

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD MARTINEZ and DEPARTMENT OF THE NAVY,
PEARL HARBOR NAVAL SHIPYARD, HI

*Docket No. 01-48; Submitted on the Record;
Issued January 16, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant had any disability or medical condition after November 30, 1995 causally related to his accepted emotional condition.

This case is before the Board for the second time. Previously, the Board found that appellant had identified two compensable factors of employment and remanded the case for consideration of the medical evidence.¹ The facts and history of the prior appeal are incorporated by reference.

On September 28, 1993 appellant, then a 52-year-old crane operator, filed an occupational disease claim alleging that he sustained an emotional condition in the performance of duty on December 15, 1992. He alleged that he was unfairly rated on his performance appraisal because of his light-duty status due to employment-related medical conditions and was required to work beyond his physical limitations.

By letter dated March 26, 1998, the Office of Workers' Compensation Programs referred appellant, a statement of accepted facts and copies of medical records to Dr. Mohan S. Nair, a Board-certified psychiatrist and neurologist of professorial rank, for an examination and evaluation of whether he had any disability or medical condition causally related to compensable factors of employment.

In a report dated May 19, 1998, Dr. Nair provided a history of appellant's condition, a medical and personal history, a review of the medical records, and a mental status examination. He stated that appellant had post-traumatic stress disorder which was caused by the murders of his brother and nephew in 1995 and, to a lesser degree, by the murder of his sister in 1952. Dr. Nair also diagnosed a mood disorder and mixed personality disorder, psychosis and alcoholism. He stated:

¹ Docket No. 95-2503 (issued February 5, 1998).

“[Appellant’s] history and the current mental status examination [are] consistent with a seriously psychiatrically disturbed individual, whose mood alternates between depression, hopelessness, emptiness and rage.

“Having said this, the examination does not exclude the fact that [appellant] may have in fact been the subject of ongoing or episodic unfairness at his job. I agree with Dr. Goodyear that [appellant’s] personality makes him more vulnerable to abuse, exploitation and ridicule by those around him in work or social settings. If discrimination and harassment are established by a trier of fact, then this would be a factor that *aggravated* his underlying psychiatric disorder during the course of his employment.

“There appears to be significant evidence that recommendations for [appellant] to be on light-duty were disregarded by his employers.... He may have continued to work as a result of feeling under the threat of being downgraded or terminated; all of this would be seen as stressful factors related to work.

“The work[-]related factors ceased at the time that [appellant] stopped working for the [employing establishment] three years ago. Residual effects of stress at work may be seen as a contributory factor towards his mental disorder for six months or a year at best after he ceased working, if we are to give [appellant] the benefit of the doubt, but cannot be seen as a factor in his symptoms from that point on.

“In summary, work-related stressors may be seen as a contributory factor in producing anxiety, depression symptoms and worsening of his personality disorder between December 1992 and November 1995 and to a lesser degree through 1996. By [November 19]95, consequent to the double homicide involving close relatives, the degree of nonwork-related stressors are seen as having markedly increased. Factors at work are seen as contributing 50 percent to [appellant’s] psychiatric disorder between December 1992 and November 1995 and 25 percent in 1996. No work-related factors are seen as causing or contributing to any of his mental disorders or disabilities after 1996.”

* * *

“[Appellant] does not show any residuals related to stressors at work that were noted between 1992 and 1995. His symptoms from that point onwards are the result of preexisting psychiatric disorders that I have discussed previously ... no psychiatric residuals after 1996 are seen as stemming from work. (Emphasis in the original.)

In a supplemental report dated June 16, 1998, Dr. Nair stated that appellant’s mood disorder, psychosis, personality disorder and alcoholism were aggravated between 1992 and 1995 as a result of stress related to appellant’s feelings of being victimized by his performance rating and being assigned to duties beyond his physical limitations.

By decision dated July 9, 1998, the Office accepted that appellant sustained temporary aggravation of a mood disorder, psychosis, a personality disorder, and alcoholism from December 1, 1991 through November 30, 1995. The Office found that appellant had no work-related psychiatric condition causally related to factors of his federal employment after November 30, 1995.

By letter dated August 31, 1999, appellant requested an oral hearing and submitted additional evidence.

In a report dated July 15, 1998, Brian Goodyear, Ph.D., appellant's licensed clinical psychologist, disagreed with Dr. Nair's report. He stated his opinion that, at the time of his initial examination in 1993, appellant had major depression and a personality disorder and did not have clinical indications of post-traumatic stress disorder, mood disorder, psychosis or alcoholism. Dr. Goodyear stated his opinion that appellant had a permanent aggravation of major depression. He noted that he had not seen appellant since June 20, 1995 and had kept in contact with him by telephone on an occasional basis. Dr. Goodyear stated:

“Dr. Nair indicates that the work-related factors ceased at the time that [appellant] stopped working for the [employing establishment] three years ago. I do not agree.... [Appellant] continues to be adversely affected by the events, which took place while he was employed at [the employing establishment]. Dr. Nair's own description of [appellant] states, in fact: ‘He tended to be perseverative, constantly ruminating on the events at work. Every question that was asked of him would be related to the events at [the employing establishment].’ This clearly illustrates the ongoing effects of the work-related factors....

“[Appellant] has significant residuals related to his employment.... I have not seen [appellant] in person since 1995, but it is evident from our telephone conversations that there is at least a moderate level of psychological impairment, which, I believe, is likely to remain present on a permanent basis. This impairment is at least partly attributable to his employment....”

By letter dated October 4, 1999, appellant requested that the Office subpoena Samuel Mitchell, his representative, and Dr. Goodyear to attend the oral hearing. By decision dated April 6, 2000, the Office declined to issue a subpoena for these individuals on the grounds that appellant had not submitted persuasive argument or evidence establishing that the presence of the requested individuals was necessary for a full presentation of his case or that he was unable to obtain statements directly from them on his behalf.²

In a report dated April 19, 2000, Dr. Goodyear stated that he examined appellant on that date and that appellant had unresolved major depression related to his employment. He stated that appellant was very upset by the deaths of his brother and nephew in November 1995 but also continued to be bothered by the symptoms stemming from his ongoing employment.

² Appellant does not challenge the April 6, 2000 decision on appeal and the Board notes that Mr. Mitchell and Dr. Goodyear did appear at the oral hearing held on April 25, 2000.

Dr. Goodyear noted that appellant retired from the employing establishment and moved in May 1996 but maintained contact with him periodically by telephone. He stated:

“[Appellant] currently reports that his condition improved somewhat after his move ... but he has continued to be bothered by obsessive, ruminating thoughts and intermittent dreams about the problems he had while working at [the employing establishment], feelings of depression and irritability, and difficulty sleeping. He has been prescribed medications.... His clinical presentation and mental status examination at this time are consistent with a diagnosis of major depression, chronic, in partial remission, in the context of a personality structure notable for longstanding paranoia and schizoid features. His thought content is dominated by a ruminative preoccupation with the problems that he experienced during his employment ... his mood appears moderately dysphoric and his affect is remarkable for a pervasive sense of dejection and demoralization, punctuated by episodic expressions of anger and frustration. [Appellant] does not report any symptoms suggestive of post-traumatic stress disorder and there are no indications of any psychotic symptoms in his clinical presentation.”

On April 25, 2000 at hearing was held and appellant testified. Dr. Goodyear also testified.

By decision dated August 22, 2000, the Office hearing representative affirmed the Office’s July 9, 1998 decision.

The Board finds that the weight of the medical evidence in this case establishes that appellant had residuals of his employment-related emotional condition through 1996.

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his or her claim.⁴ The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁵ However, it is well established that proceedings under the Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ The Office has an obligation to see that justice is done.⁷

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Ruthie M. Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

⁵ See *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁶ See *Dorothy Sidwell*, 36 ECAB 699, 707 (1985).

⁷ See *John J. Carlone*, 41 ECAB 354, 360 (1989).

In this case, the Office found that appellant had failed to establish that he had any disability or medical condition after November 30, 1995 causally related to his December 12, 1992 employment injury. The Office based its decision on the May 19 and June 16, 1998 reports of Dr. Nair, a Board-certified psychiatrist and Office referral physician. However, Dr. Nair indicated in his May 19, 1998 report that appellant's work-related condition continued beyond November 30, 1995 and, in fact, extended through 1996. On page 22 of his report he stated that, "Residual effects of stress at work may be seen as a contributory factor towards his mental disorder for *six months to a year at best after he ceased working*,⁸ if we are to give [appellant] the benefit of the doubt, but cannot be seen as a factor in his symptoms from that point on." On page 23 of his report Dr. Nair states, "In summary, work-related stressors may be seen as a contributory factor in producing anxiety, depression symptoms and worsening of his personality disorder between December of 1992 and November of 1995 *and to a lesser degree through 1996*.... Factors at work are seen contributing 50 percent to [appellant's] psychiatric disorder between December of 1992 and November of 1995 *and 25 percent in 1996*. No work-related factors are seen as causing or contributing to any of his mental disorders or disabilities *after 1996*." On page 26 of his report he stated, "No psychiatric residuals *after 1996* are seen as stemming from work." (Emphasis added.)

Dr. Nair provided a comprehensive medical report, including diagnostic testing, and opined that employment factors contributed to appellant's emotional condition through 1996. The Board finds that his reports constitute the weight of the medical opinion in this case. Therefore, the Office's August 22, 2000 decision is modified to find that appellant is entitled to compensation through 1996.

The reports of Dr. Goodyear and his opinion that appellant had a permanent aggravation of his emotional condition are of diminished probative value. He acknowledged in his July 15, 1998 report that he had not seen appellant in person since June 1995 and relied only on occasional telephone conversations with him in making his diagnosis and rendering his opinion. His April 19, 2000 report is brief and is based on telephone conversations with appellant rather than first-hand observation and evaluation.

On appeal appellant argued that the Office hearing representative should have questioned his wife at the hearing concerning his medical condition. However, the issue in this case is a medical one and lay persons are not competent to render a medical opinion.⁹ Therefore, there is no error in the fact that appellant's wife did not testify at the hearing in this case.

The August 22, 2000 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Dated, Washington, DC
January 16, 2002

⁸ According to Dr. Goodyear, appellant ceased work in May 1996.

⁹ See *James A. Long*, 40 ECAB 538, 541-42 (1989).

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member