

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUE V. SANDERS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Fort Lauderdale, FL

*Docket No. 97-2059; Submitted on the Record;
Issued December 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant's disability beginning on or about February 18, 1996 was causally related to her November 21, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's November 29, 1996 request for reconsideration.

On November 21, 1994 appellant, a compliance officer, sustained an injury while in the performance of her duties when a driver hit her motor vehicle from behind. The Office accepted her claim for cervical and lumbar strain.

On January 17, 1996 Dr. Ronald B. Hinds, an orthopedic surgeon and Office referral physician, reported as follows:

"The patient is now fourteen months postinjury and although she does have some mild subjective complaints, she has no objective findings at this time. She has a strong history of psychiatric problems which I think certainly have compounded her symptomatology in the past. She seems to be doing quite well at this time and from an orthopedic point of view I feel she has reached maximum medical improvement and has no permanent impairment as a result of the accident of November 21, 1994. She is fit to work without restrictions."

In a disability certificate dated February 13, 1996, Dr. David B. Ross, appellant's attending neurologist, indicated that appellant had recovered sufficiently to return to light duty on February 19, 1996 with restrictions.

On February 14, 1996 appellant's psychologist, Dr. Patrice Gerard, reported that appellant had major depressive disorder and was totally disabled for usual work.

On February 19, 1996 appellant's chiropractor, Dr. Russ Tannenbaum, reported that appellant was able to return to work that day with restrictions.

On March 15, 1996 appellant filed a claim for continuing compensation on account of disability for the period beginning February 18, 1996. She explained: "Due to myofascial pain syndrome and depression, I am taking medication that causes drowsy side effects and medical condition being aggravated and pain accelerated by stressful working conditions and aggravates depression that is associated with pain acceleration and unable to function at present position. Presently totally disabled to work due to permanent/partial disability until April 1, 1996."

In an undated attending physician's supplemental report, Dr. Ross diagnosed myofascial pain, lumbar sprain/strain, cervical sprain/strain and carpal tunnel syndrome. He indicated that these conditions were all permanent effects of appellant's November 21, 1994 employment injury. Dr. Ross stated that appellant was not totally disabled for work but had been placed on restrictions of a permanent nature. He indicated that she would be able to work with restrictions on April 1, 1996.

Dr. Tannenbaum completed a similar undated supplemental form report but diagnosed cervical acceleration/deceleration, injury to wrist and lumbosacral strain/sprain.

On March 7, 1996 Dr. Patrice Gerard, also completed a supplemental form report. She diagnosed major depression due to the November 21, 1994 employment injury and indicated that appellant was currently unable to perform work until April 1, 1996.

The Office submitted a copy of Dr. Hind's report to Dr. Ross and requested a supplemental report. On March 26, 1996 Dr. Ross reported that he had read Dr. Hind's report and was in partial agreement with it. He disagreed, however, with Dr. Hind's assertion that appellant had no objective findings: "She does have decreased range of motion of the neck and low back associated with muscle tenderness and spasm in both areas. This is, however, magnified by guarding. It is also colored by a clear[-]cut superimposed chronic depression that is not work related." Dr. Ross stated that from a purely neurologic and orthopedic standpoint, he agreed with Dr. Hinds that appellant had no condition that would prevent her from safely going back to her previous level of work duty. He anticipated that appellant would have complaints of pain but that she would not be at identifiable risk of reinjury. "I have explained this to [appellant]," he stated, "and that has been my opinion for the last several months."

In a decision dated July 23, 1996, the Office denied appellant's claim for compensation on the grounds that the medical evidence of record failed to demonstrate that the claimed disability was causally related to her federal employment.

Appellant requested reconsideration and submitted in support thereof an October 22, 1996 report from Dr. Gerard. Dr. Gerard reported that appellant suffered from major depressive disorder, recurrent and that her condition had been exacerbated by complications related to finding the appropriate medication to deal with her depressive symptomatology. She noted that appellant related her depressive symptoms in part to the physical pain associated with her prior, severe automobile accident. Appellant also submitted numerous documents relating to a separate claim for mental depression (OWCP File No. A6-631167).

In a decision dated March 10, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was irrelevant and immaterial and insufficient to warrant a review of the prior decision.

The Board finds that the evidence of record fails to establish that appellant's disability beginning on or about February 18, 1996 was causally related to her November 21, 1994 employment injury.

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³

The Office accepted that appellant sustained an injury while in the performance of her duties on November 21, 1994. Appellant, therefore, has the burden of proof to establish that her disability beginning on or about February 18, 1996 was causally related to that employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her claimed condition or disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the claimed condition or disability is related to the injury.⁴

The record on appeal contains no such medical evidence. Much of the medical evidence, in fact, supports that appellant was able to work on or about February 18, 1996. On January 17, 1996 Dr. Hinds, the Office referral physician, reported that appellant was fit to work without restrictions. On February 13, 1996 Dr. Ross, appellant's attending neurologist, indicated that appellant had recovered sufficiently to return to light duty on February 19, 1996 with restrictions. On February 19, 1996 Dr. Tannenbaum, appellant's chiropractor, reported that appellant was able to return to work that day with restrictions. The only medical evidence indicating that appellant was unable to work, either with or without restrictions, is the February 14, 1996 report of Dr. Gerard, appellant's psychologist, who indicated that appellant had major depressive disorder and was totally disabled for usual work. The Office has not accepted, however, that appellant's major depressive disorder is causally related to the motor vehicle accident that occurred on November 21, 1994. Although Dr. Gerard indicated in her March 7, 1996 supplemental form report that appellant's depression was due to the

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

November 21, 1994 employment injury, the Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁵

Undated supplemental form reports from Dr. Ross and Dr. Tannenbaum indicated that appellant was not totally disabled for work, but these reports also indicated that appellant was able to return to work with restrictions on April 1, 1996. It is unclear whether these reports support total disability until April 1, 1996. Regardless, neither physician offered a well-reasoned medical explanation to support that appellant's disability beginning on or about February 18, 1996 was causally related to her November 21, 1994 employment injury. The Office attempted to clarify the matter by referring Dr. Hind's report to Dr. Ross and requesting additional information. Dr. Ross reviewed Dr. Hind's report and, although he disagreed with the referral physician on the issue of objective findings, he agreed that appellant had no condition that would prevent her from safely going back to her previous level of work duty. Appellant's attending physician further explained in his March 26, 1996 report that this has been his opinion for several months.

Dr. Ross' March 26, 1996 report is the most probative medical opinion evidence in the record relating to appellant's claim for compensation beginning on or about February 18, 1996 and it does not support that the November 21, 1994 employment injury caused appellant to be disabled for work during the period claimed. As the weight of the medical evidence fails to support appellant's claim, the Board will affirm the Office's July 23, 1996 decision.

The Board also finds that the Office properly denied appellant's November 29, 1996 request for reconsideration.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁶

Appellant has not shown that the Office erroneously applied or interpreted a point of law, nor has she advanced a point of law or a fact not previously considered by the Office. Accordingly, she may not obtain a merit review of her claim based on the first or second requirement set forth above. Appellant, instead, submitted evidence to support that she was unable to perform her duties as a result of job-related stress and physical disabilities. Dr. Gerard's October 22, 1996 report supported a diagnosis of major depressive disorder but did not establish that this condition was causally related to appellant's November 21, 1994 employment injury. Dr. Gerard reported only that it was appellant who related her depressive symptoms to the accident. None of the other evidence submitted to support appellant's request for reconsideration addressed the issue decided by the Office on July 23, 1996. Because this

⁵ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

⁶ 20 C.F.R. § 10.138(b)(1).

evidence is irrelevant or immaterial to appellant's claim for compensation beginning on or about February 18, 1996, appellant may not obtain a merit review of her claim based on the third requirement set forth above.⁷

Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸ For this reason, the Board will affirm the Office's March 10, 1997 decision.

The March 10, 1997 and July 23, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
December 16, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁷ Evidence that does not address the particular issue involved also constitutes no basis for reopening a case. *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁸ 20 C.F.R. § 10.138(b)(2).