

In order to determine the residuals of appellant's accepted injury, the Office referred her to Dr. Bernard N. Stulberg, a Board-certified orthopedic surgeon, for a second opinion evaluation. On November 9, 2000 Dr. Stulberg, after conducting a physical examination and reviewing the records, found that she had cervical, thoracic and lumbar myofasciitis and a chronic strain due to the July 6, 1984 motor vehicle accident. He noted that, although she had not recovered from her myofascial discomfort, it was clear that it had not progressed and would not be expected to progress to full spinal arthritic involvement with neurologic compromise. Dr. Stulberg opined that appellant could not work as a letter carrier. He concluded that appellant had received numerous interventions and had developed a number of other related psychological and medical problems but that it did not appear that further interventions would be of value. In response to queries by the Office, Dr. Stulberg noted that appellant's examination did not reveal substantial neurologic compromise and he recommended that she undergo a functional capacity evaluation to determine her work abilities.

By letter dated November 28, 2001, appellant was referred to Dr. Tim Nice, a Board-certified orthopedic surgeon, for evaluation. In a medical report dated December 14, 2001, Dr. Nice reviewed medical studies and determined that it would be advisable to get a magnetic resonance imaging (MRI) scan of her spine.

On January 2, 2002 Dr. Frank E. Seidelmann, an osteopath, performed an MRI scan which he interpreted as showing: "L5-S1 disc desiccation, endplate spondylosis, annular bulging with a superimposed posterior right paramedian disc protrusion superimposed upon mild facet arthrosis, producing impingement with mild compression of the crossing right S1 nerve root."

On August 16, 2002 Dr. Nice indicated that he did not believe that, since 1984, it would be expected to see residuals of chronic cervical, thoracic and lumbar strains syndrome. He noted that appellant had an L5 herniated disc that was probably due to her age that was on the opposite side of her symptoms. She also had tenderness over the sacroiliac joint and a fat goabual that was painful, but this pathology was not related to the accident of July 6, 1984. He noted that there was nothing in the reports of the 1984 accident that described an injury severe enough to have culminated in a rapidly progressive lumbar spine condition. Dr. Nice found that appellant could not return to work as a letter carrier, but indicated that she was capable of other remunerative employment. He noted that there could be a significant psychiatric component to her overall condition which might preclude her from employment.

On August 19, 2002 appellant was treated by Dr. Norton A. Winer, a Board-certified psychiatrist and neurologist. He indicated that she had a lumbar disc protrusion, L5-S1, and probable bilateral lumbar radiculopathy. On September 30, 2002 Dr. Winer concurred with Dr. Nice that appellant's work-related medical condition had resolved and that her current medical conditions and disability were not causally related to her work injury of July 6, 1984. He noted that appellant had a chronic intermittent low back strain and a disc protrusion at the L5-S1 levels. In response to further inquiry, on January 24, 2003, Dr. Winer opined that appellant had a chronic low back strain and lumbar disc disease at L5-S1. He stated that her leg pain may constitute lumbar radiculopathies and that her continuing symptomatology was related to her 1984 injury as it represented exacerbations of the original condition. In a January 27, 2003 report, Dr. Winer reiterated that appellant was under his care for the diagnosis and treatment of

chronic low back pain and lumbar radiculopathies, and that he believed that appellant's back problems were a continuation of the original work injury of July 6, 1984.

On December 13, 2003 appellant was seen by Walter Belay, Ph.D., a clinical psychologist, for evaluation. He opined that there was no clear evidence that appellant had a major depressive disorder or that her depression was a direct and proximate result of the July 6, 1984 work-related injury. Dr. Belay noted that appellant had a serious psychiatric disorder that resulted in numerous suicide attempts and appeared to be the result of family problems, difficulties with troubled children and difficulties with relationships. He opined that appellant's psychiatric condition preexisted her July 6, 1984 injury. Appellant's psychiatric disorder was of sufficient severity that it would prevent a return to gainful employment.

On January 10, 2003 the Office issued a notice of proposed termination of compensation and medical benefits. The Office noted that appellant failed to establish that she had depression related to the physical injuries sustained on July 6, 1984.

In a decision dated June 17, 2003, the Office finalized the termination of benefits, finding that the accepted myofasciitis and chronic strain conditions had resolved. The Office also found that appellant did not sustain depression as a result of the July 6, 1984 injury. The Office also denied epidural lumbar nerve blocks and physical therapy.

By letter dated June 24, 2003, appellant requested an oral hearing which was held on January 27, 2004. She testified that she was being treated by Dr. Jung U. Yoo, a Board-certified orthopedic surgeon, for her back condition and by Dr. Sevette and Dr. Shim for her psychiatric problems. There are no medical reports in the record by either Dr. Sevette or Dr. Shim.

In a medical report dated July 16, 2003, Dr. Yoo indicated that appellant had an L5-S1 disc herniation that caused her symptoms. He indicated that this was a work-related injury. In a report dated February 18, 2004, Dr. Yoo reiterated that appellant had a disc injury at L5-S1 spanning from the 1984 injury that has progressively worsened over the years.

By decision dated April 26, 2004, an Office hearing representative affirmed the June 17, 2003 decision, finding that appellant had no employment-related residuals or disability.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make

¹ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Patricia A. Keller*, 45 ECAB 278 (1993).

an examination.”² Where there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.³

ANALYSIS -- ISSUE 1

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation benefits. There is a conflict in medical opinion evidence on the issue of whether appellant has continuing disability and residuals related to her accepted condition.

In a second opinion dated August 16, 2002, Dr. Nice indicated that he would not expect to see residuals of appellant’s 1984 injury at this time, and that appellant had an L5 herniated disc that was probably due to age and a tenderness over the sacroiliac joint and fat goabual that was painful, but unrelated to the July 6, 1984 accepted injury. He explained that there was nothing in the reports of the 1984 accident that described an injury severe enough to have culminated in a rapidly progressive lumbar spine condition. In a report dated January 24, 2003, Dr. Winer, appellant’s physician, indicated that appellant had a chronic low back strain and lumbar disc disease at L5-S1, and noted that appellant’s leg pain may constitute lumbar radiculopathies and that her continuing symptomatology was related to her 1984 injury as it represented exacerbations of the original condition. On January 27, 2003 Dr. Winer reiterated that appellant was under his care for diagnosis and treatment of chronic low back pain and lumbar radiculopathies, and that he believed that appellant’s back problems were a continuation of the original work injury of July 6, 1984.

Dr. Winer and Dr. Nice, both Board-certified specialists are in disagreement on the issue of whether appellant has any residual disability causally related to the accepted condition. Accordingly, the Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation due to an unresolved conflict of medical opinion.

LEGAL PRECEDENT -- ISSUE 2

It is an accepted principle of workers’ compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee’s own intentional conduct.⁴ The subsequent injury is compensable if it is the direct and natural consequence of a compensable primary injury.⁵

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or illness

² 5 U.S.C. § 8101 *et seq.*, § 8123(a).

³ *William C. Bush*, 40 ECAB 1064 (1989).

⁴ *See John R. Knox*, 42 ECAB 193 (1990).

⁵ *Larson, The Law of Workers’ Compensation* § 10.01 (2000); *see also Dana Bruce*, 44 ECAB 132 (1992).

has some connection with the employment, but nevertheless does not come within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.⁶

To establish her claim that she has sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁷

ANALYSIS -- ISSUE 2

In the instant case, appellant alleged that she sustained a consequential emotional condition as a result of her July 6, 1984 work-related injury. In the notice of proposed termination of compensation, the Office indicated that Dr. Belay concluded that appellant's multiple psychological problems were the result of various family problems and difficulties with relationships, and that they were not the result of the physical injuries sustained on July 6, 1984. The Board notes that there is no contrary rationalized medical evidence in the record. Although Dr. Stulberg and Dr. Nice indicated that there may be a psychiatric condition, neither are psychiatrists nor evaluated her from a psychiatric standpoint. Accordingly, as appellant has not submitted evidence in support of her claim that a consequential emotional condition resulted from the July 6, 1984 work-related injury, the Board finds that the Office properly denied her claim.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective June 17, 2003. The Board further finds that appellant has not established that she sustained a consequential emotional condition causally related to the July 6, 1984 accepted injury.

⁶ *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 6, 1984 and June 17, 2003 are affirmed with regard to the holding that appellant had not established a consequential emotional condition causally related to her accepted injury. However, the decisions terminating appellant's compensation are reversed.

Issued: March 4, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
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