

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA T. VISAYA and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, Calif.

*Docket No. 97-1174; Submitted on the Record;  
Issued February 23, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective December 29, 1995.

On December 9, 1993 the Office accepted appellant's claim for a shoulder strain and a single episode of major depression resulting from the shoulder strain. Appellant sustained the shoulder strain on May 17, 1990. Appellant returned to light-duty work but stopped working on November 2, 1992 when a dispute with her supervisor caused her to have the major depression. Appellant has not worked since November 2, 1992 and received temporary total disability benefits until they were terminated. In a report dated June 17, 1993, Dr. Ronald Wolfson, a Board-certified orthopedic surgeon and second opinion physician, stated that appellant's shoulder strain resolved in July 1991 "as suggested by" Dr. Marvin B. Zwerin, an osteopath and appellant's treating physician, that appellant's condition was permanent and stationary, her complaints of ongoing shoulder pain were subjective and she required no restrictions on an objective basis. In a report dated July 12, 1991, Dr. Zwerin opined that it would be unlikely there would be further change in appellant's shoulder condition as it was one year after the date of the injury but appellant required a permanent preclusion from lifting or carrying in excess of 20 pounds or repetitive use of her right upper extremity for reaching at or above shoulder level on the basis of the May 17, 1990 employment injury. In a report dated November 1, 1994, Dr. Zwerin indicated that he was still prescribing medicine for appellant's shoulder pain.

In a report dated February 11, 1994, Dr. Frank Lieberman, a psychologist, conducted various psychological tests including the minnesota multiphasic personality inventory (MMPI), the thematic apperceptive test (TAT) and the bender-gestalt and recall test, and considered appellant's history of injury. He diagnosed depression, paranoid thinking and repression detachment and that acceptance of pathology and dependency were psychological components. He stated that appellant lacked the resources to take control of her life and to initiate autonomous behavior patterns.

In a report dated October 20, 1994, Dr. Richard Komm, a psychologist and second opinion physician, considered appellant's history of injury, reviewed the medical documents, interviewed appellant and conducted psychologist tests including the kaufman brief intelligence test, the TAT and the MMPI. He concluded that appellant was a depressed, highly avoidant and dependent individual with very powerful internalized feelings, primarily of the angry and aggressive variety, which were strongly inhibited and blocked from emergence behind a very rigid and constricted, yet somewhat brittle, personality structure. Dr. Komm diagnosed Axis I pain disorder associated with both psychological factors and general medical condition and Axis II personality disorder, mixed, with avoidant, dependent and histrionic features. He stated that it was extremely difficult to connect the nature of the work of her May 17, 1990 employment injury to her subsequent reactions. Rather, Dr. Komm stated that appellant appeared to be on a "downhill slide" with increasing use of a series of distancing and avoidance mechanisms which were "only creating ever greater depression and even further decline in function." He suggested that she return to work as a hair stylist or another job which would be within her physical restrictions.

The Office referred appellant to Dr. James R. Liles, a Board-certified psychiatrist and neurologist. In his report dated October 25, 1994, Dr. Liles interviewed appellant and stated that she was crying through most of the session. He considered her history of injury, reviewed other medical reports, her current symptoms and admitted to verbally sparring with her in an effort to challenge her disability status. Dr. Liles stated that a major depressive disorder is marked by a rather profound and observable diminution in concentration and memory, and that patients with that degree of depression could not perform as appellant had. He stated that appellant was not depressed or unable to cope but had a formidable ability to relate appropriately to others, to interact with them, to express her opinions and feelings and to appreciate her situation. Dr. Liles stated that he did not believe appellant suffered any psychiatric injury from "a permutation of [her] orthopedic injury and the possible residual pain from it, and a subsequent depression." He stated that appellant's assertions were much more reflective of job dissatisfaction, unhappiness with her life, and inability to meet the challenges of her working life, and stated that his clinical findings did not support an Axis I diagnosis. Dr. Liles diagnosed Axis II personality traits consisting of avoidant, histrionic, passive-dependent and perhaps, paranoid traits and believed her unhappiness was reflective of those personality traits. He also diagnosed myofascial pain syndrome and severe psychosocial stressors. Dr. Liles opined that appellant could perform her usual work as, despite her lack of confidence in her cognitive abilities and capacity to work, there was no clinical evidence to suggest dysfunction.

In an attending physician's supplemental report, Form CA-20a, dated February 7, 1995, Dr. Hyman Silver, a psychologist, diagnosed major depression and checked the "yes" box indicating that appellant's depression was due to the May 17, 1990 employment injury.

By decision dated December 29, 1995, the Office terminated benefits effective December 29, 1995, relying on Dr. Liles' October 25, 1994 opinion that appellant was not suffering from a work-related depression.

On May 30, 1996 appellant requested reconsideration and submitted medical evidence to support her claim consisting of a medical report from Dr. Ruth Fallenbaum, a psychologist, dated

May 13, 1996. In her report, Dr. Fallenbaum considered appellant's history of injury, interviewed appellant and diagnosed major depressive disorder, recurrent, of moderate severity. She stated that appellant's symptoms included feelings of worthlessness, diminished ability to concentrate, low self-esteem, recurrent suicidal ideation without plan to carry it out, insomnia, depressed mood most of the day, diminished pleasure and significant weight loss not due to diet or physiological cause and indecisiveness. Dr. Fallenbaum opined that appellant's depression was directly related to her right shoulder strain and its impact on her life because:

“(1) At no point in [appellant's] history is there any evidence of the profound withdrawal from daily life or depressed state that we have seen in appellant until the time that the severity of her injury and its limiting role in her ability to do work became evidence. Her schooling and occupational life show no time periods of inactivity prior to her injury. She seems to have been, in fact, a hard-working young woman who went straight from high school to a training program, which she pursued directly.... Even after her initial injury, she tried valiantly to continue to work. Work is clearly important to the patient as a means of providing for herself as well as nourishing her self-esteem. It is not surprising that realizing that the pain of her shoulder injury could shatter her work life would precipitate a powerful depressive reaction. (2) Her ruminations and depressive ideation almost exclusively center around either memories of trying to work with the pain she was experiencing in her shoulder or around worries about how she will be able to earn a good living in the future, as well as her feelings of failure at not being able to literally “carry her load.”

Dr. Fallenbaum opined that appellant was totally disabled. She concluded that appellant injured her shoulder to the point that she could no longer carry out the physical duties of her job, became plunged into a classical major depression, feeling worthless, hopeless, frustrated, and frightened to face her future without the physical abilities upon which she had previously relied. Dr. Fallenbaum also explained in great detail errors she perceived in Dr. Komm's and Dr. Liles' analysis of appellant's condition. For instance, she noted that after two hours with appellant and 27 pages of discourse Dr. Liles failed to provide a diagnosis on either Axis I or Axis II in the D.S.M. IV schema. She noted that he stated that appellant had personality traits suggestive of an underlying mixed personality disorder but inconsistently stated that no Axis II diagnosis was justified.

By decision dated August 22, 1996, the Office denied appellant's reconsideration request.

The Board finds that the Office has not met its burden of proof to terminate compensation benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.<sup>2</sup>

A conflict in the evidence exists between the opinions of Dr. Fallenbaum and Dr. Liles. In his October 25, 1994 report, Dr. Liles opined that appellant did not suffer any psychiatric injury from her May 17, 1990 employment injury or possible residual pain from it. He opined that appellant was not depressed but was dissatisfied with her job, unhappy with life and unable to meet the challenges of her working life. He diagnosed Axis II personality traits consisting of avoidant, histrionic, passive-dependent and perhaps, paranoid traits and believed her unhappiness was reflective of those personality traits. Dr. Liles stated that appellant could perform her usual work, as despite her lack of confidence in her cognitive abilities and capacity to work, there was no clinical evidence to suggest dysfunction.

In his October 20, 1994 report, Dr. Komm conducted psychological tests, considered appellant's history of injury and concluded that appellant was a depressed, highly avoidant and dependent individual with very powerful internalized feelings, primarily of the angry and aggressive variety. He diagnosed Axis I pain disorder associated with both psychological factors and general medical condition and Axis II personality disorder, mixed, with avoidant, dependent and histrionic features. Dr. Komm stated that it was extremely difficult to connect the May 17, 1990 employment injury to her subsequent reaction. His opinion is of little probative value because he did not conclusively state that appellant's emotional condition was not work related.<sup>3</sup>

In contrast to Dr. Liles' opinion, Dr. Fallenbaum considered appellant's history of injury, interviewed appellant and reviewed Dr. Liles' and Dr. Komm's reports and diagnosed major depressive disorder, recurrent, of moderate severity. She opined that appellant's depression was directly related to her right shoulder strain and its impact on her life because appellant had no psychological problem prior to the May 17, 1990 employment injury and that being able to work was important to appellant's self-esteem, and therefore, "it was not surprising" that her inability to work due to her shoulder strain would precipitate a powerful depressive reaction. Dr. Fallenbaum also opined that appellant's ruminations and depressive ideation were almost exclusively centered around either memories of trying to work with the pain she experienced in her shoulder or around worries about how she would be able to earn a good living in the future, as well as her feelings of failure at not being able to literally "carry her load." She concluded that appellant was totally disabled. The February 11, 1994 opinion of Dr. Lieberman, which was based on the MMPI, TAT and the bender-gestalt and recall tests, he diagnosed, in part, depression, paranoid thinking and repression detachment and the February 7, 1995 opinion of Dr. Silver who diagnosed major depression and checked the "yes" box indicating that appellant's depression was work related are supportive of Dr. Fallenbaum's opinion.

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<sup>1</sup> *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

<sup>2</sup> *Larry Warner*, 43 ECAB 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>3</sup> *See William S. Wright*, 45 ECAB 498, 504 (1994).

As the conflict between Dr. Liles and Dr. Fallenbaum regarding the cause of appellant's emotional condition remains unresolved, the Board will reverse the August 22, 1996 decision of the Office.

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 22, 1996 is hereby reversed.

Dated, Washington, D.C.  
February 23, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member