U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of JUNE R. GRASSMAN and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, Missouri

*Docket No. 96-1138; Submitted on the Record;*
*Issued August 13, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of January 31, 1996.

On February 5, 1993 appellant, a 48-year-old letter carrier, was bitten by a dog on her lower left leg. Appellant filed a claim, Form CA-1, on February 5, 1993 for benefits based on the bite wound to her lower left leg. The Office accepted the claim for puncture wound to the left lower leg. Appellant was treated by Dr. Thomas J. Stees, an osteopath, who in a report dated February 18, 1993 placed her off work for at least 7 days. Dr. Stees referred appellant to Dr. N.S. Sandberg, a podiatrist, who in a note dated March 22, 1993 released her to case mail and perform mounted delivery.

In a report dated April 8, 1993, Dr. Sandberg reported that while appellant had sustained a dog bite on the calf muscle of her left leg, she now claimed that the pain was acute in the ankle joint and left forefoot in the third metatarsal joint region. Dr. Sandberg stated that appellant had developed neuroma type pain secondary to the original injury as a direct result of compensating in her gait pattern. Dr. Sandberg commented that if no improvement was noted, surgical exploration of the left foot was possible in the third metatarsal phalangeal joint area.

The case record was submitted to Dr. Daniel R. Zimmerman, an Office medical adviser. In a report dated May 17, 1993, Dr. Zimmerman stated that Dr. Sandberg's opinion that appellant had developed neuroma type pain secondary to the original injury of February 5, 1993 was not supported by any medical rationale in the file. Dr. Zimmerman noted that it would not be appropriate to authorize any further treatment by Dr. Sandberg or accept any of his recommendations regarding therapy, particularly the recommendation that appellant might need operative intervention for a neuroma.

On August 30, 1993 the Office referred appellant to Dr. David Scherr, a Board-certified orthopedic surgeon, for a second opinion evaluation to take place on September 14, 1993. Prior

to the appointment, however, appellant underwent surgery on September 3, 1993 for excision of Morton's neuromas, second and third interspace, left foot.

By letter dated October 1, 1993, the Office rescheduled appellant's appointment with Dr. Scherr to October 28, 1993. In a report dated October 28, 1993, Dr. Scherr diagnosed reflex sympathetic dystrophy [RSD], which he stated began shortly after appellant's "otherwise relatively minor" February 5, 1993 employment injury consisting of a single puncture wound from a dog bite. Dr. Scherr stated that the initial treatment of this condition had been proper, although perhaps inadvertent, since appellant had been urged to bear weight on her foot and tolerate the pain for several months. Dr. Scherr commented that if the diagnosis of RSD had been recognized prior to September 1993, she would not have had to undergo surgery to remove the neuromas, which "predictably" failed to relieve her symptoms. Dr. Scherr stated that appellant's RSD "plainly" resulted from the February 5, 1993 dog bite, so that all treatment except for the September 3, 1993 surgery was work related. Dr. Scherr concluded that Dr. Sandberg correctly identified the work relatedness of appellant's condition, but incorrectly attributed her symptoms to neuroma type pain secondary to original injury as a direct result of compensation in her gait pattern.

In a report dated December 23, 1993, Dr. Zimmerman stated that Dr. Scherr's diagnosis of RSD was "absolutely correct," and he concurred with Dr. Scherr's opinion that Dr. Sandberg's surgery to remove the neuromas was inappropriate treatment for the accepted condition.

In a letter dated January 18, 1994, the Office informed appellant that her claim had been expanded to include the additional accepted condition of RSD.

In a decision dated January 18, 1994, the Office denied appellant compensation for the September 3, 1993 neuroma removal surgery and for her subsequent disability. The Office stated that the medical evidence failed to establish that such surgery was appropriate treatment for the accepted condition, RSD. The Office did, however, authorize appropriate treatment for the accepted condition.

By letter dated February 2, 1994, the Office informed appellant that it was transferring authorization for medical care relating to her accepted condition to Dr. Daniel Phillips, Board-certified in psychiatry and neurology, and scheduled a second-opinion examination with Dr. Phillips on February 24, 1994. In his report dated February 25, 1994, Dr. Phillips stated:

> "At this point I cannot confirm the diagnosis of RSD. I would point out that the diagnosis is being attributed to an area not initially involved in the original trauma; *i.e.*, she was bit in the distal calf and the RSD is said to have started in the foot. As a first step, I would recommend obtaining a triple phase delayed bone scan with attention to the left foot for evaluation of this diagnosis. In the interim, I would continue her on a light-duty status. I would further point out that in treating patients with RSD we do the sympathetic blocks in order to reduce pain so that [appellant] may become ambulatory and [bear weight]. Once they start weight bearing they continue their walking and that becomes the mainstay of treatment. Therefore, I am not inclined to perform sympathetic blockades at this

> time, nor would sympathectomies become appropriate. Finally, let me point out that [appellant] does not have pain when she is not weight bearing. Pain of RSD is independent of weight bearing. It may be exacerbated by activities, but a substantial component is present in the nonweight-bearing mode. Therefore, despite the observations of others, and some of the symptoms being reported, I would keep an open mind with regards to this diagnosis at the present time."

In a letter dated February 4, 1994, appellant requested an oral hearing.[1]

Appellant underwent a bone scan on March 1, 1994, which revealed a negative examination of the left foot. Dr. Phillips reviewed results of the bone scan and concluded that it showed no evidence for RSD or significant degenerative changes in the feet, and stated that his clinical impression was not that of RSD or any other ongoing neurological conditions.

In a follow-up report dated May 16, 1994, Dr. Sandberg indicated that he still felt his treatment "at the time was appropriate considering the symptoms present, the location of acute pain, and the fact that an injection of steroid into the area of the foot brought about some relief, even minor in nature." Dr. Sandberg further noted that Dr. Scherr's opinion that appellant had RSD was not supported by Dr. Phillips. Dr. Sandberg indicated that he had recommended to appellant that she undergo further evaluation and treatment for the pain in her left leg and hip, and he stated that he would continue to treat her foot.

In a decision dated November 7, 1994, an Office hearing representative vacated the Office's previous decision of January 18, 1994, and found that the case was not in posture for decision. The hearing representative stated that the Office had based its decision on Dr. Scherr's opinion that appellant's September 3, 1993 surgery was not appropriate and that appellant's continuing problems were due to RSD; however, the hearing representative noted that this opinion had been contradicted by that of Dr. Phillips, who did not diagnose RSD. The hearing representative stated that, absent an established diagnosis of RSD, Dr. Scherr's opinion was of diminished probative value. The hearing representative further stated that Dr. Phillips had not provided a specific opinion regarding the September 3, 1993 surgery. The hearing representative stated that, in light of Dr. Phillips's finding that appellant did not have RSD or any other neurological condition, the case should be remanded and the case record returned to Dr. Phillips to review his original report and the medical evidence of record, in particular the September 3, 1993 operative report, and for Dr. Phillips to submit a reasoned opinion as to whether the September 3, 1993 surgery constituted appropriate medical treatment, and whether such treatment was in any way necessitated by appellant's February 5, 1993 employment injury. The hearing representative further stated that Dr. Phillips should be asked to provide an opinion as to whether appellant has any continuing condition or disability causally related to her February 5, 1993 employment injury, and if so, to indicate his recommendations for further medical evaluation and/or treatment.

[1] The Office did not schedule a hearing for appellant, but ultimately arranged to have her claim reviewed by an Office hearing representative.

In his updated report of December 14, 1994, Dr. Phillips stated:

> "In my opinion, the surgeries performed on September 3, 1993; *i.e.*, resection of neuromas of the second and third interspace of the left foot, were in no way related to the employment injury of February 5, 1993. It would be my opinion that that injury did not generate nor in any way aggravate a condition to require this surgery."

Dr. Phillips further stated:

> "There is no ongoing continuing condition or disability causally related to the February 5, 1993 injury. In terms of Morton's neuromas, these are small balls of nerve and fibrous tissue which develop along the plantar nerve as they pass the metatarsal bones on the way to the toes. Again, it is a frequent condition and occurs in the act of walking, numerous life events, repetitively over a lifetime. It does not occur unless a nerve has been severed by a penetrating injury or a major crush injury or something of that nature, from a change in gait pattern over the short period of time described in this case. Further, it appears from the physical exam[ination] of February 24, 1994 that dramatic responses were given to simply palpating [in] these areas despite the reported neuromas being resected. Response in the general patient population that we care for is if they have a neuroma that gets resected the area heals up and the problem is solved."

With regards to this diagnosis of RSD, she does not have that condition in my opinion to a degree of medical certainty for the numerous reasons which I have already outlined in my previous communication."

Dr. Phillips stated that according to the most recent medical literature pertaining to the subject, the diagnosis of RSD in the last 10 years had become a catch-all in workman's compensation and litigation cases for complaints of pain which cannot be substantiated by other tests and procedures. Dr. Phillips stated that the concept of sympathetically maintained pain was unfounded and resulted from neglect of proper placebo control when performing sympathetic blocks, and from neglect of careful neurological evaluation in patients with chronic neuropathic pain. Dr. Phillips concluded:

> "It has been our experience over and over again [in] patients with this diagnosis, and if in fact an organic process is at work, careful evaluation and examination leads to an alternative diagnosis which explains the known facts, often with important treatment available. In this particular case, it would be my opinion that there is neither a diagnosis of RSD or any other neurological diagnosis or process which is accounting for the reported symptoms, that this is a well-healed minor dog bite, that she is capable of working without restrictions and without neurological disability."

In a decision dated January 3, 1995, the Office found based on Dr. Phillips' December 14, 1994 opinion that appellant's September 3, 1993 surgery and subsequent disability were not related to the employment injury of February 5, 1993, and that appellant did not have

RSD. The Office noted that the hearing representative in the Office's November 7, 1994 decision had referred the case back to Dr. Phillips for reevaluation, that Dr. Phillips in his December 14, 1994 opinion had found that the September 3, 1993 surgery was not related to the February 5, 1993 employment injury, that the accepted February 5, 1993 injury did not generate or aggravate a condition that required this surgery, and that there was no ongoing continuing condition or disability as a result of the February 5, 1993 employment injury. The Office indicated that since the condition of RSD and nerve blocks had previously been approved, appellant would be compensated for any time lost as a result of treatment for RSD, and medical bills for the treatment would be considered for payment up to date of its decision.

In a letter to the Office dated January 9, 1995, appellant requested an oral hearing.

In a letter dated August 4, 1995, the Office scheduled a hearing for September 13, 1995.

In a decision dated December 11, 1995, the hearing representative found based on the weight of the medical evidence that appellant's September 3, 1993 surgery was inappropriate treatment for her accepted condition. He therefore affirmed this portion of the Office's January 3, 1995 decision. With regard to the issue of whether appellant continued to suffer from RSD, the hearing representative found that a conflict in the medical evidence existed between the opinions of Dr. Phillips and Dr. Scherr. He therefore vacated that portion of the Office's January 3, 1995 decision and remanded the case to the Office to resolve this conflict. The hearing representative directed the Office to refer appellant, a statement of accepted facts, and the medical record to an appropriate, independent medical examiner [IME] specialist to provide a rationalized medical opinion as to whether appellant continued to suffer from the previously accepted condition of RSD as a result of the employment injury of February 5, 1993. The hearing representative stated that following the issuance of the IME's medical report, the Office should issue a *de novo* decision.

In a letter dated January 9, 1996, the Office informed appellant that it had scheduled an appointment for her with Dr. Robert Woolsey, Board-certified in psychiatry and neurology, for an independent medical examination on January 19, 1996. Dr. Woolsey was asked whether appellant continued to suffer residuals from the RSD, to discuss the basis for this finding, and to indicate whether the condition continued to be the result of the employment injury of February 5, 1993.

In his report of January 19, 1996, Dr. Woolsey discussed appellant's history of leg pain and the treatment she had received since her February 5, 1993 injury. Dr. Woolsey stated that appellant had left foot pain of undetermined type which had been present since she was bitten by a dog, and found no signs of RSD based on his examination.

In a decision dated January 31, 1996, the Office found that the medical evidence of record failed to establish, by objective physical findings, any residuals of RSD as a result of the injury of February 5, 1993. In a memorandum accompanying the decision, the claims examiner stated that the case had been referred to an IME, Dr. Woolsey, to resolve the conflict in medical evidence, and that based on Dr. Woolsey's January 19, 1996 medical report, appellant did not suffer from RSD. The claims examiner indicated that Dr. Woolsey's report was sufficiently well reasoned and based upon a proper factual foundation, and was therefore entitled to the special

weight afforded referee examiners. The claims examiner further stated that Dr. Woolsey had concurred with Dr. Phillips' December 14, 1994 opinion that appellant had no objective findings of RSD. The Office therefore concluded that appellant did not suffer from the claimed condition of RSD, that appellant's current medical condition did not result from the February 5, 1993 injury, and it terminated all compensation for medical benefits and wage loss based on alleged residuals from the claimed condition.

The Board finds the Office met its burden of proof in terminating appellant's compensation benefits in its January 31, 1996 decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[2] 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.[3]

In the present case, the Office based its decision to terminate appellant's compensation on the January 19, 1996 medical report of Dr. Woolsey, who rejected any causal relationship between factors of appellant's employment and her claimed current condition, and found that she did not suffer from the previously accepted condition of RSD. The Office relied on Dr. Woolsey's opinion in its January 31, 1996 decision, finding that all residuals of the previously accepted condition, RSD, had ceased and that there were no residuals from the accepted employment injury of February 5, 1993.

The Board finds that the opinion of the impartial medical examiner, Dr. Woolsey negating a causal relationship between appellant's claimed condition and her February 5, 1993 employment injury was sufficiently well reasoned and based upon a proper factual background, and that it is entitled to special weight.[4]

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] *Id.*

[4] *Gary R. Seiber*, 46 ECAB 215 (1994).

The decision of the Office of Workers' Compensation Programs dated January 31, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 13, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member