U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NEIL B. BANKSTON and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, Va.

Docket No. 97-741; Submitted on the Record;
Issued January 28, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant had disability or any medical residuals after September 19, 1996, causally related to his September 24, 1993 employment-related soft-tissue injury; and (2) whether appellant has established that he developed a psychiatric condition as a consequential injury related to his accepted soft-tissue lumbosacral strain.

On September 24, 1993 appellant, then a 29-year-old clerk, filed a claim alleging that on that date after lifting letter trays from a rack he "started getting very bad pains in my back." On December 8, 1993 the Office of Workers' Compensation Programs accepted that appellant sustained lumbosacral strain.

On September 12, 1994 the Office determined that a conflict in medical opinion evidence existed between Dr. Rajesh K. Sethi, a Board-certified neurologist, who opined that appellant was totally disabled from his usual employment, and Dr. Neil Kahanovitz, a Board-certified orthopedic surgeon, who as of July 22, 1994, his most recent report, noted that appellant had a present impairment of low back and left lower extremity pain, diagnosed lumbar strain, and indicated that it was unknown at that time whether appellant's disability would continue for 90 days or longer, and it referred appellant to Dr. Pasquale H. Palumbo, a Board-certified orthopedic surgeon, together with a statement of accepted facts, questions to be answered and the complete case file, for an impartial medical specialist's rationalized opinion on whether appellant continued to suffer residuals of his accepted employment injury, and if so, when such residuals would be expected to cease.[1]

By report dated October 6, 1994, Dr. Palumbo reviewed appellant's history, performed a physical examination and reported that appellant complained of pain on forward pressure of the

[1] As there was actually no conflict between the numerous reports of Drs. Sethi and Kahanovitz as to appellant's disability status, Dr. Palumbo does not constitute an impartial medical specialist and his report is merely another second opinion.

L3-5 spinous processes, but that he moved about without difficulty, that there was no appreciable muscle spasm noted in the paravertebral muscle masses, that neurologic examination of the lower extremities revealed equal deep tendon reflexes at both the patellar and Achilles sites, that pinprick examination revealed normal sensation in both lower extremities, that there was no evidence of sciatic tenderness, and that straight leg raising was essentially negative. Dr. Palumbo noted that x-rays and magnetic resonance imaging (MRI) scan revealed sacralization of the L5 spinous process, but noted that there was no evidence of disc space narrowing or other indication of a herniated disc or other abnormalities. He opined that he was at a loss to understand appellant's persistent low back and radicular pain, given the objective evidence present, that it was very unusual to have an injury of this nature resulting from lifting letter trays from a rack, that there was no evidence of nerve root impingement, and that all of appellant's complaints were essentially subjective. Dr. Palumbo explained that sacralization of L5 was a variant condition which generally did not cause pain and opined that appellant's symptoms appeared out of proportion to his physical findings particularly given the interval from the time of the accident to the present date. Dr. Palumbo offered the diagnostic impression that appellant had sustained an acute lumbosacral strain superimposed on a sacralized L5 vertebra which had been ongoing, but opined that he did not understand why appellant had not returned to his occupational duties much before that date. Dr. Palumbo opined that appellant should be able to return to work and noted that he saw no objective reason for appellant not to have gainful employment. He opined that appellant could work for 8 hours a day and noted work restriction limitations to include no lifting over 40 pounds, and avoidance of standing for 8 hours but rather alternate standing and sitting. A work restriction evaluation form was attached specifying appellant's duty activity limitations for an eight-hour workday.

In a report dated January 6, 1995, Dr. Sethi expanded his clinical impression to include: "1. Chronic myofascial back and left leg pain; 2. Cluster migraine headaches; [and] 3. Reactive depression secondary to chronic pain," but he failed to discuss causal relation of these expanded diagnoses and failed to provide any medical rationale explaining how they developed. Dr. Sethi, however, did mention that appellant was seeing a psychologist and was undergoing personal stress as his mother was in a coma after a massive myocardial infarction in North Carolina, and that appellant was experiencing urinary incontinence.

By letter dated February 27, 1995, the employing establishment notified appellant that, although the medical documentation of record indicated that he was disabled from his regular distribution clerk duties, a work restriction evaluation indicated that he could perform limited duty six hours per day.[2] The employing establishment offered appellant a permanent modified limited-duty position effective March 18, 1995. Attached was approval from Dr. Palumbo that the proposed duties of the limited-duty position were in compliance with appellant's physical restrictions.

[2] The Board notes that the work restriction evaluation actually specified that appellant could work an eight-hour day but that the employing establishment incorrectly interpreted the six-hour limit on sitting and the six-hour limit on standing to mean that appellant could only work six hours a day, when Dr. Palumbo had explained in his narrative report that appellant should alternate sitting and standing during the workday.

On May 10, 1995 Dr. Sethi was provided with a copy of Dr. Palumbo's report that reached a different conclusion than Dr. Sethi had regarding appellant's disability status.[3]

On May 11, 1995 appellant was issued a notice of proposed reduction of compensation noting that the factual and medical evidence of record demonstrated that he was capable of performing the duties of a modified distribution clerk as of April 11, 1995, which therefore constituted an offer of suitable work, and including an attached memorandum providing an explanation of the nature of the conflict in medical opinion evidence and how the impartial medical examiner resolved it.

Appellant did not respond to the employing establishment's offer of the modified limited-duty clerk position, which the Office determined was a refusal to accept suitable employment, and by decision dated June 23, 1995, the Office terminated appellant's compensation finding that appellant was no longer totally disabled and had refused suitable work.

Appellant requested a hearing, and by decision dated November 7, 1995, the hearing representative set aside the June 23, 1995 decision finding that the Office did not meet its burden of proof to terminate compensation. The hearing representative found that the procedural requirements for termination of compensation for refusal of suitable work according to Chapter 2.814, paragraph 4 of the Office's procedure manual had not been met by the Office as appellant had not been advised that the offered job was suitable, that the job remained open, that appellant would be paid compensation for the difference in pay with his date-of-injury job, that he still had 30 days within which to accept the job without penalty or within which to provide an explanation of his reasons for refusal.[4] The hearing representative also found that Dr. Palumbo was unclear on why there was a need for work restrictions when no objective findings were evidenced upon examination. The case was additionally remanded for further medical development and clarification of Dr. Palumbo's opinion.

On November 22, 1995 the Office requested that Dr. Palumbo answer specific questions. Thereafter Dr. Palumbo responded that appellant had no residuals causally related to his September 24, 1993 employment injury, and that appellant could work an eight-hour day, and he provided a December 29, 1995 letter reiterating his findings as stated in his October 6, 1994 report. Dr. Palumbo noted that it was most unusual to have an injury of the nature perceived by appellant resulting from merely lifting letter trays from a rack, that physical examination results as well as radiologic findings confirmed no objective evidence of injury or pathology, that appellant's symptoms were out of proportion and were exaggerated in the absence of any

[3] A conflict in medical opinion evidence regarding appellant's disability status was now created between Dr. Sethi and Dr. Palumbo, which required resolution by referral to an impartial medical examiner.

[4] The Board notes that the May 11, 1995 notice of proposed termination of compensation contained the information specified as being required by Chapter 2.814, paragraph 4 of the Office's procedure manual and advised appellant that the offered position was indeed suitable, that he was being retained at his same date-of-injury step and level, that he would not sustain a loss of wage-earning capacity, and that he had 30 days within which to submit further argument or medical evidence, during which time his compensation would not be reduced. The only flaw in the notice of proposed reduction of compensation was the failure of the Office to state that the job remained open during the 30-day period, which the Board finds is not fatal to the completeness of the notification.

objective findings, that the work restrictions were imposed in an effort to provide cautionary measures for appellant's comfort, that appellant was capable of working an 8-hour day avoiding lifting over 40 pounds and alternating sitting and standing positions, and that both a work-hardening program and psychological counseling for motivation would be beneficial for appellant.

The Office, however, upon receiving Dr. Palumbo's reiteration of the contents of his October 6, 1994 reports, determined that his repeat responses lacked rationale to write a compensation order and, without considering these 1995 responses in conjunction with his 1994 narrative and form reports, referred appellant together with a statement of accepted facts, the complete case record and questions to be answered, to a second impartial medical examiner to resolve the conflict in medical opinion evidence.[5]

By report dated March 1, 1996, Dr. Victor N. Guerrero, a Board-certified orthopedic surgeon chosen by the appropriate rotational method, reviewed appellant's history of injury as reported in the statement of accepted facts previously provided to him, reviewed appellant's clinical treatment history, medications, and negative objective testing results as reported in the complete case record provided for his prior review, and repeated appellant's present complaints. He performed a physical examination on appellant, noting that his spine showed no gross deformity, that spinal muscles showed no evidence of spasm, that straight leg raising was negative bilaterally, and that reflexes were equal bilaterally. Dr. Guerrero noted that appellant's Bowstring sign was negative, that he stood well on his toes and heels, that bilateral pulses were good, that hips, knees and ankles showed fair motion, and that no warmth or redness was evident in the lower extremities. He noted, however, that appellant's back motion was markedly limited on flexion/extension as well as on rotation, that appellant complained of pain on pressure on the paravertebral musculature from the lower thoracic to the lumbosacral region, that appellant also complained of pain when standing on his heels and toes, and that appellant complained of diffuse decreased sensation in the left leg in a "stocking" pattern. Dr. Guerrero noted a diagnosis of lumbosacral strain and opined that, although appellant continued to complain of pain, there were no real objective orthopedic findings upon examination. Dr. Guerrero opined that appellant portrayed symptom magnification, considering that all prior objective studies, including MRI, electromyogram (EMG), and nerve conduction studies, had been negative, and he opined that the effects of the September 1993 injury should have subsided after six months or so. He opined that, at present, appellant should be able to return to work on a light- to medium- duty basis and to lift up to 35 pounds on occasion and 15 pounds frequently. Dr. Guerrero also opined that further physical therapy would be of no major advantage to appellant's treatment.

On April 1, 1996 the employing establishment offered appellant a limited-duty position as a modified personnel clerk with intermittent sitting, standing and walking, intermittent squatting and bending, intermittent grasping, fine manipulation and reaching above the shoulder, intermittent pushing and pulling of less than 35 pounds, and lifting 35 pounds occasionally and 15 pounds frequently. No work restriction evaluation had been completed by Dr. Guererro addressing appellant's working ability to squat, bend, reach above his shoulder, push or pull, and

[5] As the actual conflict in medical opinion evidence was between Drs. Sethi and Palumbo, this referral was the first referral for an impartial medical examination.

Dr. Guererro was not given a description of the proposed position for his approval of its suitability. Further, the job offer was not accompanied by or preceded by notification from the Office that the position was indeed suitable to appellant's job restriction limitations.[6]

On April 3, 1996 appellant's representative objected to Dr. Guerrero's impartial medical examiner report claiming that Dr. Guerrero was biased against appellant, that the impartial medical examiner's examination lasted five minutes, that Dr. Guerrero performed only two tests on appellant, that Dr. Guererro refused to look at additional information not provided by the Office but brought to the examination by appellant, that Dr. Guerrero performed no laboratory tests, and that Dr. Guerrero did not allow appellant's wife to be present during the impartial medical examiner's examination.

In an April 8, 1996 report, Dr. Edwin N. Carter, a psychologist, stated that appellant was under treatment for depression related to two factors: 1. Chronic pain he suffered "including, but not limited to, myofascial pain, back pain and leg pain;" and 2. Appellant felt various employing establishment administrative personnel had been insensitive to his problems, both medical and psychological. Dr. Carter further stated that Dr. Guerrero's examination seemed to have worsened appellant's psychological condition. He stated that appellant appeared to walk with much more pain than previously, that he appeared more distressed and confused, that he reported increased nightmares and difficulty sleeping, and that he certainly seemed anxious to Dr. Carter. Dr. Carter opined that appellant suffered from severely incapacitating psychological problems "associated with his work-related difficulties." No discussion of how appellant's accepted condition of lumbosacral strain in 1993, which Dr. Guerrero opined had subsided within six months or so, contributed to his psychological condition diagnosed in 1996.

By letter dated April 16, 1996, appellant requested that his disability claim be "supplemented" on the basis of psychiatric complications resulting from his September 1993 injury. He alleged that his condition had deteriorated as a result of the 1993 injury.

By letter dated June 13, 1996, appellant's representative renewed his objections to Dr. Guerrero's report claiming violations of procedures and laws.

On June 20, 1996 the Office requested clarification of Dr. Guerrero's report.

Dr. Guerrero signed a Form OWCP-5c which had been mostly completed by an Office claims examiner on June 20, 1996, and which stated that appellant should limit lifting, that he could lift up to 35 pounds occasionally and up to 15 pounds frequently, that appellant could perform repetitive motions of the wrist and elbow, and that the above restrictions were due to appellant's employment injury.[7] The questions the claims examiner wanted answered by

[6] The Board notes that Dr. Palumbo had explained that the lifting restrictions he recommended were purely prophylactic for appellant's comfort but that the Office claims examiner provided an answer to this same question in lieu of getting a medical opinion from Dr. Guerrero.

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Dr. Guerrero were how many hours could appellant work, how long will the restrictions apply, are any other factors to be considered, and when was the date of maximum medical improvement. Dr. Guerrero restated that appellant could work eight hours a day, indicated lifting restrictions were indefinite, and stated that maximum medical improvement was "six months after injury." No date stating when disability ceased was included.

By report dated July 7, 1996, Dr. Carter restated the contents of his April 8, 1996 report and added that appellant suffered from severely incapacitating psychological problems associated with his pain. Dr. Carter opined that he felt that there was a direct relationship between appellant's physical pain and his current depressed state.

By letter dated July 17, 1996, the Office advised that Dr. Guererro's impartial medical examiner report was indeed appropriate, that based on the medical evidence of record it found that the limited-duty offer made by the employing establishment on April 1, 1996 constituted a "valid job offer" and determined that the position was "suitable medically and otherwise," and that because appellant had not returned to duty nor accepted nor rejected the limited-duty position, he had 15 days from the date of this letter to accept the job offer. The Office also noted that "We will not consider any further reason(s) for refusal or any further statement from your physicians or attorney. If you do not accept the job within the 15-day period, compensation payments will be terminated under 5 U.S.C. § 8106(c)." No evidence that the procedural requirements for termination of compensation for refusal of suitable work according to Chapter 2.814, paragraph 4 of the Office's procedure manual had been met by the Office, as appellant had not previously been advised that the offered job was suitable, that the job remained open, that appellant would be paid compensation for the difference in pay with his date-of-injury job, and that he still had 30 days within which to accept the job without penalty or within which to provide an explanation of his reasons for refusal.[8]

In an August 6, 1996 letter to the Office, Dr. Guererro stated that, prior to the examination of appellant, he did review the statement of accepted facts, that no objective findings were found during the examination of appellant, and that, although he agreed that lumbosacral strain usually resolved within six to eight weeks of its occurrence, he put appellant on restricted work duties due to his subjective complaints of pain.

By decision dated August 9, 1996, the Office terminated appellant's monetary compensation benefits, effective August 23, 1996, finding that he had refused an offer of suitable work.

By letter dated August 22, 1996, appellant, through his representative, requested reconsideration of the termination decision. In support he submitted a July 25, 1996 report from Dr. Sethi noting that appellant's symptoms fluctuated, that when he took excessive pain medication he had urinary incontinence in his sleep, that his knee pain was better, and that appellant was frustrated with delays in approval from his workers' compensation carrier. An August 15, 1996 report from Dr. Sethi stated that appellant continued with back and leg pain and

[8] The Board notes that the hearing representative had previously remanded the case to the Office to correct the same defect.

intermittent severe headaches, and that he was unable to do any type of physical work which tended to increase his pain. Appellant's representative also presented several arguments that appellant had a consequential psychiatric injury, that the impartial medical examiner's examination had various flaws, that appellant was not notified of the specific medical conflict, citing *Henry J. Smith*, and that appellant was not allowed to see Dr. Palumbo's supplemental report.

By report dated September 3, 1996, Dr. Guerrero stated that he did feel that appellant's condition did resolve within six months, and that he did not feel that appellant's subjective complaints were indicative of any continuing residual of injury.

By decision dated September 19, 1996, the Office modified the August 9, 1996 decision finding that, although appellant's consequential psychological injury claim was not considered in the August 9, 1996 decision, subsequently received medical evidence from Dr. Guerrero established that appellant's physical condition had resolved within six months of its occurrence without continuing residuals, such that his consequential psychological injury claim could now be adjudicated. The Office found that appellant could not develop a psychological injury consequent to a resolved physical condition without residuals. Further, the Office found that the medical evidence submitted by appellant in support of his consequential injury claim attributed it to a variety of pain symptoms not accepted by the Office, rather than solely to the accepted physical condition of lumbosacral strain, such that no psychological injury causally related to appellant's September 24, 1993 lumbosacral strain injury has been shown to have occurred. Further, the Office changed the basis for the termination of appellant's compensation from termination because he refused suitable work, to termination because the weight of the medical evidence now clearly supported that appellant had no residuals of his 1993 injury six months after it occurred.[9] The Office found that, as per Dr. Guerrero's impartial medical examiner's report and its supplements, appellant's injury resolved within six months of September 24, 1993, that he had no injury residuals, and that therefore the Office was not required to find him suitable work as he was fully able to perform his date of injury job. The Office modified the August 9, 1996 decision to reflect that appellant had not suffered a work-related psychiatric condition consequential to his physical injury; that Dr. Guerrero was not biased in his role as an impartial medical examiner and that therefore his reports remain valid and constitute the weight of the medical opinion evidence; and that appellant no longer suffers residuals of the September 24, 1993 injury such that he would be entitled to either compensation for wage loss or to medical expenses.

Appellant requested review of the September 19, 1996 decision and in support his representative reargued his prior contentions regarding the impartial medical examiner's bias and selection, and lack of appellant notification of the specific nature of the conflict, and argued that date of occurrence of appellant's psychological condition preceded the termination of his disability. In support appellant submitted a September 4, 1996 report from Dr. Sethi repeating the contents of his earlier reports and a report from Dr. Hampton J. Jackson, Jr. stating that EMG

[9] As the Office changed its basis for termination of compensation from failure to accept suitable work to a finding of no further disability as of September 19, 1996, appellant remains entitled to compensation for the period August 23 to September 19, 1996.

and nerve conduction velocity studies demonstrated that appellant had an L5 radiculopathy and a positive straight leg raising test. No opinion on causal relation was included.

By decision dated December 6, 1996, the Office denied appellant's request for a review of the case on its merits finding that the evidence submitted in support of the request was cumulative and irrelevant and insufficient to warrant a merit review.

The Board finds that the weight of the medical evidence establishes that appellant had no disability or medical residuals on or after September 19, 1996 causally related to his September 24, 1993 employment-related soft-tissue injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[10] 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.[11] In the instant case, the Office has met its burden to terminate monetary compensation benefits as well as medical benefits effective September 19, 1996 through the rationalized reports of Dr. Guerrero.

The Federal Employees' Compensation Act at 5 U.S.C. § 8123(a), in pertinent part, provides: "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 an examination."

In the instant case there was a clear and self-evident conflict in medical opinions between appellant's Dr. Sethi and the well-rationalized reports of Dr. Palumbo, the Office's second opinion specialist, on the issue of whether appellant continued to be totally disabled or whether he could return to some type of work. Appellant's representative's challenge to the selection of an impartial medical specialist is without merit as appellant had been constructively made aware that a conflict existed and of the specific nature of the conflict, appellant's ability to perform some type of work, by the resulting actions of the Office following appellant's first referral to Dr. Palumbo and the Office's actions upon receipt of Dr. Palumbo's reports. Based upon the Office's actions in performing a suitable work determination, the offering to appellant of suitable work, his refusal, and the subsequent termination of his compensation for refusal, the Board finds that it was self evident to both appellant and his representative that a conflict existed and the specific nature of that conflict, such that the notification requirements of Chapter 3.500, paragraph 4c(1) of the Office's procedure manual and section 8123 of the Act had been constructively met.[12] Further, the Board notes that it stated in *Henry J. Smith* that "Lack of

[10] *Harold S. McGough*, 36 ECAB 332 (1984); *see* Federal (FECA) Procedure Manual, Chapter 2.812.3 (March 1987).

[11] *See Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[12] The Board notes that in the February 12, 1996 notification letter to appellant the Office did state that a conflict in medical opinion evidence existed and that the examination was being arranged under the provisions of 5 U.S.C. § 8123, as detailed in *Henry J. Smith*, such that appellant was given the opportunity to raise any objection to the

notification of a conflict under section 8123(a) and referral of the claim to an impartial medical specialist *may* rise, *depending on the circumstances of the case*, to the level of reversible error." (Emphasis added.) This case is not such a case.

The Office thereafter followed its procedures and properly selected an impartial medical examiner, Dr. Guerrero, using the computer based rotational system, to resolve the conflict on whether or not appellant remained totally disabled.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[13]

In this case, Dr. Guerrero received and reviewed, prior to appellant's examination, a statement of accepted facts and the complete case record containing all of appellant's medical history, including all of his previous negative objective and negative clinical diagnostic "laboratory" testing results, such that Dr. Guerrero's reports were based on an extremely complete, detailed and thorough, and hence proper, medical and factual background. Further, Dr. Guerrero included objective examination and testing results in his narrative which provided sufficient rationale to logically support his final opinion. Consequently, the Board finds that Dr. Guerrero's impartial medical examination reports are entitled to special weight, and hence constitute the weight of the rationalized medical opinion evidence of record.[14]

As Dr. Guerrero concluded that appellant's accepted condition, lumbosacral strain, resolved within six months of its occurrence, and that appellant's subjective complaints were not indicative of any continuing residual of injury, the Board finds that the Office correctly found that appellant, as of September 19, 1996, had no disability related to his accepted employment condition, and that he additionally had no injury-related residuals requiring further medical treatment. Accordingly, the Board finds that the Office properly terminated appellant's entitlement to continuing benefits effective September 19, 1996.

The Board further finds that appellant has failed to establish that he developed a consequential psychological condition, causally related to his September 24, 1993 accepted lumbosacral strain injury.

In the case of *John R. Knox*,[15] regarding consequential injury, the Board stated:

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selected physician prior to examination.

[13] *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

[14] The Board notes that, although Dr. Sethi submitted and continued to submit multiple repetitive narrative reports, they were very brief and failed to include objective evidence to support their findings and conclusions, and were, hence, not well rationalized, and therefore of diminished probative value.

[15] 42 ECAB 193 (1990).

> "It is an accepted principal 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. As is noted by Professor Larson in his treatise: '[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition.'"[16] (citations omitted)

In the present case, however, appellant has not met his burden of proof to demonstrate that a lumbosacral strain injury, which the weight of the medical evidence of record supports resolved within six months of its occurrence, progressed beyond six months to cause an emotional condition diagnosed in 1996. Dr. Carter, who diagnosed appellant in April 1996 as having depression, related appellant's condition to chronic pain he suffered from two factors "including but not limited to myofascial pain, back pain and leg pain," and from employing establishment personnel insensitivity to appellant's problems. This means that appellant's diagnosed emotional condition stemmed from multifactorial causes, not limited to his accepted 1993 lumbosacral strain, which constituted independent nonindustrial causes breaking the chain of progression and hence causation. As Dr. Carter opined that multiple factors were causally implicated in appellant's development of the condition, this report argues against appellant's consequential injury claim. In subsequent reports Dr. Carter became less specific about the causation of appellant's condition attributing it to his "physical pain" from all causes and "work-related difficulties." As the Office did not accept "physical pain" from all causes as being employment related, nor "work-related difficulties," these reports too do not support a consequential injury relationship. Dr. Sethi identified that appellant had depression as early as September 2, 1994 but specifically noted that appellant's condition was "depression secondary to chronic pain cluster/migraine headaches" and that it was concurrent disability not related to the employment injury in question. These reports attribute the depression to other conditions such as headaches, as well as to unspecified pain, neither of which was accepted by the Office as being employment related, and specifically noted that it was not related to his employment injury. These reports, consequently, do not support appellant's claim, and indeed attribute his condition to independent nonindustrial causes which break the chain of causation and argue against appellant's consequential injury claim. Dr. Sethi later begins to expand his diagnoses to include depression related to chronic pain but he fails to provide any medical rationale as to why his earlier diagnoses were expanded or as to why there was causal relationship with appellant's accepted soft tissue lumbosacral strain. Dr. Sethi also fails to explain how a condition initially characterized as a concurrent disability not due to the employment injury is broadened to imply

[16] *Id.*

some causality later exists. In March 1995 Dr. Sethi again attributes appellant's depression in part to his recurrent left-sided headaches, which would be an intervening independent nonindustrial cause, and which would negate the chain of causation. In subsequent reports Dr. Sethi becomes even less specific about the cause of appellant's depression, such that these reports lack rationale for their conclusions as well as fail to explain Dr. Sethi's change in opinion on the issue of causation from his earlier reports. As appellant submitted no other medical evidence supporting that his depression was a direct consequence, without independent intervening nonindustrial factors involved, he has failed to meet his burden of proof to establish his consequential injury claim. Therefore, the Office correctly found that consequential injury had not been established.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 6 and September 19, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 28, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member