

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN M. WOOD and U.S. POSTAL SERVICE,
PALMA SOLA POST OFFICE, Bradenton, Fla.

*Docket No. 97-1560; Submitted on the Record;
Issued April 15, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits.

On November 11, 1990 appellant, then a rural carrier associate, was lifting a tray of mail to put in her postal vehicle when she felt a pull in her neck. She filed a claim for a muscle strain in the neck and right shoulder. In a December 6, 1991 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and the claimed condition or disability. In a March 25, 1992 decision, an Office hearing representative set aside the Office's December 6, 1991 decision on the grounds that there existed a conflict in the medical evidence on the issue of causal relationship. He remanded the case for referral of appellant to an impartial medical specialist for an examination and opinion on the issue of causal relationship. In a July 21, 1992 letter, the Office informed appellant that her claim had been accepted for cervical strain and paid temporary total disability compensation for the period December 16, 1991 through April 20, 1992 when she did not work. The Office subsequently accepted appellant's claim for depression. In an August 22, 1995 decision, the Office terminated appellant's compensation and medical benefits effective that day on the grounds that her disability due to the November 14, 1990 employment injury had ceased. In merit decisions dated July 24, 1996 and February 5, 1997, the Office denied appellant's requests for modification of its August 22, 1995 decision.

The Board finds that the Office did not meet its burden of proof in terminating appellant's medical benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

In a November 29, 1990 report, Dr. James A. Briles, a Board-certified family practitioner, gave a history of appellant's employment injury and diagnosed cervical muscle strain. In subsequent office notes and duty status reports he repeated his diagnosis of appellant's condition and indicated that she had a strain of the left shoulder. The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Robert J. Pfaff, a Board-certified orthopedic surgeon, for an examination. In a September 6, 1991 report, he stated that at the time of the employment injury appellant had a mild cervical sprain but no history of involvement of a major nerve root in the neck or irritation to the dorsal scapular nerve. Dr. Pfaff indicated that appellant probably had some fibrocystic nodule forming in the transverse fibers of the right trapezius which was treated by local injections. He commented that the diffuse, poorly localized tenderness throughout the right side of the neck and the shoulder girdle area made it difficult to place appellant in any specific orthopedic category other than a recurrent low grade myositis within the transverse fibers of the trapezii, more so on the right than the left, without neurological involvement, sensory or motor, to the arms. Dr. Pfaff opined that appellant's depression and anxiety were playing a significant role in the perpetuation of appellant's malady. He stated that there was no objective evidence of impairment on which to base an impairment rating.

In an October 10, 1991 report, Dr. Robert B. Halvorsen, a Board-certified physiatrist, indicated that appellant had limited motion of the neck and right shoulder due to guarding from pain. He noted that she had cervical and right trapezius spasm. Dr. Halvorsen diagnosed chronic right trapezius and right cervical paraspinal injury.

In a January 29, 1992 report, Dr. Charles J. Davenport, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan revealed a central and right sided disc protrusion at C5-6 which indented the ventral sac but did not appear to deform the ventral cord surface. He also noted a left sided disc bulge at C3-4 which also spared the cord.

In a June 29, 1992 report, Dr. Charles Boring, a Board-certified orthopedic surgeon acting as an impartial medical specialist, stated that appellant had a severe degree of muscle spasm during the examination in the posterior cervical muscles and the right trapezius muscle. He indicated that she did not have any muscle atrophy. Dr. Boring commented that her muscle strength was normal in both arms. He concluded that appellant had a muscle sprain of the neck and right shoulder while lifting a heavy tray of mail and continued to suffer from those injuries. Dr. Boring stated that she had developed a large psychological overlay concerning her pain which had somehow taken over her life. He commented that the cervical and right shoulder sprain should have resolved by the time of the examination but it had not. Dr. Boring indicated that appellant still had objective signs of muscle spasms in her neck and right shoulder. On the basis of this report, the Office accepted appellant's claim for a cervical strain.

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. James A. Lewis, a Board-certified neurologist, for an examination. In an October 23, 1992 report, he diagnosed chronic benign pain, depression and muscle spasm. Dr. Lewis noted that an MRI scan showed a herniated C5-6 disc with a protrusion to the right but a myelogram failed to show a herniated disc. He stated that appellant's only residual from the employment injury was pain. Dr. Lewis indicated that the likelihood of finding any significant pathology was slim. He recommended referral of appellant to a pain center.

In a June 18, 1993 memorandum, an Office medical adviser stated that it was unlikely that appellant had residual disability from the employment injury. He commented that a cervical strain should have resolved a long time previously. The Office medical adviser noted that a pain clinic had been suggested but indicated that his experience with such clinics in the past showed a 90 percent failure rate despite the expense. He recommended sending appellant for a psychiatric or psychological evaluation.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. James Slocum, a Board-certified psychiatrist, for an examination and opinion on whether appellant had any emotional condition causally related to her employment injury. In a December 28, 1993 report, Dr. Slocum gave a history of appellant's employment injury and related that appellant complained of being hassled by her supervisors as she tried to get medical treatment for the injury, eventually developing an adversary relationship. He noted that appellant was in no obvious physical discomfort during the evaluation. Dr. Slocum commented that she did not appear depressed or anxious and was not hallucinating or delusional. He diagnosed adjustment disorder with mixed emotional features. Dr. Slocum concluded that appellant strained her neck on November 14, 1990 and then got locked into an adversary position which resulted in the perpetuation of functional difficulties long after the acute problems in her neck were over. He indicated that an attempt to reconstruct how long this lasted was difficult but commented that therapy and the institution of zoloft in August 1993 changed the picture dramatically. Dr. Slocum noted that it usually takes one to two months for zoloft to work so, by appellant's account, she had a resolution of the primary symptoms of anger and depression since October 1993. He stated that the cervical strain appellant sustained on November 14, 1990 was the cause of the diagnosed condition. Dr. Slocum commented that the aggravation of the condition by employment factors was temporary, ceasing following the injury. He indicated that the depression appellant was experiencing was causally related to the cervical strain. Dr. Slocum stated that appellant did not have any continuing disability from a mental point of view. He stated that appellant had a residual attitude which was minimal and which was not causing any disability but caused appellant some discomfort and she could respond to continuing treatment and medication.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Thomas R. Sprenger, a Board-certified orthopedic surgeon, and Dr. Kenneth Piotrowski, a Board-certified psychiatrist, for examinations. In a June 12, 1995 report, Dr. Piotrowski diagnosed a chronic pain disorder associated with both psychological factors and general medical condition and paranoid personality disorder. He stated that appellant's psychiatric problems were primarily related to her paranoid personality disorder which was not causally related to the November 14, 1990 employment injury. Dr. Piotrowski indicated that it

was a pervasive disturbance that affected all aspects of her life. He concluded that appellant's pain disorder was triggered by the employment injury but was being maintained by paranoid pathology.

In a June 21, 1995 report, Dr. Sprenger indicated that appellant was tender to palpation throughout the entire cervical area and the upper right trapezius area. He noted that x-rays showed absence of the lordotic curve in the cervical spine and straightening at C5-6 and C7 with suggestion of hypertrophic changes at C5-6. Dr. Sprenger diagnosed cervical spine sprain and early degenerative joint disease of the cervical spine. He found no evidence of neurological deficit. Dr. Sprenger stated that he did not find objective residuals from the November 14, 1990 work injury. He indicated that the cervical spine sprain had not resolved over 4½ years because appellant was developing degenerative joint disease in the cervical spine at the C5-6 level. Dr. Sprenger commented that appellant's subjective complaints outweighed the objective findings. His conclusion was unclear in that he stated that the accepted condition of cervical sprain had not resolved because appellant had been developing cervical degenerative joint disease. However, Dr. Sprenger stated that he did not find objective residuals from the employment injury. These statements are contradictory and inconsistent because he suggested appellant's accepted condition had led to degenerative disc disease and yet stated that appellant had no condition related to the employment injury. His report therefore has limited probative value and is insufficient to support a decision to terminate appellant's compensation.

In a July 11, 1996 report, Dr. Barbara P. Srur stated that appellant continued to verbalize feelings that her coworkers were getting preferential treatment particularly as she had an overburden route and was not given help as others. Appellant related that she felt she had been targeted and more closely observed since her employment injury. Dr. Srur noted that her symptoms of depression were improved except for poor sleep. She diagnosed major depression in partial remission and chronic pain disorder associated with both psychological and medical conditions and paranoid personality disorder focused only on work situations. Dr. Srur stated that appellant had neither paranoid personality, depression nor chronic headaches prior to the employment injury. This report directly contradicts Dr. Piotrowski's report that appellant's paranoid personality disorder was unrelated to work and was the current cause of her disability. Dr. Piotrowski did not address whether appellant's accepted condition of depression had ceased while Dr. Srur indicated that the depression was in partial remission. She related the paranoid personality disorder solely to work situations, which would indicate that appellant's employment caused the personality disorder or continually aggravated a preexisting condition. There exists, therefore, a conflict in the medical evidence on whether appellant's emotional condition remains causally related to the employment injury. Since there exists a conflict in the medical evidence, the Office has not met its burden of proof in establishing that appellant's employment-related depression has ceased.

The decisions of the Office of Workers' Compensation Programs, dated February 5, 1997 and July 24, 1996, are hereby reversed

Dated, Washington, D.C.
April 15, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member