U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHIL L. POTTER and DEPARTMENT OF JUSTICE,
OFFICE OF INSPECTOR GENERAL, Washington, DC

Docket No. 00-1060; Submitted on the Record;
Issued December 17, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's medical benefits on March 26, 1998; and (2) whether appellant met his burden of proof to establish that he had any disability after March 26, 1998 causally related to his employment injury.

On November 19, 1993 appellant, then a 43-year-old former criminal investigator, filed an occupational disease claim alleging that factors of employment caused an emotional condition.[1] He had been terminated for cause, effective November 19, 1990. By letter dated December 21, 1994, the Office accepted that appellant sustained an employment-related post-traumatic stress disorder and generalized anxiety disorder. On March 13, 1995 the Office informed appellant that the medical evidence of record was insufficient to establish that he was totally disabled due to the accepted conditions and requested that he submit further medical evidence.[2] In response, appellant submitted reports from his treating clinical psychologist, Bruce Chlopan, Ph.D.

The Office continued to develop the claim, and on May 26, 1995 referred appellant to Dr. Pankaj P. Chokhawala, a Board-certified psychiatrist, for a second opinion evaluation. By decision dated September 15, 1995, the Office denied the claim, based on Dr. Chokhawala's opinion. Appellant requested a hearing that was held on August 28, 1996. In a November 21, 1996 decision, an Office hearing representative remanded the case to the Office, finding that a conflict in the medical evidence existed between the opinions of Drs. Chokhawala and Chlopan.

The Office referred appellant to Dr. Melody Agbunag, who is Board-certified in psychiatry and neurology, along with the medical record, a set of questions and a statement of accepted facts, for a second opinion evaluation. Dr. Agbunag submitted a report dated February 12, 1997. By letter dated February 14, 1997, the employing establishment contacted Dr. Agbunag. In a letter dated April 24, 1997, the Office requested that Dr. Agbunag answer

[1] Appellant filed a second occupational disease claim on January 11, 1994.

[2] The record indicates that appellant has never received wage-loss compensation.

specific questions. In response, Dr. Agbunag submitted a work capacity evaluation dated May 7, 1997. The Office then determined that Dr. Agbunag's opinion was tainted because she had been requested to furnish a second opinion evaluation rather than an impartial medical evaluation and because the employing establishment wrote to her. The Office further noted that Dr. Agbunag had not answered the questions requested by the Office on April 24, 1997.

The Office referred appellant, together with the medical record, a set of questions and a statement of accepted facts, to Dr. R. Scott Benson, who is Board-certified in psychiatry, neurology and pediatrics, for an impartial medical evaluation. Dr. Benson submitted reports dated October 15, November 17 and December 11, 1997, January 28 and February 19, 1998.

In a February 23, 1998 decision, the Office found that appellant had no disability due to the accepted emotional condition. In a letter that same date, the Office informed appellant that it proposed to terminate his medical benefits. By decision dated March 26, 1998, the Office finalized the termination of appellant's medical benefits on the grounds that he had no continuing employment-related disability. Appellant timely requested a review of the written record and in a decision dated August 14, 1998, an Office hearing representative affirmed the March 26, 1998 decision. In a request received by the Office on August 10, 1999, he requested reconsideration and submitted additional evidence. By decision dated November 16, 1999, the Office denied modification of the prior decision. The instant appeal follows.

The Board notes that the Office properly excluded the report of Dr. Agbunag, as her opinion may have been influenced by the employing establishment.[3] She further failed to submit a supplementary report that was requested by the Office on April 24, 1997 and had not been identified as an impartial medical evaluation in correspondence sent to appellant on January 15, 1997. The Board thus finds that the Office properly referred appellant to Dr. Benson for an impartial medical evaluation.

The Board finds that the Office met its burden of proof to terminate appellant's medical benefits on March 26, 1998.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require medical treatment.[4] Furthermore, in situations where there are 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 on a proper factual background, must be given special weight.[5]

The relevant medical evidence in this case includes numerous reports from appellant's treating psychologist, Dr. Chlopan, who diagnosed employment-related depression, post-traumatic stress disorder, panic disorder and generalized anxiety disorder. Dr. Chokhawala, who is Board-certified in psychiatry and neurology provided a second opinion evaluation for the Office dated July 12, 1995 in which he diagnosed post-traumatic stress disorder and generalized

[3] *See Jeannine E. Swanson*, 45 ECAB 325, 334-35 (1994).

[4] *Marvin T. Schwartz*, 48 ECAB 521 (1997).

[5] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

anxiety disorder. Dr. Chokhawala advised that appellant was not disabled and further questioned whether appellant was malingering.

Dr. Benson, who is also Board-certified in psychiatry and neurology, provided an independent medical evaluation for the Office. In a report dated October 15, 1997, he diagnosed alcohol dependence in early full remission and post-traumatic stress disorder by history. Dr. Benson stated that appellant did not have a pattern of symptoms that met the criteria for post-traumatic stress disorder or generalized anxiety disorder and advised that the alcohol was not employment related. He further advised that the issue of malingering had not been resolved. Dr. Benson concluded that appellant was not capable of performing his date-of-injury job as a criminal investigator because this could reactivate his post-traumatic stress disorder. By report dated December 11, 1997, he advised that appellant did not currently have any objective medical evidence of either post-traumatic stress disorder or generalized anxiety disorder. Dr. Benson opined that appellant had never met the criteria for a diagnosis of generalized anxiety disorder and that his post-traumatic stress disorder had resolved. Regarding post-traumatic stress disorder, he stated:

> "Post-traumatic stress disorder develops following exposure to an extreme traumatic stressor. The statement of accepted facts identifies several incidents which could be defined as extreme stressors. On two occasions he was threatened with a knife. As an activities Lieutenant, he witnessed inmates and detainees die from heart attacks, suicide, murder, rape and assaults. Other stressors, such as being required to testify against an acquaintance and former coworker or being required to work long hours, ordinarily would not be considered examples of extreme stressors and therefore not related to post-traumatic stress disorder. It is important to note that [appellant] experienced his extreme stressors between 1984 and 1986. Symptoms of post-traumatic stress disorder usually begin within the first three months after the trauma. In this case, [he] was able to continue his work with the federal government without any evidence of post-traumatic stress disorder for several years. In fact, the diagnosis of post-traumatic stress disorder was not considered until 1993, three years after he stopped work with the federal government."

In a January 28, 1998 report, Dr. Benson reiterated that appellant's post-traumatic stress disorder had resolved. He advised that appellant's current disability was in no way related to the accepted conditions and that he was able to perform the duties of the position he held at the time of his termination for cause. By report dated February 19, 1998, Dr. Benson advised that he used Dr. Agbunag's report to confirm historical data provided by appellant and that her conclusions were reviewed for information only. He advised that his medical opinion was based on his examination and review of the record, stating "conclusions reached by other examiners are reviewed for information but have little influence on my conclusions."

In this case, the Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Benson, the referee examiner, who advised that appellant's post-traumatic stress disorder had resolved and that his current disability was in no way related to the accepted conditions, concluding that appellant was able to perform the duties of the position he held at the time of his termination for cause. The Office, therefore, met its burden of proof to terminate appellant's medical benefits on March 26, 1998.

The Board also finds that appellant failed to meet his burden of proof to establish that he had any disability after October 15, 1997, the date of Dr. Benson's examination.

Under the Federal Employees' Compensation Act,[6] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act.[7]

To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[8] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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.[9]

With his request for reconsideration submitted to the Office on August 10, 1999, appellant submitted a number of medical reports that were previously of record. He also submitted copies of prescriptions signed by Dr. D.K. Vijapura, a discharge summary from a hospitalization from May 27 to July 2, 1998 and an August 6, 1999 report from Dr. Ken Gray, a psychiatrist, who diagnosed alcohol abuse and dependence by history, post-traumatic stress disorder by history and antisocial personality disorder. None of the foregoing, however, provides an opinion regarding appellant's ability to work and are, therefore, irrelevant to the issue of continuing disability. Appellant also submitted a copy of an article from a news magazine. The Board has held, however, that excerpts from publications are of little evidentiary value because such materials are of general application.[10] Lastly, appellant submitted a report dated July 9, 1999 from Dr. Fernando Lopez. The Board notes that Dr. Lopez merely reiterated diagnoses and conclusions that were contained in reports he previously submitted that had been reviewed by the Office. Thus, as the record contains no rationalized evidence that appellant continued to be disabled after March 26, 1998, the Office properly determined that he was not entitled to compensation after that date.

Lastly, the Board finds that this case is not in posture for decision regarding appellant's entitlement to wage-loss compensation for the period from November 19, 1990 when he was

[6] 5 U.S.C. §§ 8101-8193.

[7] *Maxine J. Sanders*, 46 ECAB 835 (1995).

[8] *See* 20 C.F.R. § 10.110(a); *Kathryn Haggerty, supra* note 5.

[9] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *See generally Dominic E. Coppo*, 44 ECAB 484 (1993).

terminated for cause and October 15, 1997, the date of Dr. Benson's independent medical evaluation.

In the instant case, while Dr. Benson clearly indicated that appellant had no employment-related residuals on the date of his examination, October 15, 1997, he did not provide, nor did the Office ask that he provide, an opinion regarding any disability prior to that time. As stated above, Dr. Chlopan advised that appellant could not work because of his employment-related emotional condition and Dr. Chokhawala advised that appellant was not disabled. The Board therefore finds that a conflict remains regarding whether appellant had an employment-related disability between November 19, 1990 and October 15, 1997, the date of Dr. Benson's examination. The case will, thus, be remanded for the Office to prepare an updated statement of accepted facts, containing a position description of the criminal investigator job that appellant was performing at the time of his termination to include the physical requirements of the job. The Office should then obtain a supplemental report from Dr. Benson.[11] After such development as it deems necessary, the Office shall issue a *de novo* decision regarding whether appellant had an employment-related disability from work for the period November 11, 1990 to October 15, 1997.

The decision of the Office of Workers' Compensation Programs dated November 16, 1999 is hereby affirmed regarding whether the Office properly terminated appellant's medical benefits on March 26, 1998 and whether he had any disability after that date. The case is remanded to the Office for a determination of whether appellant had any employment-related disability between November 16, 1990 and October 15, 1997.

Dated, Washington, DC
December 17, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[11] The Board notes that when the impartial medical specialist's statement of clarification or elaboration is not forthcoming to the Office, or if the physician is unable to clarify or elaborate on the original report, or if the physician's report is vague, speculative or lacks rationale, the Office must refer the employee to another impartial specialist for a rationalized medical opinion on the issue in question. *Id.*