

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL LAWHON and U.S. POSTAL SERVICE,
POST OFFICE, Bonita Springs, FL

*Docket No. 99-1642; Submitted on the Record;
Issued April 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant developed an emotional condition due to her accepted employment injury.

Appellant, a 27-year-old casual clerk, filed a traumatic injury claim alleging that she was injured in a motor vehicle accident in the performance of duty on January 18, 1988. The Office of Workers' Compensation Programs accepted appellant's claim for cervical and lumbar strain, as well as contusions to the left arm, shoulder and jaw and a headache. Appellant filed a notice of recurrence of disability on February 6, 1990. The Office entered appellant on the periodic rolls on August 1, 1990. By decision dated March 3, 1993, the Office found that appellant had no loss of wage-earning capacity based on the constructed position of gate guard. The hearing representative affirmed this decision on February 3, 1994.

Appellant alleged that she had developed an emotional condition as a result of her employment injuries. The Office requested additional factual and medical evidence by letter dated November 27, 1996. By decision dated September 30, 1997, the Office denied appellant's claim for an emotional condition as a consequence of her January 18, 1987 employment injury. Appellant requested an oral hearing. By decision dated September 3, 1998, the hearing representative affirmed the Office's September 30, 1997 decision.

Appellant requested reconsideration on October 15, 1998 and submitted additional medical evidence. By decision dated March 19, 1999, the Office denied modification of its prior decisions.

The Board finds that this case is not in posture for decision.

It is an accepted principle of workers' compensation law 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 Larson in his treatise on workers' compensation, once the work-connected character of any 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 and so 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.¹

In this case, appellant attributed her diagnosed depression to pain which she experienced as a result of her employment injuries. In support of her claim, appellant submitted several medical reports. On August 30, 1993 Dr. Donald D. Pollock, a Board-certified psychiatrist, stated: "I have been treating her for depression and her depression is clearly related to her difficulty functioning secondary to pain, due to her back injury she received on the job." Dr. Pollock completed a report on April 6, 1993 and stated that appellant's depression was the direct result of her pain and inability to function as she had prior to her employment injury.

On September 10, 1993 Dr. Ann Bergin Hall, a licensed psychologist, stated that she had treated appellant for depression since February 18, 1992. Dr. Hall opined that the depression appeared to be related to her injury of January 18, 1988 and the chronic pain and disability that appellant suffered as a result.

Dr. William D. Ertag, a Board-certified neurologist, completed a report on March 9, 1994 and stated that appellant was depressed and anxious regarding her chronic disability.

Dr. Carroll A. English, a Board-certified orthopedic surgeon, and second opinion physician, completed a report on April 21, 1994. He stated; "I claimed no expertise in psychology or psychiatry, but she has been obviously depressed over her injury and lacks self-esteem."

In a report dated August 21, 1998, Dr. Frederick W. Schaerf, a Board-certified psychiatrist, noted appellant's history of injury and diagnosed chronic pain disorder and major depression in partial remission. Dr. Schaerf stated: "I believe with a high degree of medical certainty that her pain syndrome is associated directly to her accident. I also believe, without reviewing any other records or having any other informants, that it seems, at least, retrospectively, by history, that the patient's depression is related to the sequella (sic) of her motor vehicle accident."

Each of these physicians noted that appellant had injuries due to a work-related motor vehicle accident, diagnosed an emotional condition of either depression or chronic pain, and offered an opinion that appellant's diagnosed emotional condition was a consequence of the injuries and disability that appellant sustained beginning in 1988. There is no medical evidence negating a causal relationship. Furthermore, the Office's second opinion physician, Dr. English, supported the diagnosis of an emotional condition.

The reports contain a history of injury, diagnosis and an opinion that appellant's emotional condition was caused by the accepted employment injury. While these reports are not

¹ *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment injuries and her diagnosed emotional conditions and are sufficient to require the Office to undertake further development of appellant's claim.²

On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate physician to determine the causal relationship between any emotional condition and appellant's accepted employment injuries. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The March 19, 1998 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, DC
April 24, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

² *John J. Carlone*, 41 ECAB 354, 358-60 (1989).