U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEYDA PAESCH and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

Docket No. 97-1581; Submitted on the Record;
Issued March 25, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective December 10, 1995.

On September 11, 1993 appellant, then a 38-year-old mail distribution clerk, was injured pulling and pushing an "APC full of flats." The Office initially accepted the claim for chest strain, but it was expanded to included exacerbation of Reiter's syndrome. Appellant was placed on restricted duty, sedentary work only, on September 24, 1993. Appellant stopped worked on October 24, 1993 and has not worked since that date. Appellant was awarded compensation for total disability related to the accepted employment injury commencing October 24, 1993.

In an attending physician's report dated December 3, 1993, appellant's treating physician, Dr. Harris Ross, an osteopath, noted that appellant had been pushing a heavy object on September 11, 1993 when she experienced chest pain. Dr. Ross diagnosed sternum strain and prescribed a course of acupuncture. On the Form CA-20 he check marked a box indicating that appellant's condition was caused or aggravated by her employment injury. He advised that appellant was unable to return to her regular job.

Appellant underwent a fitness-for-duty examination on December 8, 1993 conducted by Dr. Norman Eckbold, a Board-certified orthopedist, to whom appellant was referred by the employing establishment. In a December 19, 1993 report, Dr. Eckbold noted that one day after appellant had been pulling and pushing a mailholding devise she developed pain about the anterior chest and low rib cage. He further noted that appellant had some swelling about the right foot with a rash and pressure sensation at the low back and left buttock. According to Dr. Eckbold, appellant's subjective complaints and clinical findings were compatible with Reiter's syndrome. He noted that appellant had not had an acute onset of pain with the pulling or pushing of the mail device. Dr. Eckbold stated that "in my teaching [Reiter's syndrome] is not related to a work injury."

Dr. Bruce Freundlich, a Board-certified rheumatologist, examined appellant on December 20, 1993 and January 24, 1994 and completed two attending physician's reports.

Dr. Freundlich diagnosed inflammatory arthritis and Reiter's syndrome, conditions which he indicated were due to appellant's September 11, 1993 work injury. He noted that Reiter's syndrome is chronic but can have periods of remission that last for years. Although Dr. Freundlich was uncertain of the permanent effects of appellant's condition, he opined that she was totally disabled from work. He prescribed autoinflammatory medication and "CS" injections. Dr. Freundlich continued submitting treatment notes and also Office form reports indicating that appellant was disabled and that her condition was work related.

In order to clarify the cause and extent of appellant's injury-related impairment, the Office referred appellant for a second opinion examination on May 12, 1994 with Dr. Lawrence Brent, a Board-certified rheumatologist. In his May 25, 1994 report, Dr. Brent reviewed a statement of accepted facts prepared by the Office and noted appellant's preexisting history of Reiter's syndrome, her symptoms and complaints, the September 11, 1993 work injury and the physical findings. He indicated that appellant was probably suffering from Reiter's syndrome. With respect to causation, Dr. Brent specifically stated:

> "Although Reiter's syndrome is generally thought to be an inflammatory reaction triggered by a previous infection, I feel it is very likely [in appellant's case] that the trauma and strain to her chest wall in the costochondral junctions precipitated this present flare. This included the symptoms in her chest wall as well as the right ankle which had been quiescent up until the time of the injury. Therefore, although her underlying disease was not caused by the injury, it was most likely exacerbated by it."

Dr. Brent advised that it would be difficult to determine when appellant's disability would resolve as Reiter's syndrome tends to be chronic and unpredictable in nature." He opined, however, that appellant was not totally disabled from all forms of employment, only employment which required her to perform significant amounts of walking causing stress on the right ankle. Dr. Brent also noted that lifting or pushing using her right arm would exacerbate her symptoms.

The Office determined that there was a conflict in the medical evidence between the opinions of appellant's treating physicians, Drs. Ross and Freundlich and the Office referral physician, Dr. Brent, when compared to the opinion of Dr. Eckbold, the employing establishment physician to whom appellant was referred for a fitness-for-duty examination on the issue of appellant's level of impairment. In order to resolve the conflict, the Office referred appellant and the case record, including a statement of accepted facts, to Dr. G.E. McLaughlin, a Board-certified rheumatologist, for an impartial medical examination.

In a report dated February 8, 1995, Dr. McLaughlin noted that appellant had a history of monarthritis of the right ankle along with a rash since the age of 22, for which appellant's treating physician had diagnosed Reiter's syndrome. He also noted that appellant was genetically negative for Reiter's syndrome since she did not have the necessary antigens nor antibodies. Dr. McLaughlin discussed the September 1, 1993 work injury and indicated on physical examination that appellant had no evidence of swelling, pain, or redness in the chest wall. Because appellant complained of pain in the arm during a routine blood pressure test, the doctor opined that she had a very low threshold for pain. The only abnormality noted by Dr. McLaughlin was in appellant's right ankle, which was described as thickened, slightly warm and distinctly tender. He also noted that there was some swelling in the mid foot and a rash on the medial aspect of the right foot, compatible with Keratoderma Blenorrhagi. According to

Dr. McLaughlin, Reiter's syndrome is characterized by an asymmetrical oligo or monarthritis associated with a rash of Keratoderma Blenorrhagi. He diagnosed monarthritis, right ankle, associated with a rash which he found to be compatible with, but not diagnostic of, Reiter's syndrome. Dr. McLaughlin also noted that while appellant's ankle arthritis seems to have flared up at the same time as her work injury, her primary complaint was of chest wall pain. He opined that appellant's current condition was not related to her work injury, noting that the effects of her initial chest injury would have certainly subsided by now. Dr. McLaughlin further concluded that appellant was capable of performing only sedentary work as her underlying ankle arthritis would prevent her from prolonged standing. He prescribed alternative medication and recommended x-rays of appellant's ankles, chest, shoulders and pelvis to confirm his diagnosis.

In a supplemental report dated March 1, 1995, Dr. McLaughlin advised that x-ray reports obtained subsequent to his examination were normal except for the right ankle where there is evidence of soft tissue swelling in the foot and lower portion of the ankle, both medically and laterally. He noted that since there was no evidence of inflammation, joint space damage, or demineralization, appellant had a relatively benign rheumatic process. Dr. McLaughlin reiterated that appellant was capable of employment as outlined in his original report.

On October 6, 1995 the Office issued a notice of proposed termination of compensation and advised appellant of her right to submit additional medical evidence.

Appellant next submitted an October 27, 1995 report from Dr. Freundlich. He reviewed and criticized portions of Dr. McLaughlin's report, noting that appellant's single episode of ankle pain 22 years ago was her first sign of Reiter's syndrome. Dr. Freundlich indicated that he has treated appellant not only for foot pain but also pain in the hands, shoulders, joints of the thumbs, neck and sterna. He specifically noted that his most recent treatment of appellant in May 1995was for tenderness and swelling around the sternal area. Dr. Freundlich stated:

> "[A]lthough [appellant] may have been predisposed to developing Reiter's syndrome, she was basically without arthritis for 18 years until she pushed this heavy cart of letters, which would certainly stress the sternoclavicular and costosternal area joints. This is where her arthritis began during this bout. Since there is some precedence in the literature that Reiter's [syndrome] can be precipitated by trauma, it is my belief that this is what happened in her case. Unfortunately this led to other manifestations besides the sternal pain."

Dr. Freundlich classified appellant's condition as work related. He also noted that since appellant was still requiring high doses of medications and still showed signs and symptoms of inflammation in her joints, her condition was severe.

In a decision dated December 8, 1995, the Office terminated appellant's compensation and authorization for medical treatment effective December 10, 1995 on the grounds that the weight of the medial opinion evidence, lying with Dr. McLaughlin's reports and opinion, established that appellant's disability related to the September 11, 1993 work injury had ceased. The Office terminated compensation effective December 10, 1995.

Appellant timely requested a hearing on January 5, 1996. A hearing was held on July 22, 1996. In a decision dated February 20, 1997, the Office hearing representative found that Dr. McLaughlin's opinion was not entitled to controlling weight as an independent medical

examiner since the Office had improperly found a conflict in the medical evidence based solely on the report of Dr. Eckbold, a physician who performed a fitness-for-duty-evaluation examination at the request of the employer.[1] Although the Office hearing representative determined that Dr. McLaughlin was to be considered an Office second referral physician and not an independent medical examiner, he found that the weight of the evidence resided with Dr. McLaughlin's opinion and therefore, affirmed the Office's December 8, 1995 decision to terminate compensation.

The Board finds that the Office failed to meet its burden of proof in terminating appellant's benefits effective December 10, 1995.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[2] 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.[3]

In the instant case, the Office accepted the claim for chest strain and an exacerbation of appellant's underlying Reiter's syndrome. The Office paid compensation for total disability beginning October 24, 1993, the date of appellant's last employment, until, by decision dated December 10, 1995, the Office terminated appellant's compensation on the grounds that the residuals of her work-related injury had resolved. In reaching this determination, the Office considered the weight of the medical evidence rested with the opinion of Dr. McLaughlin, who opined that appellant's work-related chest strain has resolved and that any residuals of Reiter's syndrome, specifically appellant's symptoms of ankle arthritis, were not due to the September 11, 1993 work injury.

The Board finds that there is a conflict in the medical record between the opinion of Dr. McLaughlin, the Office's second referral physician and Dr. Freundlich, appellant's treating physician.[4] In his October 27, 1995 report, Dr. Freundlich adequately explains how he feels the September 11 1993 work incident made symptomatic a condition for which appellant was already predisposed. He specifically opined that appellant's work injury resulted in a flare up of her symptoms of Reiter's syndrome, including ankle arthritis. Dr. Freundlich stressed that appellant had no arthritic problems for 18 years until she pushed a heavy mail cart at work. Because the Office accepted Reiter's syndrome and did not limit the acceptance to any particular

[1] According to Office procedures, a physician who performs a fitness-for-duty examination may not be considered a second opinion physician for the purpose of creating a conflict in the medical evidence or for reducing or terminating benefits based on the weight of the evidence; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.8109b (March 1994).

[2] *Harold S. McGough*, 36 ECAB 332 (1984).

[3] *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

[4] Dr. Brent opined that appellant's symptoms in her chest and ankle were most likely exacerbated by appellant's work injury. Although Dr. Brent's May 12, 1994 report is somewhat speculative and predates the termination by over on year, Dr. Brent's opinion lends support to Dr. Freundlich's opinion.

part of the body, both Drs. McLaughlin and Freundlich offer plausible explanations as to why appellant's ankle arthritis is or is not work related.[5]

Section 8123(a) of the Federal Employees' Compensation Act provides that, "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."[6] Such a conflict exists in this case. Inasmuch as the opinions of Drs. McLaughlin and Freundlich are in direct conflict on the issue of whether or not appellant had disabling injury residuals at the times of their examinations, neither opinion constitutes the weight of the medical evidence and the Office improperly terminated appellant's compensation benefits.

Consequently, the decision of the Office of Workers' Compensation Programs dated May 1, 1997 is hereby reversed.

The decisions of the Office of Workers' Compensation dated February 20, 1997 and December 9, 1995 are hereby reversed.

Dated, Washington, D.C.
March 25, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[5] There is also a conflict between the physicians as to whether appellant has any continuing symptoms related to his accepted chest strain. Dr. Freundlich's report documents some continuing chest area symptoms while Dr. McLaughlin reported a normal chest.

[6] 5 U.S.C. § 8123.