

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUTH N. RIVERA and DEPARTMENT OF THE ARMY,
USMAC, Fulda, W. Germany

*Docket No. 95-2948; Submitted on the Record;
Issued February 23, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits, effective June 25, 1995; and (2) whether appellant met her burden of proof to establish that she sustained an additional psychiatric or cervical injury as a consequence of her accepted condition.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits, effective June 25, 1995.

On December 24, 1988, appellant filed a claim for traumatic injury (Form CA-1) alleging that on that day she injured her back while moving a kitchen refuse can in the performance of duty. The Office accepted appellant's claim for low back strain and herniated nucleus pulposus, L4-5. Appellant was off work for intermittent periods between December 24, 1988 and September 26, 1990, when she became totally disabled due to her employment-related herniated disc. The Office paid appellant appropriate compensation benefits during this time. By letter dated April 11, 1995, the Office notified appellant that it proposed to terminate her compensation benefits based on the reports of Office referral physicians Drs. Neal H. Shonnard, John S. Wendt and Richard A. Golden. The Office terminated appellant's compensation benefits on May 15, 1995, effective June 25, 1995.

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 Furthermore, the right to medical

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

² *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

Beginning on September 12, 1991, appellant was treated by Dr. W. Brandt Bede, a Board-certified orthopedic surgeon. In the numerous reports and medical progress notes completed by Dr. Bede, the physician documented his treatment of appellant's chronic low back pain syndrome and herniated nucleus pulposus at the L4-5 level. Beginning in February, 1992, Dr. Bede began treating appellant for cervical spine complaints, caused by appellant's fall on a stairway on February 3, 1992 during an occupational therapy session. In a report dated November 20, 1992, Dr. Bede, who had previously enrolled appellant in a pain management clinic and in vocational rehabilitation, and had attempted on several occasions to return appellant to work, stated that he felt appellant had become totally disabled. Specifically, Dr. Bede stated:

“Objectively this woman has evidence of degenerative disc disease at C4-5 and C5-6, and in her lumbar spine at L4-5 and L5-S1. There is mild disc protrusion in the cervical region at C4-5 and in the lumbar region at L4-5. Complicating her cervical and lumbar pain is a significant psychological depression, which I feel has been secondary to the chronicity of her neck and low back pain problems as a result of the industrial injury. Combining the degenerative disc disease, depression and chronicity of the problem, I do not foresee that she will be returning to any type of gainful employment in the future. Previous attempts at pain clinic management have been unsuccessful to date. She continues to be treated with local modalities for neck and low back pain and with Prozac for her depression.”

Dr. Bede concluded:

“Further attempts at rehabilitation and pain management most likely will be unsuccessful. I do not feel she will be returning to any type of gainful employment in the future, including full or part time, limited or light duty.”

On March 30, 1993, at Dr. Bede's request, the Office authorized appellant to undergo a psychiatric evaluation by Dr. Fletcher B. Taylor, a psychiatrist. In his report dated April 8, 1993, Dr. Taylor diagnosed appellant with major depression, unipolar, moderate to severe, noted that appellant had no psychiatric history prior to 1988, and stated that while depression following such a debilitating injury as appellant's was expected, the degree of her depression, which included suicidal ideations, was unexpected. The Office subsequently authorized six weeks of psychiatric treatment to get appellant through her crisis period. At the conclusion of the six week treatment, Dr. Bede repeatedly requested that additional psychiatric treatment be authorized, which the Office consistently declined, as appellant's claim had not been accepted for a psychiatric condition.

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

By letter dated July 21, 1994, the Office referred appellant to a panel of physicians including Dr. Neal H. Shonnard, an orthopedist, John S. Wendt, a Board-certified neurologist, and Richard A. Golden, a Board-certified psychiatrist, for a second opinion examination and evaluation.

In the portion of the physicians' joint September 13, 1994 report pertaining to appellant's physical condition, Drs. Shonnard and Wendt diagnosed appellant with cervical strain, injury related, lumbar strain, injury related, and significant functional pain disorder, not injury related. They further stated, in pertinent part:

"The claimant's condition appears to be causally related and due in whole to the industrial injury of December 24, 1988, on a more probably than not basis. Her chronic cervical and lumbar strains are considered medically fixed and stable. Her symptoms have not completely resolved, and there appears to be a significant psychiatric component to her pain. We are unable to identify any disabling residuals from the claimant's herniated L4-5 lumbar disc. There are no objective findings of significant abnormality.

"We are unable to identify objective evidence of abnormality in the claimant's clinical examination, and consequently her objective directed physical examination markedly differs with her self-reported pain levels. Significant pain behavior is noted throughout the examination and history taking....

"No further active treatment measures are indicated for residuals of the cervical and lumbar strains. Any treatment would be palliative and therefore is not clinically warranted.

"The claimant has a reasonable likelihood of being able to return to full-time light-duty status, should psychiatric concerns not intervene to preclude her from work. Please refer to the psychiatric report of Dr. Golden in this regard...."

In an accompanying work capacity evaluation form (OWCP-5), Drs. Shonnard and Wendt indicated that appellant should be restricted from lifting more than 25 pounds and from bending and kneeling, but otherwise could work eight hours a day. They further indicated that they expected these restrictions to last for approximately six months, and that appellant would reach maximum medical improvement in February of 1995.

In the psychiatric portion of the report, Dr. Golden listed his primary diagnoses as pain disorder with associated psychological factors, adjustment disorder with depressed mood, and personality traits of emotionally unstable personality. Dr. Golden further stated:

"The claimant does worry excessively about her pain, which appears to exist entirely on a functional basis, with no anatomic basis for pain findings. She is emotionally labile and prone to act out impulsively, as demonstrated by two impulsive suicide attempts....

“Her adjustment disorder with depressed mood does leave her at some risk for further impulsive suicidal behavior. It is recommended she be referred back to her treating psychiatrist and placed on antidepressant medication. After three months of treatment, it is recommended she be referred for reevaluation; and hopefully there will be improvement in her condition.

“Both her pain disorder and her adjustment disorder appear to be related to her industrial injury of December 24, 1988.

“There are considerable barriers to her return to gainful employment. One is the chronicity of her condition, and the second in her apparent assumption of the role of an invalid. For these reasons it is recommended that she receive vigorous psychiatric treatment, with the possibility of improvement.”

In an accompanying work capacity evaluation form., Dr. Golden indicated that he expected appellant to reach maximum medical improvement in 90 days.

In response to the Office’s request for additional clarification, Drs. Shonnard and Golden submitted an October 27, 1994 addendum to their report. In this report, the physicians stated:

“The claimant’s cervical strain does not appear to be industrially related. The lumbar strain originally noted in 1988 did not completely resolve. Other than subjective reports of pain, no objective signs of the 1988 lumbar strain remain.

“The restrictions placed on the claimant are based on her comments that she is unable to perform these tasks and on her medical history consistently indicating that she has a recurrent need for medical treatment for this recurrent condition....

“There is no firm documentation of any psychiatric disorder prior to 1993....

“The description of personality traits of an emotionally unstable personality means that she will characteristically overreact to minor stress. For example, on two occasions in the past, while under minor stress, she impulsively attempted suicide. Although these attempts may be impulsive, they can nevertheless be lethal. Thus, the recommendation for psychiatric intervention at this time. Her perceived pain appears to be on a psychological basis. Because of her personality traits of emotional instability she would likely overreact to minor pain complaints as compared to a normal individual. The pain diagnosis is related to her 1988 injury, in that prior to this time she did not have a significant pain problem. As stated, her personality makeup may predispose her to overreact. However, she does not have a preexisting psychological pain disorder.

“As far as work restrictions are concerned, the claimant’s perception is that because of back pain she cannot work. As previously stated, she appears to be rapidly moving in the direction of becoming an invalid. Due to her emotional lability and impulsivity there is some risk of suicide attempt. Thus the recommendation was made for psychiatric intervention in an attempt to prevent

any permanent mental health impairment and hopefully alleviate her long-standing pain problems.

“It is again suggested that the claimant return for reevaluation after completing approximately three months of psychiatric treatment.”

The Board finds that the medical evidence establishes that appellant is no longer disabled due to her accepted employment-related L4-5 herniated nucleus pulposus. Drs. Bede, Shonnard, and Wendt all indicate that appellant does not have any significant objective residuals of her employment-related lumbar strains, that her accepted back condition is fixed and stable, and that no further physical treatment is recommended. While Drs. Shonnard and Wendt did place some physical restrictions on appellant, and stated that these restrictions would last approximately six months, they explained in the addendum to their report that these restrictions were not objectively based, but rather were based on appellant’s assertions that she could not perform certain tasks. Therefore, as the medical evidence of record establishes that appellant’s employment-related disability has ceased, the Office met its burden of proof to terminate appellant’s compensation benefits.

On the issue of whether appellant sustained a consequential psychiatric or cervical condition, however, the evidence is less clear. The Board has held that a second nonemployment-related injury is compensable if it is the direct and natural result of an earlier injury. That is, if the second injury is sustained as a consequence of a residual resulting from a previous industrial injury, the second injury is deemed to arise out of and in the course of employment because of the chain of causation.⁵

With respect to appellant’s psychiatric condition, Drs. Bede, Shonnard, Wendt and Golden all agree that the primary barrier to appellant’s return to work is her psychiatric pain disorder, and that she requires additional vigorous psychiatric treatment. In addition, Dr. Golden, the Office referral psychiatrist, directly related appellant’s psychiatric pain disorder and her adjustment disorder to her 1988 employment injury, in that prior to that time she did not have a significant pain problem. Although none of the medical reports of record, including those of Dr. Golden, contain sufficient rationale to discharge appellant’s burden of proving by the weight of reliable, substantial and probative evidence that her psychiatric condition is causally related to factors of her employment, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁶ Therefore, the case must be remanded to the Office for further evidentiary development on this issue. After such development as it deems necessary, the Office shall issue a *de novo* decision.

With respect to whether appellant sustained a consequential cervical injury, in this case the Office acknowledged that there is evidence in the record that on February 3, 1992, during an occupational therapy session for her accepted lumbar condition, appellant fell on a stairway. Although x-rays taken of her cervical spine, pelvis and left hip revealed no abnormalities, and

⁵ *Anthony S. Wax*, 7 ECAB 330 (1954).

⁶ *Horace Langhorne*, 29 ECAB 820 (1978).

appellant did not submit a claim for any injury she may have sustained during this fall, from the date of this incident, Dr. Bede's medical reports reflect appellant's consistent cervical complaints. In addition, Drs. Shonnard and Wendt, stated in their initial report that appellant's cervical condition was causally related to her industrial injury. While in the addendum to their report, the physicians retracted this statement, they did not explain the reason for the change in their opinion. Consequently, the case must also be remanded to the Office for further evidentiary development on this issue.

The decision of the Office of Workers' Compensation Programs dated May 15, 1995 is affirmed in part, and set aside in part, and the case remanded for further action consistent with this decision.

Dated, Washington, D.C.
February 23, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member