

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARMANE E. MATTHEW and U.S. POSTAL SERVICE,  
POST OFFICE, Tacoma, WA

*Docket No. 99-780; Submitted on the Record;  
Issued January 12, 2001*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in authorizing psychological counseling for a finite period of 90 days only, as an adjunct to vocational rehabilitation to facilitate appellant's return to employment after being disabled due to her accepted employment-related conditions of bilateral wrist tendinitis and excision of a left wrist ganglion cyst.

On January 12, 1994 the Office accepted that appellant, then a 39-year-old carrier/clerk, sustained bilateral tendinitis of her wrists and an ulnar ganglion cyst of the left wrist, for which she underwent excision on May 9, 1994, the date her disability began and a repeat excision on January 9, 1995 while in the performance of duty.<sup>1</sup> By report dated January 26, 1998, appellant's treating physician, Dr. Edgar S. Steinitz, a Board-certified physiatrist specializing in physical medicine and rehabilitation, opined that appellant was "fully capable of work within a light work category," and advised appellant to "return to work at any time."

On February 20, 1998 the Office determined that vocational rehabilitation counseling was required to successfully return appellant to work and it referred appellant to Richard King, for rehabilitation plan development. On April 29, 1998 Mr. King noted that appellant "indicated a need for some work adjustment counseling when she was in," to "deal with feelings she had towards her employer (supervisor) and coworkers."

On May 19, 1998 the Office authorized appellant to participate in 90 days of supportive counseling services "as an adjunct to vocational rehabilitation." However, no emotional or

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<sup>1</sup> Claim No. A14-0304500. Appellant filed multiple claims for a variety of other injuries/conditions, some of which were evidently accepted by the Office under different claim numbers, including A14-0320520, some of which were denied, but none of which were formally combined with the instant case record to create a master file as requested by appellant. This is notwithstanding the rehabilitation specialist's erroneous annotation of "cervical strain" as the accepted condition for Claim No. A14-0304500.

psychological illness or condition was accepted as being employment related, or as being a consequence of appellant's accepted conditions of bilateral wrist tendinitis and left ganglion cyst.

By report dated June 10, 1998, Dr. Steinitz noted that appellant's physical capacity evaluation "shows ability to return to work within a sedentary to light work category."

On July 30, 1998 the employing establishment submitted a rehabilitation job offer for appellant to Dr. Steinitz detailing the employment activities it proposed to have appellant perform, for his approval as appropriate to her partially disabled condition. Dr. Steinitz reviewed the physical requirements of the job offer and on August 3, 1998 commented "Basically, the job sounds appropriate [and] [appellant] is released, but some accommodation may be needed for heavier parcels especially lifted to shoulder level [and] above."

By report dated August 6, 1998, Dr. Katharine Brezezinski-Stein, a psychologist, noted that appellant continued to experience a reduction in depressive symptoms, that she expressed an increasing readiness to return to work, but that she believed that Dr. Steinitz wanted her to participate in a work hardening program. Dr. Brezezinski-Stein noted that appellant had telephoned her and expressed concern that "Dr. Steinitz had returned her to the work site in which she was previously both physically injured and sexually and emotional[ly] harassed." Dr. Brezezinski-Stein noted that appellant had "serious trepidations regarding reinjury given her job duties as well as fears about how she will be received by some of her fellow employees and supervisors in this facility." She requested a 90-day extension of authorization for outpatient psychotherapy for appellant "to assist in her adjustment to return to work and to monitor her mental status and mood," as Dr. Brezezinski-Stein was concerned that appellant "may be entering a potentially very hostile work environment and that this could have significant deleterious effects on her mental status and mood."

Also on August 6, 1998 appellant accepted the employing establishment's job offer "under protest." She returned to her modified-duty position on August 15, 1998 at a higher salary than that of her date-of-injury job.

By report dated August 31, 1998, Dr. Steinitz expressed his delight that appellant "has been successful with return to work," but noted "I still feel that a psychologist's support for pain stress coping strategies would be invaluable to her, while continuing with the physical therapy or massage therapy (if available) would be a benefit to her." He requested approval for psychological support for pain and stress management.

By report dated September 2, 1998, Dr. Brezezinski-Stein noted that she had seen appellant three times since her return to work and that there were no changes made in her diagnosis or treatment plan. Dr. Brezezinski-Stein noted, however, that "Within a few days of her return, [appellant] had already filed a grievance regarding loss of seniority, scheduling difficulties, problems with a supervisor, work which has exceeded her physical restrictions, etc." She also noted that appellant was very concerned that the massage therapy had not been approved and noted that she was feeling depressed, anxious, tired and in pain during the most recent session.

Office payment for psychological counseling for support of appellant's transition back to work ended on August 31, 1998. On September 17, 1998 Dr. Brezezinski-Stein called the Office to explain that appellant wished to extend Office coverage of counseling for two more months as she was not doing well. The Office advised that no psychological condition had been accepted as being employment related.

A job analysis was conducted by the rehabilitation counselor in September 1998 and was reviewed by appellant's supervisor, who agreed that it was a description of appellant's job and essential functions. On September 23, 1998 appellant signed the report and agreed with the job as described and any reasonable accommodation request made.

On October 6, 1998 the Office received an undated letter from appellant stating that "There is no way my benefits have ran [sic] out." Appellant claimed that she was "back to work with a new injury and aggravations to [her] neck and spine also," and indicated that new claims, Nos. A14-0335559 and A14-0334500, were going into the present claim.

By decision dated October 15, 1998, the Office noted that appellant had been reemployed as a part-time flexible carrier with wages of \$37,623.00 per year, noted that she had satisfactorily performed the duties of this position since August 15, 1998 and determined that this position fairly and reasonably represented her wage-earning capacity. The Office found that, in accordance with the provisions of 5 U.S.C. § 8106 and 5 U.S.C. § 8115, appellant had no loss of wage-earning capacity between her pay rate on her date of injury and her ability to earn wages in her new position.<sup>2</sup>

Appellant stated in an undated letter that she wished to appeal this decision, but indicated "I have no quarrels regarding my pay." Appellant claimed, however, that although the Office stated that she had "no losses" when she returned to work, she felt that she had lost a lot, that she had lost many rights and now benefits under the Federal Employees' Compensation Act, that she had lost her seniority, that her contract had been violated in many ways on her return and that grievances had been filed and that she had rights under the contract to protest. Appellant alleged that her doctor had released her to a different job, that she had been assured that she would be at a desk for six hours per day but was not, that her hours were making her home life suffer, that her return to work had reaggravated her cervical strain, that tendinitis and carpal tunnel syndrome had flared up and more chronic pain had hit her, that she had had to triple her medication, that she sustained a new back injury, that this was the same job in which she had experienced other injuries, that she was not getting help, that denial of continued psychological counseling was creating more stress and tension and that her fibromyalgia would never go away.<sup>3</sup>

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<sup>2</sup> Appellant's salary in her current position was more than \$1,000.00 more than her previous salary in her former position.

<sup>3</sup> Although appellant stated that she wished to appeal this decision, she indicated that it was not an appeal of her wage-earning capacity determination, but was an appeal of multiple other aspects of her claim not addressed by the October 15, 1998 decision. As appellant did not wish to appeal the wage-earning capacity aspect of the decision and as no formal final decisions have been rendered by the Office on the other issues, the Board finds that appellant has not substantively appealed the October 15, 1998 decision. See 20 C.F.R. § 501.2(c).

By decision dated October 29, 1998, the Office denied authorization of medical coverage for psychological counseling after August 31, 1998. The Office noted that appellant had successfully returned to work on August 15, 1998 and continued in this employment to the present, that it had authorized temporary counseling for 90 days to assist during the rehabilitation and return to work period which had ended on August 31, 1998 and that a psychological condition had not been accepted as a work-related injury.

Appellant stated in another undated letter that she wished to appeal the denial of authorization for psychological counseling arguing that all parties involved felt that this was very pertinent to her continued employment. Appellant claimed that upon her return to work the stress was almost unbearable, that the job she was put into was not the same job that she had accepted, that she had “reaggravated [her] existing claims” and had a new claim for cervical strain, that Dr. Steinitz had requested the psychological counseling “to deal with the fibromyalgia chronic pains” with which she suffered, that the claims examiner was playing games, trying to beat her down, never returning telephone calls and denying her “rights under [her] benefits,” that stress management and biofeedback had been requested and that the rehabilitation counselor knew she needed more counseling. Appellant apparently also simultaneously requested reconsideration by the Office.

The Board finds that the Office did not abuse its discretion in authorizing adjunct psychological counseling for a finite period of 90 days only, to facilitate appellant’s return to employment after being disabled due to her accepted employment-related conditions of bilateral wrist tendinitis and excision of a left wrist ganglion cyst.

Medical expenses, along with transportation and other expenses incidental to securing medical care, are covered by section 8103 of the Act.<sup>4</sup> This section provides that “[t]he United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability, or aid in lessening the amount of any monthly compensation. These services, appliances and supplies shall be furnished ... by or on the order of the United States medical officers and hospital, or at the employee’s option, by or on the order of physicians and hospitals designated or approved by the Secretary.”<sup>5</sup>

The Board has found that the Office has great discretion in determining whether a particular type of treatment is likely to cure or give relief.<sup>6</sup>

In the instant case, the Office authorized temporary psychological counseling for a defined period of time to aid in the transition of appellant back to work.

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 5 U.S.C. § 8103(a)(3).

<sup>6</sup> *James E. Archie*, 43 ECAB 180 (1991); *Daniel J. Perea*, 42 ECAB 214 (1990); *William F. Gay*, 38 ECAB 599 (1987).

The general principle in workers' compensation law under the Act regarding monetary compensation and medical benefits is that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>7</sup> 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.<sup>8</sup> However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.<sup>9</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>10</sup>

Under ordinary circumstances the Office would be required to justify the termination date of a defined period of medical benefits entitlement for an accepted employment-related condition or injury, however, that is not so in this case as the psychological counseling appellant was receiving was not for the treatment of any such accepted employment-related condition or accepted consequential sequelae. The 90 days of authorized psychological counseling granted by the Office was not intended for medical treatment of any specific accepted condition at all, but was explicitly intended only as an adjunct to vocational rehabilitation. Therefore, when authorization for vocational rehabilitation was terminated, any authorized adjunct therapy would also be terminated.

Further, the Board notes that appellant successfully returned to modified duty on August 15, 1998 and performed adequately for more than 60 days and that the Office formally requested termination of all vocational rehabilitation efforts on October 21, 1998. As appellant successfully returned to modified employment and performed adequately beginning August 15, 1998, there ceased, shortly after that point, to be a need for vocational rehabilitation or its adjuncts. Appellant, however, continued to receive psychological counseling benefits through August 31, 1998. Beyond that point, the Board finds nothing in the case record to support the need for ongoing psychological counseling benefits provided under the Act.<sup>11</sup>

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<sup>7</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>8</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>9</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

<sup>10</sup> *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

<sup>11</sup> This is not to say that appellant would not benefit from future psychological counseling as recommended by her therapist; however, entitlement under the Act to those benefits is not supported by the record as no emotional or psychological condition has been accepted by the Office as being an employment-related condition or consequential injury.

In order to be entitled to payment of medical expenses, a claimant must establish that the expenditures are incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.<sup>12</sup> However, the present case record is devoid of any such rationalized medical opinion supporting the employment relatedness of any such psychological or emotional injury or condition, for which psychological counseling would be indicated.

Therefore, the Office did not abuse its discretion in denying appellant's request for authorization for further psychological counseling.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 29, 1998 is hereby affirmed.

Dated, Washington, DC  
January 12, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member

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<sup>12</sup> See *Bertha L. Arnold*, 38 ECAB 282 (1986); *Delores May Pearson*, 34 ECAB 995 (1983); *Zane H. Cassell*, 32 ECAB 1537 (1981); *John R. Benton*, 15 ECAB 48 (1963).