

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NOLEN W. KIMBLER and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, OH

*Docket No. 99-1765; Submitted on the Record;
Issued February 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective August 15, 1998 on the grounds that he had no disability due to his employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective August 15, 1998 on the grounds that he had no disability due to his employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

In August 1983, appellant, then a 59-year-old letter carrier, filed an occupational disease claim alleging that he sustained an emotional condition due to harassment from coworkers. The Office accepted that appellant sustained temporary aggravation of organic brain syndrome, mixed personality style and involuntional melancholia and paid appellant compensation for disability. Appellant stopped work on June 17, 1983 and retired from the employing establishment on September 2, 1983. In March 1998, the Office determined that there was a

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

conflict in the medical opinion between Dr. Eugene S. Cherry, appellant's attending Board-certified psychiatrist and the Office referral physician, Dr. Alan Edmonson, a Board-certified psychiatrist, on the issue of whether appellant continued to have residuals of the accepted employment injury.⁵

In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Michael Gureasko, a Board-certified psychiatrist, for an impartial medical examination and an opinion on the matter.⁶ By decision dated August 14, 1998, the Office terminated appellant's compensation effective August 15, 1998 on the grounds that the opinion of Dr. Gureasko showed that appellant had no employment-related disability after that date. By decision dated and finalized April 8, 1999, an Office hearing representative denied modification of the Office's August 14, 1998 decision.

In situations where 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.⁷

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Gureasko, the impartial medical specialist selected to resolve the conflict in the medical opinion. The April 16, 1998 report of Dr. Gureasko establishes that appellant had no disability due to his employment injury after August 15, 1998.

In his April 16, 1998 report, Dr. Gureasko detailed appellant's factual and medical history and reported the findings of the psychiatric evaluation performed on April 14, 1998. He diagnosed lifelong dysthymic disorder and alcohol dependence in remission and indicated that appellant had certain personality traits such as passive-aggressiveness, which did not reach the level of a frank personality disorder. Dr. Gureasko noted that appellant did not exhibit any indication that he continued to sustain residuals of the accepted employment injury, temporary aggravation of organic brain syndrome, mixed personality style and involuntional melancholia. He noted that appellant's current stressors were nonemployment factors such as the aging process, chronic lifelong depression, childhood emotional deprivation and lifelong maladaptive personality traits. Dr. Gureasko indicated that appellant could not work due to such

⁵ In a report dated September 24, 1996, Dr. Cherry determined that appellant continued to have disabling residuals of his employment-related emotional condition. Dr. Cherry indicated that incidents in appellant's life continued to trigger memories of the conditions at the employing establishment and exacerbated his continuing emotional condition. In a report dated March 3, 1998, Dr. Edmonson determined that appellant did not have any continuing employment-related disability. Dr. Edmonson indicated that appellant's continuing disability was due to nonwork-related personality traits and chronic depression which had been exacerbated by an accumulation of life stressors.

⁶ 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." 5 U.S.C. § 8123(a).

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

nonemployment factors as his physical condition, chronic depression and maladaptive personality traits.⁸

The Board has carefully reviewed the opinion of Dr. Gureasko and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Gureasko's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Gureasko provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁹ Dr. Gureasko provided medical rationale for his opinion by explaining that appellant did not exhibit any evidence of his employment injury. Dr. Gureasko further explained that appellant's continuing problems were due to nonwork factors including his physical condition and nonwork-related depression and personality traits.

The decisions of the Office of Workers' Compensation Programs dated and finalized April 8, 1999 and dated August 14, 1998 are affirmed.

Dated, Washington, D.C.
February 3, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ Appellant's physical problems include diabetes, hypertension and kidney and prostate conditions.

⁹ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).