

PUBLIC LAW BOARD NO. 7660
CASE NO. 56

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s medical disqualification and removal from service of Mr. S. Zinn effective March 31, 2015 was arbitrary, unsupported, unwarranted and in violation of the Agreement (System File T-1550U-902/1628034 UPS).
2. The Carrier’s refusal to convene a Rule 50 medical panel regarding Claimant S. Zinn’s ability to return to service was arbitrary, unsupported, unwarranted and in violation of the Agreement.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, the Carrier shall provide Claimant S. Zinn for all hours he was not allowed to work commencing March 31, 2015 and continuing until he is returned to service, including both straight time and overtime hours.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a military veteran, tested positive for benzodiazepine in a reasonable cause drug test on February 13, 2014, and was removed from service on February 24, 2014. It was learned by EAP that he had a 50% medical disability, and he was referred to the local VA for treatment. He was hospitalized between March 18 and 24, 2014 for an alcohol and narcotics episode, during which time he had a psychological evaluation. Claimant attended an intensive outpatient substance abuse program at the VA in Tucson, AZ for 30 days commencing April 9, 2014, and successfully completed the program. As part of the return to work process, Claimant had a negative urine screen on June 12, 2014, and was referred for an outside Chemical Use Evaluation (CUE) and a psychological evaluation to assess his PTSD.

The CUE was conducted on June 30, 2014, and trauma-related treatment and anger management counselling were recommended. Claimant was seen for a psychiatric evaluation by Dr. Wiggins on July 15, 2014. He found that Claimant suffered from symptoms of trauma-related disorder, with depression, anxiety in public places, frequent panic attacks, combat related nightmares, intense irritability and anger, and visual hallucinations of demons. He recommended “work restrictions related to job functions that require sustained concentration and attention, and significant levels of social interactions,” which he considered temporary contingent on his addressing his psychological issues.

Claimant presented a note from his treating psychiatrist at the Southern Arizona VA Hospital, dated October 13, 2014, indicating that he was last seen on that date and that “he is cleared to return to full-time employment.” Carrier found no clinical substantiating information upon which to act. A note from a VA Psychiatric Resident, dated November 5, 2014, indicates that Claimant has been diagnosed with PTSD related to his history in the military in Iraq, noting that his inability to work has increased his anxiety, and opining that his return to work “may be beneficial to his treatment and

recovery.” After Carrier did not return him to work, it appears that Claimant moved his family back to St. Louis, MO and commenced receiving treatment for his diagnosed PTSD from the VA there.

By letter dated April 9, 2015, Carrier’s CMO, Dr. John Holland, issued a FFD Determination, giving Claimant a General Medical Disqualification from doing any jobs for Carrier, “due to his history of chronic mental health and substance abuse issues.” His three page determination sets forth his review of various progress notes, drawing the conclusion that Claimant’s “history of chronic substance abuse issues, untreated PTSD, and psychotic features substantiate that he has a low likelihood of maintaining mental health stability for a prolonged period of time in the future....”

By letter dated April 16, 2015, St. Louis VA PTSD Clinic Team Coordinator Dr. O’Connor sets forth his analysis of Claimant’s current situation. He notes that Claimant was assessed on February 26, 2015 and diagnosed with PTSD and alcohol and opioid use disorders, both in remission, with a history of ADHD. Dr. O’Connor indicates that Claimant has been vigorously participating in Prolonged Exposure Therapy, the most effective PTSD treatment, and making substantial gains, and projects that continued participation, along with lack of substance abuse and his support network, will result in his recovery from PTSD, and him no longer meeting the criteria of the diagnosis by the end of treatment.

The claim was initiated by the Organization on May 19, 2015 based upon the contention that there were no reasons given for his medical disqualification, he had participated in all necessary treatment, and should have been returned to work, especially in light of the fact that in October and November, 2014, he was released to return to full duty by his psychiatrist and psychologist. It notes that Carrier ignored several doctor’s recommendations, even from a PTSD specialist, and the CMO’s opinions were

unsupported and arbitrary, since there was no personal evaluation of Claimant and no valid reason to withhold him from service. In the claim, the Organization states that if its request to return Claimant to work and make him whole is denied, it requests a Rule 50(a) panel, given the clear difference of opinions between the CMO and Claimant's doctors.

Carrier's denials point out that Claimant's serious mental health and substance abuse issues raise concern for the safety of himself and his co-workers, and that he has not met the medical criteria for FFD, which it must assure due to its workplace safety obligations. It asserts that Claimant's situation does not meet the criteria for a Rule 50(a) medical board, which requires a dissenting opinion, since all medical professionals agree on his diagnoses, and there is no dissenting opinion. Carrier contends that the medical disqualification was based on safety, and was neither arbitrary nor unwarranted.

While the appeal was working its way through the on property process, Dr. O'Connor sent another letter, dated August 6, 2015, noting that Claimant's recent assessment by VA Compensation and Pension Examiner found him not to meet the criteria for a diagnosis of PTSD. Dr. O'Connor stated that Claimant's hard work in treatment has "resulted in a steady and well documented decrease in the severity and frequency of his symptoms,..... He has shown no signs of relapse relating to substance use, and therefore, does not meet criteria for any other active mental health diagnosis." He opines that Claimant's prognosis is good, and he sees no indication that he is at particular risk for relapse of any of his previously diagnosed conditions.

Carrier's further denials indicate that these medical notes were reviewed by its HMS Department and it was determined to leave the medical disqualification in place since Claimant has chronic substance abuse and mental health issues. It argues that it has the responsibility and obligation to maintain reasonable physical and mental standards,

which it has done in this case, and asserts that the Organization did not meet its burden of proof. The Organization's final appeal points out that Claimant no longer has the diagnosis of PTSD, and there is no support for Carrier's denial of a third doctor panel.

A careful review of the record convinces the Board that, while there can be no question that Claimant was initially properly held out of service while receiving treatment for his diagnosed substance abuse and PTSD conditions, and the various symptoms attributable to them, on April 9, 2015, Carrier permanently medically disqualified him from performing any type of service. The initial claim makes clear that if Claimant was not to be returned to work, or have his medical disqualification reversed, the Organization requested the convening of a Rule 50(a) Medical Board. That provision provides:

(a) DISQUALIFICATION - When an employee is withheld from duty because of his physical or mental condition, the employee or his duly accredited representatives may, upon presentation of a dissenting opinion as to the employee's physical or mental condition by a competent physician, make written request upon his employing officer for a Medical Board.

While Carrier denied such request based upon its understanding that there was no dissenting medical opinion about Claimant's diagnoses and medical condition, the record does not support that claim. Even if the Board was to discount the October 13, 2014 return to work clearance from Claimant's VA psychiatrist, based upon its brevity or absence of any "clinical substantiating information" in the letter, as did the CMO, or the November 5, 2014 note concerning the beneficial effect a return to work may have on Claimant's treatment and recovery, the clinical notes exchanged on the property reveal that Carrier was being kept informed as to the ongoing steps being taken by Claimant to deal with his issues.

Immediately after the issuance of the medical disqualification, Claimant's PTSD clinic team leader sent the first of two notes concerning the current status of Claimant's

treatment and prognosis for future recovery, and a follow up note in August, 2015 indicating that Claimant no longer met the criteria for any active mental health diagnosis, including PTSD, without any indication of relapse, and that his prognosis was quite good. At the very least, these represent dissenting opinions from the CMO's determination that Claimant suffered from chronic conditions that "he has a low likelihood of maintaining mental health stability for a prolonged period of time in the future," the basis for disqualifying him from performing any type of service with Carrier.

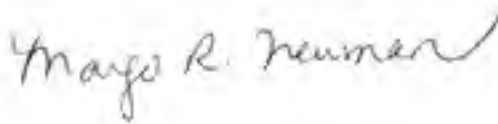
While the Board is cognizant of Carrier's managerial prerogative to establish and enforce medical qualification standards and determine fitness and ability, see e.g. PLB 5666, Award 207, we find that the Organization made a proper Rule 50(a) request for a Medical Board, and that medical evidence was presented that disputed the CMO's conclusions that Claimant's chronic mental illness would preclude him from doing any job for the railroad. See, e.g. Third Division Award 41499. There is little doubt that Claimant's successful ongoing treatment changed his medical status, as well as his mental health diagnoses, and that his FFD was an evolving issue during the time period in question. However, an agreement by medical professionals about initial diagnoses does not mean that there is no dissenting opinion about an employee's "physical or mental condition" affecting his FFD or impacting his qualifications to perform work. Carrier made a determination to issue a general medical disqualification permanently barring Claimant from working for the railroad. Medical evidence presented which notes improvement in both diagnoses and treatment, and a positive prognosis, must be considered a dissenting opinion for purposes of Rule 50(a).

Thus, we conclude that Carrier violated Rule 50(a) by failing to agree to convene a Medical Board once it was requested by the Organization, and a dissenting medical opinion was brought forward. Assuming that Claimant has not already been determined to be fit to return to duty upon a request to review his case, and that a current medical

assessment disagrees with the conclusions set forth in the April 9, 2015 general medical disqualification, we direct that the parties convene a Medical Board to determine whether Claimant is FFD or if his general medical disqualification should be modified or withdrawn. Should the Medical Board determine that Claimant was withheld from service after a point when he was found to be fit for duty, Claimant should receive appropriate compensation for such time period.

AWARD:

The claim is sustained in accordance with the Findings.

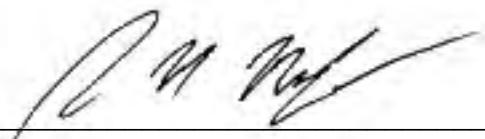


Margo R. Newman
Neutral Chairperson

Dated: 2/12/2018



K. N. Novak
Carrier Member



Andrew Mulford
Employee Member