

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YOLANDA J. GARVIN and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 99-1626; Submitted on the Record;
Issued December 14, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation after October 24, 1997; and (2) whether appellant met her burden of proof, following the Office's termination of compensation, to establish that she had a work-related disability after October 24, 1997, causally related to her accepted employment-related conditions.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

On June 4, 1976 appellant, then a 34-year-old distribution clerk, filed a claim for traumatic injury alleging that on that date she hurt her neck and back when a rest bar she was leaning against gave way. The Office accepted appellant's claim for acute cervical and lumbosacral strains, and later expanded its acceptance to include fibromyositis and adjustment disorder with mixed atypical features.

Appellant stopped work on June 5, 1976 and returned to work as a mail distributor, four hours a day, on August 22, 1983. Appellant stopped work again in October 14, 1985, after being struck on the back of the neck by a coworker and never returned. The Office did not accept this injury as work related. On June 15, 1996 appellant filed a claim for a recurrence of disability, alleging that her inability to perform her four-hour-a-day, light-duty job was causally related to her accepted 1976 medical and psychiatric conditions. In a decision dated January 15, 1997, the Office denied appellant's claim for a recurrence of disability.

Subsequently, after giving appellant proper notice, in a decision dated October 24, 1997, the Office terminated appellant's compensation benefits. Appellant requested an oral hearing and by decision dated September 4, 1998 and finalized September 8, 1998, an Office hearing representative affirmed the Office's October 24, 1997 decision. By letter dated January 12, 1999, appellant, through counsel, requested reconsideration of the Office's termination of benefits and submitted additional medical evidence. In a decision dated January 26, 1999, the

Office found the evidence submitted by appellant insufficient to warrant modification of the prior decision terminating compensation benefits.

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.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

In this case, appellant's attending physician, Dr. Raul Florez, a Board-certified orthopedic surgeon, submitted a series of reports supporting appellant's continuing disability and the need for further medical treatment. In a report dated August 27, 1996, Dr. Florez stated that appellant had evidence of degenerative disc disease about the cervical and lumbosacral spine and that she had also developed fibromyositis about the entire spine that required frequent injections. He added that she had objective findings of persistent trigger points about the neck and lower back with limitation of neck and lumbosacral motion. According to appellant's own statement, she was unable to work and was a poor candidate for any type of rehabilitation program.

Dr. Florez concluded that with a reasonable degree of medical certainty, appellant's conditions at the time of his examination were directly connected to her employment injuries sustained on June 4, 1976. He emphasized that she still had persistent signs of stiffness of the neck and back, as well as a neuropsychiatric problem and was totally disabled from any type of substantial gainful occupation, including her former duties as a mail distributor.

The Office referred appellant for a second opinion evaluation with Dr. Richard T. Sheridan, an orthopedic surgeon. The Office provided Dr. Sheridan with copies of the relevant medical evidence of record, a statement of accepted facts and a list of questions to be resolved. In a report dated November 6, 1996, he noted appellant's history of injury, performed a physical examination and concluded that there were no current objective findings to indicate that appellant's accepted injury-related conditions of acute cervical and lumbar strain and fibromyositis were still active. On an accompanying work capacity evaluation form, Dr. Sheridan noted that appellant could work eight hours a day, without restrictions.

Section 8123(a) of the Federal Employees' Compensation Act,⁵ provides, "If there is disagreement between the physician making the examination for the United States and the

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).

physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” As there was a conflict of medical opinion evidence between Drs. Florez and Sheridan the Office properly referred appellant for an impartial medical examination with Dr. James P. Duffy, a Board-certified orthopedic surgeon.

In a report dated December 16, 1996, Dr. Duffy noted appellant’s history of injury, performed a physical examination and reviewed the diagnostic studies. He found that appellant had no evidence of injury to her cervical or lumbosacral spine or to her shoulders, but did have degenerative changes in these areas on x-ray. Dr. Duffy concluded that appellant had recovered from the orthopedic injuries sustained in her June 4, 1976 work injury and could work 8 hours a day with a restriction on lifting more than 20 pounds. In a supplemental report dated February 13, 1997, Dr. Duffy clarified that the lifting restrictions contained in his prior report were due to appellant’s nonwork-related degenerative changes.

After receiving Dr. Duffy’s report, the Office referred appellant to Dr. Michael A. Gureasko, a Board-certified psychiatrist, for an updated evaluation. The Office provided Dr. Gureasko with copies of the relevant medical and psychiatric evidence of record, a statement of accepted facts and a list of questions to be resolved. In a report dated May 10, 1997, he noted appellant’s history of injury, performed a psychiatric examination, and diagnosed major depressive disorder, recurrent, with psychotic features, pain disorder related to her psychological condition and a personality disorder not otherwise specified. Dr. Gureasko concluded that appellant was suffering from a chronic paranoid psychotic illness, fairly well controlled and noted that he also observed an almost paranoid delusional quality to some of appellant’s responses. He concluded that appellant did not have any residuals of her accepted adjustment disorder with mixed atypical features, but rather had developed a psychotic condition, a type resulting more from genetics than from a minor industrial injury, at least 10 years after the 1976 employment injury.

In response to Dr. Gureasko’s report, appellant submitted a report dated September 29, 1997 from Dr. Joseph D. Massoud, her treating Board-certified psychiatrist, whose last report had been received on November 15, 1995. Dr. Massoud reiterated Dr. Gureasko’s findings, noting that he was not aware of appellant’s history of major recurrent depression. Dr. Massoud stated that since he first evaluated appellant in 1990, he had been impressed by her tendency to be delusional. He added that appellant’s delusional state was a reaction to an employment-related injury in 1983 or 1984, which was not recognized by the Office. Dr. Massoud concluded that, at this time in her life, appellant did not have a major depression, that her paranoid tendencies were well controlled and that from a psychiatric standpoint she could be considered ready to return to work.

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.⁶

⁶ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

With respect to appellant's physical conditions, Dr. Duffy's report was based on a proper factual background and he supported his conclusions that appellant had no disability or residuals with physical findings. He reviewed the history of injury and the medical evidence of record and reported his findings on physical examination and review of the diagnostic studies. Dr. Duffy concluded that appellant had no residuals of her employment injuries and that she could return to work. The only restrictions he provided were due to her nonwork-related degenerative disc disease. Therefore, the Office properly relied on Dr. Duffy's report to terminate appellant's compensation benefits.

With respect to appellant's psychiatric condition, the Board finds that the weight of the medical opinion evidence rests with the well-rationalized opinion of Dr. Gureasko, the Office second opinion physician. He provided a history of injury and appellant's medical and psychiatric history and performed a complete psychiatric examination. Dr. Gureasko noted that while appellant did have symptoms of psychiatric illness, including depression and some paranoid delusional qualities, which developed at least 10 years after her employment-related injury, she had no residuals of her accepted employment-related adjustment disorder. Therefore, the Office properly relied on Dr. Gureasko's report in terminating appellant's benefits.

Furthermore, the most recent report from appellant's treating physician, Dr. Massoud, largely supports Dr. Gureasko's conclusions. While Dr. Massoud disagreed with Dr. Gureasko's diagnosis of depression, he agreed that appellant exhibited paranoid delusions, which he attributed not to the 1976 employment injury at issue in this case, but to later work injury not accepted by the Office. In addition, Dr. Massoud agreed with Dr. Gureasko's conclusion that, from a psychiatric point of view, appellant was ready to return to the workplace. Therefore, in relying on the opinions of Drs. Duffy and Gureasko, the Office met its burden of proof to terminate appellant's compensation benefits effective October 24, 1997.

The Board further finds that appellant did not meet her burden of proof, following the Office's termination of compensation, to establish that she had a work-related disability after October 24, 1997, causally related to her accepted June 4, 1976 cervical strain.

In support of her claim for continuing disability, appellant submitted a series of progress notes from Dr. Florez and full narrative report from Dr. Florez dated July 28, 1998, which was not in the record at the time of the Office's prior decision. In his narrative report, Dr. Florez reviewed appellant's history of injury, noting that the initial diagnosis was of acute neck and lumbosacral strain aggravating a preexisting condition about the lumbosacral spine, and that subsequently, because of persistent pain, appellant developed pain about the upper back as well as some sort of extended strain to the upper dorsal spine and fibromyositis.

Dr. Florez disagreed with Dr. Duffy's conclusion that appellant had recovered from her orthopedic injuries sustained in June 1976. Dr. Florez emphasized that appellant had "residuals of pain which were related more or less to the aggravation of preexisting conditions about the cervical and lumbosacral spine of degenerative disc disease and osteoarthritis about the dorsal spine." Dr. Florez also disagreed with Dr. Sheridan's opinion that appellant had no current objective findings to indicate that her injury-related condition of acute cervical and lumbosacral strain and fibromyositis were still active. Dr. Florez stated that contrary to Dr. Sheridan's

conclusions, appellant had objective findings of recurrent neck pain with trigger points and limited spinal function with spasms. Dr Florez concluded:

“The above findings of persistent pain about the neck and back due to fibromyositis and also degenerative disc disease cervical and lumbosacral spine and also osteoarthritis about the cervical spine and lower back are due to the injury that [appellant] sustained in 1976 which precipitated the preexisting dormant condition in Ms. Garvin at the time of the injury in 1976. These preexisting conditions were significantly aggravated by the injuries in 1976. The patient has not been able to resume the work that she is supposed to do as a clerk at the [employing establishment]. She is not able to do at this time a significant amount of work that requires reaching overhead, pushing or pulling because of persistent pain about the neck and also evidence of degenerative disc disease about the cervical spine and arthrosis. The patient cannot do much standing or sitting for a prolonged time because of the instability and evidence of degenerative disc disease and arthritis of the lumbosacral spine. This limits her as far as bending, lifting, pushing and squatting, etc. Also, the patient developed neuropsychiatric problems related to the injuries. Therefore, as a result of the injuries in 1976, the patient is still disabled and her condition is one of total disability. She is unable to resume any gainful occupation.”

Dr. Florez’s conclusions are substantially similar to those contained in his earlier reports of record, which formed one side of the conflict of medical opinion which was eventually resolved by Dr. Duffy. In addition, Dr. Florez’s opinion is insufficiently rationalized because his conclusions are based almost solely on appellant’s subjective complaints of recurrent neck pain and tenderness, rather than on objective findings.⁷ While Dr. Florez did provide objective findings of degenerative disc disease, which he stated was substantially aggravated by appellant’s June 4, 1976 employment injury, the Office did not accept this claim for aggravation of preexisting degenerative disc disease.⁸

Dr. Florez’s July 28, 1998 report is substantially similar to his opinions contained earlier in the record and does not contain any new objective findings to substantiate his conclusions. Therefore, his report is not sufficient to create a conflict with the well-reasoned opinion of Dr. Duffy or to support modification of the Office’s prior decision.

⁷ See *Carolyn Matthews*, 32 ECAB 748 (1981).

⁸ See *Cynthia M. Judd*, 42 ECAB 246 (1990).

The decisions of the Office of Workers' Compensation Programs dated January 26, 1999 and September 4, 1998, finalized September 8, 1998 are hereby affirmed.

Dated, Washington, DC
December 14, 2000

Michael J. Walsh
Chairman

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member