

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET FARFARA and U.S. POSTAL SERVICE,
POST OFFICE, Boston, Mass.

*Docket No. 95-3083; Submitted on the Record;
Issued September 11, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective October 15, 1994; and (2) whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

The facts in this case indicate that on December 20, 1989 appellant, then a 35-year-old letter carrier, sustained an employment-related cervical strain with thoracic outlet syndrome of the right shoulder and right rotator cuff tendinitis that required surgery. She stopped work on December 21, 1990, and received appropriate compensation. By letter dated May 5, 1994, the Office proposed to terminate appellant's compensation benefits, which, by decision dated September 28, 1994, were terminated, effective October 15, 1994.

The relevant medical evidence includes reports from appellant's treating Board-certified orthopedic surgeon, Dr. Henry Toczyłowski, who diagnosed reflex sympathetic dystrophy and persisted in his opinion that she continued to be disabled from the employment injury. Following referral by the Office, Dr. Robert Shapiro, a Board-certified orthopedic surgeon, opined that appellant did not have reflex sympathetic dystrophy. The Office then found that a conflict in the medical opinion existed between the opinions of Drs. Toczyłowski and Shapiro and referred appellant to Dr. Steven H. Sewall, a Board-certified orthopedic surgeon, to provide an impartial evaluation. In an April 11, 1994 report, Dr. Sewall stated:

“It is my feeling that [appellant's] diagnosis was one of neck strain, now resolved and it is my professional opinion that [appellant] is capable of returning to her regular work at the [employing establishment] without restriction, in view of the fact that examination of her neck and her entire right upper extremity is entirely unremarkable. I do feel that [she] has a great deal of functional overlay.”

The Board finds that the Office met its burden to terminate appellant's compensation benefits on October 15, 1994.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.² Here the Office determined that a conflict of medical opinion existed between appellant's physician, Dr. Toczyłowski, and that of Dr. Shapiro, who examined appellant for the Office. The Office then referred appellant, along with the medical record, a statement of accepted facts and a list of questions, to Dr. Sewall to resolve the conflict who, in an April 11, 1994 report, advised that appellant could return to her regular job duties without restriction. As Dr. Sewall's reports were based on a complete and accurate history and, in a well reasoned and thorough report, he clearly explained why he believed that appellant's employment-related disability had ceased, the Board finds appellant had no employment-related disability on or after October 15, 1994 causally related to the accepted employment injury and the Office met its burden of proof to terminate her compensation benefits on that date.

The Board further finds that this case is not in posture for decision regarding whether appellant has an emotional condition causally related to employment factors.

To establish that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to this condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.³

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. When disability results from an emotional reaction to regular or

¹ See *Patricia A. Keller*, 45 ECAB 278 (1993).

² See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

³ *Donna Faye Cardwell*, 41 ECAB 730 (1990). 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 appellant; see *Victor J. Woodhams*, 41 ECAB 345 (1989).

specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ On the other hand, there are situations when an injury has some connection with the employment, but nonetheless does not come within the coverage of workers' compensation because it is not considered to have arisen in the course of the employment.⁵

In this case, the Office accepted that appellant sustained a physical injury on December 20, 1989, but denied appellant's emotional condition claim on the grounds that the medical evidence was insufficient to establish her claim. Appellant, however, submitted a May 24, 1995 report from Dr. Paul Hamburg, a psychiatrist, who advised that she was recovering from a depressive episode "largely precipitated" by her chronic pain from the employment injury. While Dr. Hamburg's report is insufficient to establish that appellant sustained an employment-related emotional condition, the fact that it contains deficiencies preventing appellant from discharging her burden does not mean that it may be completely disregarded by the Office. It merely means that its probative value is diminished. As Dr. Hamburg indicated that appellant's emotional condition is, in part, related to an accepted injury, his report is sufficient to require further development of the record.⁶ It is well established that proceedings under the Act⁷ are not adversarial in nature,⁸ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁹ On remand the Office should prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant has an employment-related emotional condition. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joel Parker, Sr.*, 43 ECAB 220 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *See John J. Carlone*, 41 ECAB 354 (1989).

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁹ *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decisions of the Office of Workers' Compensation Programs dated June 16, 1995 and September 28, 1994 are hereby affirmed with regard to the termination of appellant's compensation benefits on October 15, 1995. The decisions are set aside and remanded to the Office for further development with regard to appellant's emotional condition claim.

Dated, Washington, D.C.
September 11, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member