>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 14, 2009 is affirmed.

Issued: October 12, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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