

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THERESA PEARSON and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, Pa.

*Docket No. 97-1054; Submitted on the Record;  
Issued March 10, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on August 18, 1994 causally related to her accepted employment injury.

The Board has duly reviewed the case on appeal and finds it is not in posture for decision.

Appellant filed a claim alleging that on March 23, 1994 she was struck in the back of her head. The Office of Workers' Compensation Programs accepted her claim for contusion. Appellant filed a claim for recurrence on October 21, 1994 noting that the employing establishment informed her on August 18, 1994 that it could no longer accommodate her by providing alternate routes. Appellant alleged that she developed an emotional condition with resultant disability due to the accepted employment incident. By decision dated July 28, 1995, the Office denied appellant's claim finding that she failed to establish a causal relationship between her diagnosed condition and her accepted employment injury. Appellant requested an oral hearing and by decision dated November 12, 1996, the hearing representative affirmed the Office's July 28, 1995 decision.

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her recurrence of disability commencing October 12, 1994 and her March 23, 1994 employment injury.<sup>1</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>2</sup>

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>2</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

In support of her claim, appellant submitted a report from Dr. Richard A. Mufson, a Board-certified psychiatrist. Dr. Mufson noted appellant's history of injury and diagnosed post-traumatic stress disorder. He reviewed the criteria for this condition and concluded that appellant had experienced a recognizable stressor, that she had intrusive recollections, and nightmares and that she had become withdrawn with diminished interest in her usual activities. He stated that appellant would be disabled for months and if she was able to return to work for the employing establishment it should not be as a letter carrier.

The Office referred appellant for a second opinion evaluation with Dr. Perry A. Berman, a Board-certified psychiatrist. In a report dated March 31, 1995, Dr. Berman noted appellant's description of the events of March 23, 1994 and reviewed the statement of accepted facts. He concluded that appellant had not been subjected to the extreme stressor necessary for a diagnosis of post-traumatic stress. Dr. Berman concluded that appellant's symptoms did not arise from the incident but from being asked to deliver mail in an area in which she did not want to work. Dr. Berman concluded that there was no supporting evidence of a gunshot wound and that if appellant had been shot then he would be more likely to assume that her current difficulties were related to that perceived incident.

In response to Dr. Berman's request, the Office provided him with a copy of appellant's initial medical examination. Dr. Berman then provided a supplemental report dated July 12, 1995 relying upon the additional medical evidence reviewed. He stated, "Although, I am not convinced that she suffered a significant traumatic event, her belief that she did was sufficient to avoid delivery of mail in that area. However, that is the only acceptable limitation, and I do not agree that she needed to avoid mail delivery or work for any period of time."

Section 8123(a) of the Federal Employees' Compensation Act,<sup>3</sup> provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

In this case, the Board finds that there is a conflict of medical opinion evidence between appellant's attending physician, Dr. Mufson and the Office referral physician, Dr. Berman regarding appellant's disability due to her accepted employment injury. Dr. Mufson noted appellant's history of injury and concluded that appellant had sustained a gunshot wound which resulted in post-traumatic stress disorder and disabled her from delivering mail permanently. Dr. Berman reviewed the medical evidence and the statement of accepted facts and concluded that appellant should return to work as a letter carrier on a different route and that she was not disabled. As these physicians disagree regarding the extent and period of appellant's disability, there is an existing conflict of medical opinion evidence.

Due to this conflict of medical opinion evidence, the Board finds that the case is not in posture for decision and should be remanded for referral to an appropriate Board-certified specialist, along with the case record, a statement of accepted facts and list of specific questions

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<sup>3</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

for an impartial medical examination. After this and other such development as the Office deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated November 12, 1996 is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.  
March 10, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member