

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELPHIA CARROLL and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Houston, Tex.

*Docket No. 98-1249; Oral Argument Held February 16, 1999;
Issued April 13, 1999*

Appearances: *Schendera Molina*, for appellant; *Sheldon G. Turley, Jr.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that her mental and physical condition on and after June 22, 1996 is causally related to an accepted concussion, cervical and lumbar strains, post-traumatic stress disorder, and multiple contusions sustained on March 5, 1990.

The Office of Workers' Compensation Programs accepted that on March 5, 1990, appellant, then a 40-year-old nursing assistant, sustained a concussion, cervical and lumbar strains, post-traumatic stress disorder, and multiple contusions in the performance of duty when she was kicked in the head by a patient and fell backwards, striking her head on bed rails and the floor.¹ She returned to sedentary duty part time on April 9, 1990, and to full duty on July 30, 1990. The Office also accepted a recurrence of disability from approximately September 5, 1990 to January 2, 1991, when she returned to light duty for four hours per day.² She received benefits on the daily and periodic rolls.

¹ In a March 6, 1990 report, Dr. Charles Ching, an internist, provided a history of injury, and diagnosed concussion, neck and back strain. Appellant also submitted treatment notes from Dr. Crago, a physician specializing in occupational medicine, dated March to May 1990.

² On September 21, 1990 appellant filed a claim for recurrence of disability on or about July 24, 1990. She stopped work on September 6, 1990. She described pain in her right side, back and legs, the right side of her face, and paresthesias in the right lumbar area into the right leg. By decision dated November 29, 1990, the Office denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. Appellant then requested an oral hearing, held February 6, 1991, at which Dr. Fernandez testified that appellant was disabled for work due to post-traumatic stress disorder. By decision dated October 16 and finalized October 17, 1991, an Office hearing representative set aside the Office's May 29, 1990, finding that appellant sustained a recurrence of disability, multiple contusions to the right side of her face, neck and back strain, and post-traumatic stress disorder.

In reports from August 17 to December 12, 1990, Dr. Jose F. Zavaleta, an attending internist, diagnosed post-concussion syndrome, multiple contusions, and personality alterations disabling appellant for work. In a January 21, 1991 report, Dr. Zavaleta diagnosed moderate to severe anxiety and depression disabling appellant for work

Appellant also sought treatment from Dr. Antonio Fernandez, a psychiatrist, who submitted periodic reports from January 25 to December 4, 1991 diagnosing anxiety and depressed mood, and finding appellant capable of working four hours per day with no patient contact. In a February 4, 1992 report, Dr. Fernandez stated that appellant was disabled for work as a nursing assistant, but could perform light duty for four hours per day. He opined that appellant's interpersonal relations were adversely affected by "anxiety and fear when working with patients directly." He noted that appellant was taking prescription medication for her psychiatric condition.³ In an October 2, 1992 report, Dr. Fernandez stated that appellant continued to demonstrate post-traumatic stress disorder related to the March 5, 1990 injury, with "apprehensiveness and fear of working with patients directly." He opined that appellant was capable of working four hours per day light duty, but was unable to resume employment as a nursing assistant.

In a December 17, 1992 report, Dr. John Berry, a neurosurgeon, and second opinion physician, provided a history of injury and treatment. On examination, he found a nonorganic, "hysterical" sensory loss throughout the right half of appellant's body, with no objective evidence of physical or neurologic abnormality. Dr. Berry concluded that appellant had no current physical or neurologic impairment preventing her from returning to work, but that any psychological or emotional problem would require a psychiatric evaluation.⁴

In an August 3, 1994 form report, Dr. John D. Griffith, an attending psychiatrist, stated that he suspected appellant had a "personality problem." He opined appellant could not perform her usual occupation due to depression and irritability, such that she could not effectively interact with others, or organize or complete tasks.⁵

In a May 1, 1995 report, Dr. Griffith noted examining appellant on June 3 and 30 and November 9, 1994. He noted that appellant had difficulty with short and long-term memory, but

³ In a February 4, 1992 letter, the employing establishment advised appellant that her temporary light-duty position was being terminated effective February 14, 1992, and that she should investigate claiming compensation benefits. In May 1992 appellant was referred for vocational rehabilitation services to Richard J. Ruppert, a vocational rehabilitation counselor. Mr. Ruppert filed periodic reports in 1992 and 1993, and a case closure report on August 12, 1994.

⁴ By decision dated December 14, 1993, the Office suspended appellant's compensation as she did not timely return a Form CA-1032 affidavit of earnings and employment. Appellant filed a request for appeal on June 7, 1994. On October 31, 1994 the Board issued an order dismissing appeal, Docket No. 94-1353, as there was no appealable decision within the Board's jurisdiction. The record indicates that appellant's compensation was briefly suspended in April 1995 when she did not timely complete a CA-1032. Compensation was reinstated retroactively.

⁵ Dr. Griffith also reviewed position descriptions for the sedentary positions of "checker" (Department of Labor, *Dictionary of Occupational Titles* No. 222.687-010), and laboratory clerk (D.O.T. No. 222.587-026).

that she “was obviously trying to appear worse than she was.” He stated a tentative diagnosis of a nonoccupational dysthymic or personality disorder with “no objective findings of a work related injury.” He opined appellant’s condition was due to “dependency needs ... activated by an opportunity to not work.”

By notice dated May 20, 1996⁶ and finalized June 21, 1996, the Office terminated appellant’s compensation benefits on the grounds that her work-related disability had ceased, based on the opinions of Dr. Griffith and Dr. Berry.

Accompanying a July 1, 1996 letter, the Office received a June 17, 1996 report from Dr. Mark S. Jacobs, an attending psychiatrist, recommending that appellant “see a therapist on a regular basis and return to see [him] within a few weeks to better assess her level of functioning and need for more aggressive treatment.” Dr. Jacobs noted the March 5, 1990 injury, but stated that it was “difficult for [him] to have an opinion about [appellant’s] disability status” as she was “non-compliant with treatment due to reported difficulty affording copayments for her visits.” Dr. Jacobs submitted chart notes from August 30, 1995, January 16 and June 10, 1996 examinations, describing appellant’s accounts of mood swings, stress and depression, a reported preoccupation with “fears of her work injury still,” and fear of losing her compensation benefits.

In a July 8, 1996 letter, the Office advised appellant that Dr. Jacobs’ reports did not warrant further consideration, and that she should refer to her appeal rights.

On July 10, 1996 appellant requested an oral hearing,⁷ held on September 25, 1997. At the hearing, appellant and her daughter described the conditions they attributed to the March 5, 1990 injury, including fatigue, memory loss, low back and neck pain, paresthesias in the extremities, diabetes, and uterine fibroids necessitating hysterectomy. She submitted additional evidence: a September 14, 1996 lumbar magnetic resonance imaging (MRI) scan showing mild anterior spondylosis at L3-4 and mild facet degeneration at L5-S1; February 27, 1997 cervical, lumbar thoracic and bilateral hip x-rays showing slight degenerative spurring throughout;⁸ a March 21, 1997 referral for swim therapy; and a March 6, 1990 statement from a coworker who witnessed the March 5, 1990 incident. Appellant also submitted an October 17, 1997 report

⁶ The Office stated that appellant had 30 days in which to submit additional evidence or argument, and that if no response was received within 30 days, the Office would proceed with the termination of compensation. The record indicates that appellant did not respond within 30 days.

⁷ The record indicates that appellant filed an appeal with the Board on August 13, 1996, docketed as No. 96-2461. The Director filed a motion to dismiss the appeal as an oral hearing was pending, and there could not be concurrent jurisdiction by the Board and the Office. On January 21, 1997 the Board issued an order dismissing appeal.

⁸ Appellant also submitted laboratory results from April 1997 blood and urine tests, which do not contain medical interpretation of the findings. Appellant also submitted a July 16, 1997 statement from Sandra A. Thomas, an employee in the office of Dr. Joseph Vadas, stating that Dr. Vadas treated appellant from February 27 to April 23, 1997 for lumbar disc syndrome, arthritis, weakness and fatigue. This letter does not constitute medical evidence as it was not signed or reviewed by a physician.

from Dr. L. Natalie Carroll, an attending Board-certified gynecologist, regarding surgery to remove uterine fibroids,⁹ which does not address work factors.

By decision dated and finalized November 25, 1997, the Office affirmed the June 21, 1996 decision finding that appellant's disability had ceased. The Office found that Dr. Berry's December 17, 1992 report established that the physical injuries sustained on March 5, 1990 had resolved, and that Dr. Griffith's May 1, 1995 report established that any psychiatric residuals had also ceased. The Office also found that no subsequent medical reports of record supported an ongoing physical or psychiatric condition related to the March 5, 1990 injuries.

Appellant then filed an appeal with the Board and requested oral argument, held February 16, 1999. At oral argument, appellant and her representative asserted that the March 5, 1990 injuries precipitated confusion, memory loss, depression, fatigue, aches and pains of the extremities, and accelerated aging. Appellant also asserted that the March 5, 1990 injuries caused a blood clot which traveled to her abdomen, entered her fallopian tubes and caused uterine fibroid tumors, necessitating a hysterectomy. Appellant and her representative did not assert that the medical record supported a causal relationship between the alleged conditions and the accepted injuries.

The Board finds that appellant has not established that her mental and physical condition on and after June 22, 1996 is causally related to an accepted concussion, cervical and lumbar strains, post-traumatic stress disorder, and multiple contusions sustained on March 5, 1990.

When an employee claims a period of continuing disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed period of disability is causally related to the accepted injury. It is not sufficient merely to establish the presence of a medical or psychiatric condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.¹⁰

As applied to this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed mental and physical conditions on and after June 22, 1996 and her March 5, 1990 concussion, cervical and lumbar strains, multiple contusions and post-traumatic stress disorder.¹¹ Causal relationship is a medical issue.¹² The medical evidence required to establish a causal relationship, generally,

⁹ Dr. Carroll stated that "[i]ncidental to the surgery was the discovery of large fibroids impinging on the lower back emanating from the posterior aspect of the uterus and a fibroid emanating from the right anterior part of the uterus," and adnexal adhesions "evidencing some insult to that area."

¹⁰ See *Armando Colon*, 41 ECAB 563 (1990).

¹¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

¹² *Mary J. Briggs*, 37 ECAB 578 (1986).

is medical opinion evidence,¹³ of reasonable medical certainty,¹⁴ supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁵ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.¹⁶

The medical record indicates that appellant was treated for depression, post-traumatic stress disorder, possible personality disorder, uterine fibroids, and arthritis at various times on and after March 5, 1990. Appellant's representative provided numerous, detailed descriptions of changes she perceived in appellant's mental and physical state following the March 5, 1990 injuries and continuing to the present time.¹⁷ However, appellant has not submitted sufficient medical evidence to establish that her mental and physical conditions on and after June 22, 1996 were medically, causally related to the March 5, 1990 injuries.

Regarding the psychiatric aspect of the claim, Dr. Griffith, an attending psychiatrist, opined in a May 1, 1995 report that appellant had a dysthymic or personality disorder unrelated to the March 5, 1990 injuries. He instead attributed appellant's condition to "dependency needs ... activated by an opportunity not to work." Thus, appellant's own psychiatrist found that she no longer had any psychiatric residuals of the accepted post-traumatic stress disorder as of May 1, 1995. Also, Dr. Jacobs, an attending psychiatrist, stated in a June 17, 1996 report that he could not express a definite opinion on causal relationship as appellant was noncompliant with treatment. Therefore, appellant did not submit psychiatric evidence establishing that her emotional state on and after June 22, 1996 was causally related to the March 5, 1990 injuries and post-traumatic stress disorder.

Regarding the physical injuries, Dr. Berry, a neurosurgeon and second opinion physician, stated in a December 17, 1992 report that appellant did not exhibit any objective physical or neurologic abnormality, and thus did not have an objective physical condition causally related to the March 5, 1990 injuries. Appellant did not submit rationalized medical evidence subsequent to Dr. Berry's report indicating that any physical condition was attributable to the March 5, 1990 injuries. The MRI and x-ray reports from September 1996 and February 1997 show generalized degenerative changes in the spine and hips, but do not contain a physician's opinion attributing these findings to the March 5, 1990 injuries. Without such rationale, these test reports are of very little probative value in establishing causal relationship, and are insufficient by themselves to establish her claim for continuing disability on and after June 22, 1996.¹⁸

¹³ See *Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

¹⁴ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁵ See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁶ *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁷ Appellant's representative stipulated at oral argument that she was not a physician.

¹⁸ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

Appellant and her representative also alleged a causal relationship between the March 5, 1990 injuries and the development of uterine fibroid tumors necessitating a total hysterectomy. The most relevant evidence regarding this allegation is an October 17, 1997 report from Dr. Carroll, an attending Board-certified gynecologist. Dr. Carroll described the presence of “large fibroids impinging on the lower back,” anterior fibroids, and adnexal adhesions. However, Dr. Carroll did not mention the March 5, 1990 injuries in her report, or provide an explanation of the cause of appellant’s uterine fibroids. Thus, Dr. Carroll’s report does not address causal relationship, and does not advance or establish appellant’s assertion of a medical, causal relationship between the uterine fibroids and the accepted March 5, 1990 injuries.

Consequently, appellant has not met her burden of proof, as she submitted insufficient medical evidence indicating that her March 5, 1990 work-related injuries caused or aggravated any medical condition after June 22, 1996.

The decision of the Office of Workers’ Compensation Programs dated November 25, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 13, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member