U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY D. WEDEL and U.S. POSTAL SERVICE,
POST OFFICE Wichita, Kans.

Docket No. 95-2789; Oral Argument Held February 4, 1998;
Issued March 10, 1998

Appearances: *Beth Regier Foerster, Esq.*, for appellant; *Miriam D. Ozur, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that his left shoulder and clavicular condition and periods of disability after December 16, 1992 were causally related to his accepted October 17, 1992 employment injury.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a rural carrier, sustained lacerations to the nose and internal injury to the septum, as a result of a motor vehicle accident on October 17, 1992. Appellant returned to work on November 30 1992. Appellant thereafter filed Forms CA-8 for intermittent dates of disability commencing December 16, 1992. By decision dated April 19, 1993, the Office denied appellant's claim for recurrence of disability commencing December 1992, on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability. The denial of the claim was affirmed by a decision, of an Office hearing representative dated April 19, 1994. The Office denied modification of the prior decision, after merit review on June 28, 1995.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

On October 17, 1992 appellant was involved in a vehicular accident and was treated at Mercy Hospital for injuries sustained as a result thereof. The emergency room report notes, that appellant lost consciousness during the accident, sustained lacerations of both lips and the nose as well as internal injury to the septum. The emergency room report also notes that appellant had pain in the left shoulder and clavicular area, however, x-ray examination was negative. Appellant thereafter sought treatment from Dr. Willard Kaufman, a Board-certified general practitioner. In a November 19, 1992 report, Dr. Kaufman indicated that appellant had

sustained injuries to his, neck and clavicular area during the accident. The record reflects that Dr. Kaufman referred appellant to Dr. Ron Weber in February 1993 due to ongoing symptoms, including clavicular symptoms. Dr. Kaufman noted in his referral that appellant had sustained a left arm injury in 1986 which caused either an impingement syndrome or a tear of the rotator cuff. In a report dated April 14, 1993, Dr. Kaufman noted that Dr. Weber had diagnosed fibromyalgia, causally related to the vehicular accident. Dr. Kaufman concluded that appellant's current condition was causally related to the accepted employment injury. Dr. Kaufman also continued to report to the Office that appellant was partially disabled from his regular work.

Dr. Weber issued several reports during February 1993, wherein he noted appellant's continuing complaints of left clavicle and shoulder pain, but noted essentially a negative examination regarding these symptoms. While Dr. Weber initially questioned whether appellant had fibromyalgia, depression, or an underlying arthritis, Dr. Weber did offer appellant's diagnosis as fibromyalgia. Dr. Weber indicated that appellant could perform his regular work, but at a reduced number of hours.

Appellant commenced treatment with Dr. Ron Reschly, a Board-certified orthopedic surgeon, in February 1993. In a report dated March 8, 1993, Dr. Reschly stated that appellant appeared to have residual neck pain, in the left clavicular area from the vehicular accident, not due to any preexisting conditions. Dr. Reschly reported that a magnetic resonance imaging study of the cervical spine, showed some decrease of canal space at C5-6, but was essentially a negative scan. In a February 21, 1994 report, Dr. Reschly stated that appellant had a significant amount of musculoskeletal type pain, yet maintained fairly good range of motion in the shoulder. Dr. Reschly stated that appellant could "adequately be spoken of as having a fibromyalgia type of syndrome, but in my parlance I might call that a neck/shoulder syndrome." Dr. Reschly related that appellant did not have tolerance to work more than four of his six scheduled workdays a week. In a report dated February 21, 1994, Dr. Reschly clarified that appellant's formal diagnosis was of a fibromyalgia syndrome. Dr. Reschly concluded that appellant's fibromyalgia condition was causally related to the accepted October 1992 auto accident. Dr. Reschly explained that appellant's history included self-consistency and persistence over time, and that his physical findings and their time course led to the conclusion of causal relationship.

Appellant was thereafter referred by Dr. Reschly to Dr. Frederick Wolfe, a Clinical Professor of Internal Medicine at the University of Kansas School of Medicine, in July 1994 for evaluation. In his report dated July 20, 1994 Dr. Wolfe reviewed appellant's medical history and physical examination findings. Dr. Wolfe stated that appellant had a myofascial pain syndrome which was related to his accepted employment injury. Dr. Wolfe noted that from review of appellant's medical records and his history, there did not appear to be any predisposing condition or previous complaints. However, following the accident appellant developed a pain problem, which was entirely consistent with the type of injury that he sustained. Dr. Wolfe explained his diagnosis by noting that the term fibromyalgia was defined by widespread pain (over most body regions) together with tenderness at 11 or 18 tender points. Dr. Wolfe related that individuals with fibromyalgia also usually have high levels of pain, sleep disturbance, high levels of fatigue and often evidence of depression. He indicated that although appellant had these latter features, appellant had regional pain and limited tenderness. Dr. Wolfe stated that appellant's symptoms

of localized regional muscle pain, unassociated with significant hyperalgesia constituted myofascial pain syndrome.

The history of injury contained in the medical record reveals that appellant, while in the performance of his federal duties, was in a traffic accident on October 17, 1992. Since October 17, 1992 appellant sought treatment for left shoulder and clavicular symptoms. Appellant returned to work in December 1992 but was only able to work for four days of his scheduled six-day work week. While appellant's physicians concurred regarding the nature of appellant's symptoms, they could not initially diagnose such. Given appellant's ongoing complaints eventually a diagnosis was made of probable fibromyalgia syndrome. Dr. Wolfe eventually examined appellant in 1994 and offered a detailed opinion as to why appellant's medical history substantiated a diagnosis of myofascial pain syndrome. While the diagnosis evolved over time to that of myofascial pain syndrome, the Board notes that appellant's physicians have all related appellant's left shoulder clavicular complaints from the day of injury, to the accepted employment injury.

Although none of the medical reports contain sufficient rationale to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that his left shoulder and clavicular condition is causally related to his October 17, 1992 employment injury,[1] the reports of record do raise an uncontroverted inference of causal relationship, sufficient to require further development of the case record by the Office.[2] Moreover, neither an Office medical adviser nor an Office medical consultant has reviewed appellant's medical record; thus there is no opposing medical evidence in the record regarding this issue.

Proceedings under the Act[3] are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. The Office has an obligation to see that justice is done.[4]

On remand, the Office should refer appellant, together with a statement of accepted facts which describes the October 17, 1992 employment injury, and the medical evidence of record to an appropriate Board-certified specialist or specialists for an examination, diagnosis and a rationalized opinion as to the relationship between appellant's diagnosed condition or conditions

[1] The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Ruby I. Fish,* 46 ECAB 276 (1994).

[2] *See Horace Langhorne,* 29 ECAB 820 (1978); *Gary L. Fowler* 45 ECAB 365 (1994).

[3] 5 U.S.C. §§ 8101-8193.

[4] *William J. Cantrell,* 34 ECAB 1233 (1983).

and the October 17, 1992 employment incident and injury. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.[5]

The decision of the Office of Workers' Compensation Programs dated June 28, 1995 is hereby set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
March 10, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[5] The Board notes that the medical evidence of record initially also described appellant's complaints of fatigue. Appellant's representative at oral argument has clarified that appellant is not currently claiming in this appeal that appellant's fatigue complaints are causally related to the accepted injury.