

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELBA VIVAS and U.S. POSTAL SERVICE,  
POST OFFICE, Santa Ana, CA

*Docket No. 99-515; Submitted on the Record;  
Issued March 26, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that her psychiatric and spinal conditions were due to or aggravated by her accepted employment injury.

On September 29, 1987 appellant, then a 46-year-old automation mark up clerk, filed a traumatic injury claim alleging that she hurt herself while pushing mail trays to place them on belts. The Office of Workers' Compensation Programs accepted the claim for right arm and neck strain, bilateral carpal tunnel syndrome and a torn medial meniscus of the right knee. The Office placed appellant on the automatic rolls for temporary total disability, and returned to a light-duty rehabilitation job effective April 14, 1997.

In a September 8, 1996 report, Dr. Luis A. Chui, a second opinion Board-certified neurologist, diagnosed mild bilateral carpal tunnel syndrome, released, and "chronic anxiety and depression for chronic progressive pain syndrome in both upper extremities aggravated by psychophysiological factors."

In a September 19, 1996 report, Dr. Lewis B. Newman, a second opinion Board-certified orthopedic surgeon, reviewed the medical evidence, a statement of accepted facts and the results of his physical examination. He concluded that appellant was not totally disabled and was capable of returning to work. Dr. Newman opined that appellant's degenerative disc disease in the cervical spine was not caused or aggravated by her employment injury. In addition, he stated that appellant no longer had any problem with her right knee as there was no objective evidence to support her subjective symptoms. Lastly, Dr. Newman concluded that appellant did not sustain an injury to her left shoulder due to her employment injury.

In a November 15, 1996 report, Dr. Richard G. Ness, a second opinion Board-certified psychiatrist, reviewed a statement of accepted facts and the medical records. After examination and testing, he concluded that appellant did not have an employment-related mental illness. Dr. Ness stated that, although appellant's depression and pain was "a two-way street," the

“medical facts in this case do not support a theory that some reasonable ‘industrial’ pain syndrome has led to a subsequent depressive syndrome. The reverse is true.”

In a report dated June 2, 1997, Dr. Lawrence N. Borelli, appellant’s attending Board-certified orthopedic surgeon, noted appellant’s return to work and stated that she was “symptomatically worse since last seen, relating primarily to her neck and upper back. I relate this to her chair” and recommended “a straight back chair with arm rests and a foot support at her work site.” Dr. Borelli diagnosed cervical spondylosis, which was degenerative and unrelated to her employment. In support of this opinion, he stated that “the nature of her work activities is primarily stressful,” but “not traumatically stressful to the lower back.”

By decision dated July 21, 1997, the Office reduced appellant’s compensation to zero on the basis that she had no loss of wage-earning capacity in her light-duty position. The Office also determined that appellant’s depression and spinal problems were unrelated to her accepted employment injuries.

In a letter dated July 19, 1998, appellant requested reconsideration and submitted evidence in support, including a May 23, 1998 report from Dr. Zan Ian Lewis, an attending Board-certified orthopedic surgeon, and reports from Dr. Michelle Preiss-Lowenwirt and Dr. Richard Miller, both attending Board-certified psychiatrists.

In a June 7, 1991 report received by the Office on July 22, 1998, Dr. Miller diagnosed adjustment disorder with anxiety and depression, which he opined were a consequence of appellant’s employment injury and job related. He also concluded that due to her emotional disorder appellant was totally disabled and recommended psychiatric treatment.

In a May 23, 1998 report, Dr. Lewis indicated that he had not seen appellant since August 1993. He then concluded, based upon a review of the medical evidence and a physical examination, that appellant’s back condition was related to her accepted employment injury. Dr. Lewis stated that Dr. Borelli’s June 2, 1997 report, which found appellant’s spinal condition unrelated to her employment, was not clear on how the problem in appellant’s neck was nonindustrial, particularly as Dr. Borelli recommended that appellant be given a chair with foot and arm rests. In support of his conclusion, Dr. Lewis noted:

“It is well known that chronic painful conditions of the knee alter the mechanics of the body. The gait becomes antalgic. The ability to squat is diminished. Secondarily, the lower back becomes affected as it over compensates for the disability in the knee.”

In her March 18, 1998 report, Dr. Preiss-Lowenwirt confirmed that appellant was treated from February 18, 1982 through May 6, 1993 and was informed that they were “unable to make a statement regarding what caused your depression” and that “it was clear that prior events regarding your employment and subsequent application/struggle for Workmans [sic] Compensation were significant stressors for you and contributed to your feelings of depression.”

In an August 7, 1998 merit decision, the Office denied appellant's request for reconsideration on the basis that the evidence was insufficient to warrant modification of its prior decision.

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a psychiatric or spinal injury as a result of her September 29, 1987 employment injury.

In the case of *John R. Knox*,<sup>1</sup> regarding consequential injury, the Board stated:

"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. 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.'"<sup>2</sup> (citations omitted)

In this case, appellant has not provided any rationalized medical evidence that her diagnosed depression was a consequential injury of her September 29, 1987 employment injuries. The only reports relevant to this issue are the opinions of Drs. Miller, Preiss-Lowenwirt and Ness. Dr. Miller provided no rationale for his conclusion that appellant's adjustment disorder with anxiety and depression were related to her accepted employment injuries. In addition, his report is more than six years old. Dr. Preiss-Lowenwirt, an attending Board-certified psychiatrist, stated that she could not provide an opinion on the cause of appellant's depression. Dr. Ness, a second opinion Board-certified psychiatrist, concluded that appellant's emotional disability was unrelated to her employment injury. Therefore, the Board finds that appellant failed to meet her burden of proof in establishing a consequential emotional condition causally related to her accepted work injuries.

The Board also finds that appellant did not meet her burden of proof in establishing that the spinal condition was a consequential injury of her accepted employment injuries.

Dr. Lewis, appellant's attending Board-certified orthopedic surgeon, indicated that appellant's spinal condition was related to his employment and that he disagreed with Dr. Borelli's conclusion that the condition was unrelated. Dr. Lewis provided no explanation or rationale in support of his conclusion that appellant's spinal condition was due to factors of her

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<sup>1</sup> 42 ECAB 193 (1990).

<sup>2</sup> *Id.*

employment or to her September 29, 1987 employment injury.<sup>3</sup> Further, his statement that appellant's knee problem affected her lower back because the back "over compensates for the disability in the knee" does not constitute a rationalized medical opinion. Dr. Lewis' opinion does not specifically state that appellant's back condition was a natural consequence from her accepted employment injury nor does he explain medically how this condition is related to her injury. Thus, his opinion is too general and conclusory in stating there is a causal connection between appellant's back condition and her accepted employment injuries.<sup>4</sup>

The Board has held that, in assessing medical opinion evidence, the weight to be accorded such medical evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.<sup>5</sup>

The Boards finds that Dr. Newman's September 19, 1996 report, which was based upon a proper factual background and was well rationalized, constitutes the weight of the medical evidence. Dr. Newman, the second opinion specialist and Board-certified orthopedic surgeon, concluded that appellant's spinal condition was not a consequential injury of her September 29, 1987 employment injuries. He found that the degenerative disc disease in her cervical spine was not aggravated or caused by her accepted employment injury. Dr. Newman also found that appellant was capable of returning to work as she had no disability due to her accepted employment injuries. Furthermore, Dr. Borelli, appellant's attending Board-certified orthopedic surgeon, supports Dr. Newman's conclusions that appellant has no consequential spinal condition. In his June 2, 1997 report, Dr. Borelli concluded that appellant's cervical spondylosis was degenerative and unrelated to her employment.

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<sup>3</sup> *Arlonia B. Taylor*, 44 ECAB 591 (1993).

<sup>4</sup> *See Robert P. Bourgeois*, 45 ECAB 745, 748-50 (1994); *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

<sup>5</sup> *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The August 7, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 26, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member