

**United States Department of Labor
Employees' Compensation Appeals Board**

A.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Somerville, TN, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-87
Issued: August 9, 2007**

Appearances:
Gordon Reisel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On October 11, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated September 12, 2006 which affirmed a September 24, 2005 decision terminating her compensation and a July 14, 2005 decision denying compensation for a consequential psychiatric condition. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden to terminate compensation benefits September 24, 2005; (2) whether appellant sustained a consequential psychiatric condition in the performance of duty.

FACTUAL HISTORY

On February 26, 2001 appellant, a 41-year-old part-time letter carrier, filed a Form CA-2 claim for benefits, alleging that she developed pain in her right knee, right foot, left knee and left foot causally related to employment factors. She stated that she became aware that these conditions were causally related to her employment April 2000. The Office accepted the claim

for right plantar facial fibromatosis, aggravation of torn medial meniscus, aggravation of patella chondromalacia and fracture of tarsal metatarsal bones. It commenced appropriate compensation for intermittent periods of total and partial disability compensation.

On November 9, 2004 appellant requested that her claim be expanded to include a psychiatric condition, major depression/panic disorder anxiety. She alleged that this condition resulted from her accepted, work-related physical conditions. Appellant was examined by Dr. Antoine Jean-Pierre, Board-certified in psychiatry and neurology, who summarized his treatment in a report dated March 23, 2005. Dr. Jean-Pierre stated:

“This is to certify that [appellant] was referred to this office by Dr. R.G. Childress for her depression, overeating, anxiety, crying spells and [inability] to sleep at night. [She] is in pain and has trouble dealing with it and wants something to be done since this puts stresses on her daily living.”

Dr. Jean-Pierre diagnosed major depressive disorder, recurrent episode, moderate. He recommended treatment consisting of 20 to 30 sessions of individual psychotherapy and medication management.

In order to determine appellant’s current psychological condition, the Office referred her for a second opinion examination with Dr. Melvin L. Goldin, Board-certified in psychiatry and neurology. In a March 22, 2005 report, Dr. Goldin related that appellant developed a major depressive disorder due to her difficulties dealing with a chronic foot injury, aggravation of earlier medial meniscal tear and patellar chondromalacia, in addition to fracture of tarsal and metatarsal bones. Appellant also felt extremely distressed due to her inability to function and work for eight hours per day, along with the attendant financial pressures. Dr. Goldin noted that appellant had experienced weight gain, irritability, insomnia, social withdrawal, suicidal ideation and a decrease in pleasurable activities. His examination indicated a mildly depressed mood with slightly blunted affect.

Dr. Goldin concluded that appellant had developed a psychological condition as a direct result of her work-related injuries. He stated that the critical factor regarding her work injuries was that, due to a series of administrative issues, she could no longer pull her own weight, resulting in a deterioration of her self-esteem and precipitating the depressive diathesis. With regard to the specific work factors contributing to the diagnosed work-related psychiatric condition, Dr. Goldin stated:

“The condition is [appellant’s] minimal paycheck at this point, which I am unable to ascertain is directly related to the on the job injury; *i.e.*, if the job injury clearly resulted in her being cut back to working two hour shifts with subsequent decrease in pay, it does cause and or contribute to her condition.”

In a work capacity evaluation dated March 22, 2005, Dr. Goldin was asked whether appellant was competent to work eight hours per day. He responded, “Yes, based on psychiatric issues.”

In order to determine whether appellant still experienced residuals from her accepted physical conditions, the Office referred her to Dr. Carl W. Huff, Board-certified in orthopedic surgery, who reviewed the statement of accepted facts which indicated:

“[Appellant’s] case was accepted for right plantar fascial fibromatosis, aggravation of medial meniscus tear, aggravation of patella chondromalacia and fracture of other tarsal and metatarsal bones (closed).”

In a report dated February 15, 2005, Dr. Huff indicated that these conditions were not due to her work duties. He stated:

“In my opinion there is no relationship to the work whatsoever of the chondromalacia of [appellant’s] knees and the torn lateral meniscus. These are normal degenerative conditions that occur and they were not caused by standing and walking as a city letter carrier.... As far as the plantar fasciitis is concerned, this seems to be a condition that is associated more with [appellant’s] per plano valgus deformity with more stress on the plantar fascia rather than the rigors of her job. The stress fractures obviously have nothing to do with her work because at the time they developed [appellant] was not really doing that much walking, so that this is more of a condition associated with increased fragility of the metatarsals and perhaps some localized osteopenia.”

Dr. Huff stated several times in his report, that appellant’s accepted conditions were not caused or aggravated by factors of her employment. He opined that she had no residuals from her work injuries because appellant had not sustained any work-related injuries. Dr. Huff concluded that appellant was capable of resuming full duty as a city letter carrier.

In a notice of proposed termination dated July 14, 2005, the Office, based on Dr. Huff’s referral opinion, found that the weight of the medical evidence demonstrated that appellant was no longer disabled and no longer had residuals due to her accepted employment conditions. In addition, the Office denied compensation for a consequential psychiatric condition based on Dr. Goldin’s March 22, 2005 report.

Appellant submitted an August 3, 2005 report from Dr. Childress who expressed his disagreement with Dr. Huff’s opinion. He stated:

[Appellant] has clear and documented history of injury and continuing residual with pain and difficulty with her knee and both of her feet. Please note that she had had objective testing with magnetic resonance imaging [MRI] scans documenting the extent of her problems and [appellant] has reason to have continuing difficulty with the articular cartilage in her knee and with ... not only tendinitis and fasciitis symptoms in her feet, but the added tendency for increase[d] problems with the metatarsal stress fracture.

“If she were totally asymptomatic, then consideration of returning to unrestricted walking, climbing, unrestricted lifting, *etc.*, would be reasonable. However, she

has clear continuing documented problems and difficulties where assigning her to totally unrestricted function would not be in [appellant's] best health interest or, in [the employing establishment's] best use of this employee to work and function in a safe environment without further injury to herself.”

By decision dated September 23, 2005, the Office terminated appellant's compensation. It found that she had no continuing disability or residuals stemming from her accepted employment conditions based on Dr. Huff's opinion, which represented the weight of the medical evidence.

On October 12, 2005 appellant requested an oral hearing which was held on July 24, 2006. Her attorney argued at the hearing that the Office erred in relying on Dr. Huff's referral opinion which was not a sufficient basis upon which to terminate appellant's compensation benefits. Counsel stated that Dr. Huff disregarded the statement of accepted facts by asserting that appellant had no diagnosed or accepted conditions causally related to employment factors. In addition, he stated that Dr. Childress's August 3, 2005 report indicating that appellant had continuing problems and restrictions with her accepted knee and foot conditions created a conflict in the medical evidence. With regard to the psychiatric claim, counsel noted that the Office had paid appellant's bills for psychiatric counseling from Dr. Jean-Pierre, whom she began seeing on March 23 until August 2004, when Dr. Jean-Pierre discontinued treatment because the Office stopped reimbursing him for appellant's visits. Counsel noted that the Office had referred appellant to Dr. Goldin who diagnosed major depression, causally related to her work duties, in his March 22, 2005 report. He concluded that, on the basis of Dr. Goldin's report, appellant had a psychiatric condition causally related to her employment.

By decision dated September 12, 2006, an Office hearing representative affirmed the September 23, 2005 termination decision. He also affirmed the Office's denial of a claim based on a psychiatric condition.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ 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.²

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is 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.³

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ 5 U.S.C. § 8123(a).

ANALYSIS -- ISSUE 1

In the present case, there is disagreement between Dr. Huff, the second opinion physician, and Dr. Childress, appellant's treating physician, as to whether appellant still has residual disability stemming from her accepted conditions of right plantar fascial fibromatosis, aggravation of torn medial meniscus, aggravation of patella chondromalacia and fracture of tarsal metatarsal bones. Dr. Huff stated in his February 15, 2005 report that appellant did not have residuals from these conditions, as they were not attributable to her work duties. He opined that the chondromalacia of her knees and torn lateral meniscus were normal degenerative conditions and were not caused by standing and walking as a city letter carrier. Dr. Huff further stated that appellant's plantar fasciitis was due to her per plano valgus deformity which placed more stress on the plantar fascia, as opposed to the demands of her job. Regarding her stress fractures, he opined that they "obviously have nothing to do with appellant's work because at the time they developed she was not really doing that much walking." Dr. Huff advised that this was a condition associated with increased fragility of the metatarsals and perhaps some localized osteopenia. He opined that appellant was capable of resuming full duty as a city letter carrier.

In contrast, Dr. Childress stated in his August 3, 2005 report that appellant had a clear, documented history of injury and continuing residuals. He advised that she continued to experience pain and difficulty with her knee and both of her feet; these symptoms were supported by objective testing, including MRI scans which documented the extent of her problems. Dr. Childress opined that these "clear, continuing, documented problems and difficulties" precluded her return to full, unrestricted duty.

The conflict of opinion regarding whether appellant has any residual disability causally related to her accepted conditions of right plantar fascial fibromatosis, aggravation of torn medial meniscus, aggravation of patella chondromalacia and fracture of tarsal metatarsal bones arose prior to the Office's termination of compensation on September 24, 2005. The conflict requires a referral to an impartial medical specialist pursuant to section 8123(a). Because the Office relied on the opinion of Dr. Huff to terminate appellant's compensation without having resolved the existing conflict, it failed to meet its burden of proof in terminating appellant's benefits.

In addition, Dr. Huff disregarded the statement of accepted facts by opining that appellant did not sustain any work-related injuries or conditions and that there are no diagnosed conditions related to employment factors. As he contravened the statement of accepted facts in his February 2005 report, the Office additionally erred by relying on his referral opinion to terminate appellant's compensation. The Board, therefore, reverses the September 12, 2006 Office decision, terminating appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim

⁴ 5 U.S.C. §§ 8101-8193.

was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.⁷

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed cervical condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁸

ANALYSIS -- ISSUE 2

The Board finds that appellant has failed to submit any medical evidence containing a rationalized, probative report which establishes that her psychiatric condition is a consequence of her accepted physical injury. For this reason, appellant has not discharged her burden of proof to establish her claim that this condition was sustained in the performance of duty.

The record contains psychiatric reports from Dr. Jean-Pierre, appellant's treating psychiatrist and Dr. Goldin, the Office referral physician. Dr. Jean-Pierre diagnosed major depressive disorder, recurrent, noted appellant's symptoms and stated findings on examination

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

⁸ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

but did not provide an opinion as to whether this condition was causally related to employment factors.⁹ The Office referred appellant for a second opinion with Dr. Goldin, who concurred with Dr. Jean-Pierre's diagnosis of a major depressive disorder. Dr. Goldin related that appellant became distressed because she was unable to function and work an eight hour-day which led to financial pressures. He stated that the critical factor regarding her condition was that, due to a series of administrative issues, appellant could no longer pull her own weight, resulting in a deterioration of her self-esteem and precipitating the depressive diathesis. With regard to the specific work factors contributing to the diagnosed, work-related psychiatric condition, Dr. Goldin opined that appellant's primary anxiety was attributable to her decreased work hours and "minimal paycheck." He asserted that, if the "job injury" clearly resulted in the reduction of appellant's work hours from eight hours to two-hour shifts with subsequent decrease in pay, it could have caused and or contributed to her psychiatric condition. Dr. Goldin advised, however, that he was unable to state with certainty whether this anxiety was directly related to appellant's accepted work injuries. He indicated in his March 22, 2005 work capacity evaluation that appellant was capable of working an eight-hour day despite her "psychiatric issues."

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish her claim; however, she failed to submit such evidence. The Office properly found that Dr. Goldin's March 22, 2005 second opinion report represented the weight of the medical evidence pertaining to this issue. Dr. Goldin's report was sufficiently thorough, probative and well rationalized and constituted sufficient medical evidence for the Office to rely upon in its July 14, 2005 decision. The Board, therefore, affirms the Office's denial of compensation for a consequential psychiatric condition.

CONCLUSION

The Board finds that the Office has failed to meet its burden of proof in terminating appellant's compensation. The Board finds that appellant has failed to meet her burden of proof in establishing that her claimed psychiatric condition was sustained in the performance of duty.

⁹ Dr. Pierre's report is of limited probative value as it did not contain any medical rationale explaining how or why appellant's claimed psychiatric condition is currently affected by or related to factors of employment.

¹⁰ See *id.*

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2006 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part, in accordance with this decision.

Issued: August 9, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board