

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY JO PRUITT and U.S. POSTAL SERVICE,
POST OFFICE, Marysville, Wash.

*Docket No. 97-1652; Submitted on the Record;
Issued March 1, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly met its burden to terminate appellant's compensation benefits.

Appellant, a substitute rural letter carrier, filed a notice of occupational disease alleging that she suffered sharp pains, muscle spasms and continuous ache due to her federal employment. The Office accepted the claim for an aggravation of a preexisting cervical degenerative disc disease and an adjustment reaction/depressive disorder and appropriate compensation was awarded.

On January 7, 1993 Dr. Sanford J. Wright, Jr., appellant's treating physician and a Board-certified neurological surgeon, indicated that he treated appellant for pain in her right neck, shoulder and arm. He recommended that a myelogram be performed to rule out a C6-7 spur or disc herniation on the right side.

On January 13, 1993 the Office medical adviser disagreed with Dr. Wright's assessment that a myelogram should be performed. The medical adviser opined that further tests and examination should be performed in order to determine the necessity of a myelogram.

On January 20, 1993 the Office requested additional information from Dr. Wright including information on appellant's psychiatric condition, her neurological condition and whether appellant's depression would be worsened by surgery. The Office further indicated that it was requesting a psychiatric evaluation.

On May 17, 1993 Dr. David T. Walters, a physician Board-certified in emergency medicine, examined appellant for neck pain. Dr. Walters diagnosed cervical root entrapment, cervical disc disease and progressive right arm weakness.

On June 16, 1993 the Office referred appellant for an examination by a panel of experts consisting of an orthopedic surgeon, a neurologist and a psychiatrist. On July 6, 1993 the panel

provided its opinion. Dr. Jacquelyn Weiss, a Board-certified neurologist and psychiatrist and Dr. Ivar W. Birkeland, Jr., an orthopedic surgeon, combined their reports. They noted that appellant complained of neck, right upper extremity and shoulder pain. They also noted numbness in the right hand. Drs. Weiss and Birkeland recorded the history of the injury and appellant's treatment. They reviewed appellant's past medical history and conducted a physical examination. Their orthopedic examination revealed light palpable tenderness throughout the posterior aspect of her neck and paraspinal muscles. They noted no tenderness in the intrascapular area, but very light touch discomfort over the right trapezius, the right acromioclavicular joint, the superior aspect of the deltoid muscle and the greater tuberosity of the proximal humerus. They noted a full range of motion in both shoulders, elbows, wrists, hands, and fingers and that there was no impingement syndrome in the right shoulder. Their neurologic examination revealed that appellant exhibited significant pain behavior with intact cognitive and language functioning. They found normal muscle tone and bulk. They noted a sleeve-like decrease of pin perception to above the midbiceps level in the right upper extremity. They found that vibration sense and position sense was otherwise intact. Coordination, gait and reflexes testing revealed no abnormalities. Drs. Weiss and Birkeland diagnosed preexisting and naturally progressing cervical spondylosis, not injury related or aggravated. They diagnosed a mild C6-7 cervical radiculopathy, right, related to the prior diagnosis, not injury related or aggravated. Finally, they diagnosed a resolved possible overuse syndrome of the right upper extremity. Drs. Weiss and Birkeland stated that they did not feel work activities resulted in an aggravation of cervical degenerative disc disease or that work activities resulted in any permanent aggravation of her accepted condition. They stated that appellant's cervical disc disease existed as shown by magnetic resonance imaging, which demonstrated a natural progression of the disease. Drs. Weiss and Birkeland opined that appellant was capable of working and that further surgery or a myelogram was not necessary.

Dr. Roy D. Clark, Jr., a Board-certified psychiatrist, neurologist and internist, provided his opinion in a separate portion of the panel's July 6, 1993 report. Dr. Clark indicated that he reviewed appellant's history and records and attended the physical examination conducted by Drs. Weiss and Birkeland. He further stated that he interviewed appellant and administered standardized psychiatric tests. Dr. Clark concluded that there was a likelihood of a depressive disorder causally related to appellant's 1985 accepted injury, but that this condition was likely related to other factors as well. He stated that the condition responded to treatment and that further treatment was not required. Dr. Clark indicated that the condition was in remission and that a myelogram would not affect it. Finally, Dr. Clark stated that appellant's condition did not preclude her from working.

On July 16, 1993 the Office requested that Dr. Wright respond to the July 6, 1993 panel report.

On October 30, 1993 Dr. John R. Bennett treated appellant for an exacerbation of chronic neck pain and diagnosed cervical discogenic pain.

On December 4, 1993 Dr. J.D. Ames, a physician Board-certified in emergency medicine and family practice, diagnosed cephalgia and a history of chronic cervical pain.

On March 14, 1994 the Office again requested that Dr. Wright respond to the July 6, 1993 panel report. On April 20, 1994 the Office specifically requested that Dr. Wright address the issue of causal relationship of the cervical condition.

On May 26, 1994 Dr. Wright stated that appellant suffered from cervical pain with neurologic change that merited a cervical myelogram to rule out cervical spondylotic stenosis. He indicated that his notes did not distinguish between an on-the-job mechanism of the injury and the natural progression of a degenerative change.

On June 18, 1994 Dr. Bennett treated appellant for a headache and diagnosed cervical root-related headaches.

On July 12, 1994 Dr. David D. O'Hara, a Board-certified internist, noted that appellant slipped on a soapy floor and wrenched her neck again. He diagnosed cervical strain superimposed upon severe cervical degenerative disc joint disease.

On August 16, 1994 the Office referred appellant to Dr. John McDermott, a Board-certified orthopedic surgeon and Dr. W. Frank Emmons, a Board-certified neurosurgeon, for a second opinion examination.

Drs. McDermott and Emmons examined appellant on August 30, 1994. They recorded her symptoms of pain in the trapezius area and neck, and noted that appellant's right arm was sore and weak. They also noted paresthesias into the index and middle finger on the right hand. Drs. McDermott and Emmons reviewed the history of appellant's illness and the medical records. They also conducted an orthopedic/neurologic examination. Regarding her neck, they found that appellant could flex her chin to her chest with some complaint and that hyperextension was to 60 degrees with some complaint. They found that right tilting and rotation was associated with complaints. They noted localized tenderness into the paravertebral group on the right and tenderness into the spinous process, T1 through the lower cervicodorsal spine. Their Adson's test was negative, but appellant reported pain. Drs. McDermott and Emmons found no abnormalities in the upper extremities or back. Neurologically, both the motor examinations and sensory examination were normal. They reviewed x-rays and found that there was some progressive enlargement of the osteophytic degenerative disc disease. Dr. McDermott diagnosed a preexisting degenerative disc disease involving the cervical spine, which was at the time of the acceptance of the claim associated with osteophytic spur formation, indicating a preexisting status. Both physicians opined that they did not believe appellant's objective findings and subjective complaints were due to his September 4, 1985 work injury. They opined that the work-related injury had long since resolved.

On September 2, 1994 Dr. O'Hara diagnosed cervical radiculopathy and degenerative joint disease. He further noted that appellant was clearly depressed.

On September 19, 1994 the Office requested that Dr. Wright respond to the opinion of Drs. McDermott and Emmons.

On September 22, 1994 Dr. Wright indicated that his opinions remained unchanged from the note he provided on May 26, 1994.

On January 20, 1995 the Office denied treatment consisting of a cervical myelogram.

In a separate letter dated January 20, 1995, the Office requested that Dr. O'Hara address whether appellant continued to suffer from an employment-related cervical condition and depression.

On June 12, 1995 Dr. O'Hara indicated that appellant ingested cocaine to alleviate her cervical radiculopathy pain and that she eventually became addicted. Dr. O'Hara treated appellant again on July 10, September 8 and October 2, 1995, January 5 and February 8, 1996 but he failed to comment on the cause of appellant's conditions

On December 8, 1995 Dr. Bennett diagnosed depression and drug dependency. He did not provide any analysis.

On October 9, 1996 the Office issued a "[n]otice of [p]roposed [t]ermination of [c]ompensation." The Office found that the weight of the medical evidence rested with the opinion of Drs. McDermott and Emmons who opined that appellant's employment-related conditions had resolved. Appellant was given 30 days to respond with additional evidence and argument.

On November 4, 1996 Dr. Daniel Schual-Berke diagnosed cervical radiculopathy, but he did not relate the condition to appellant's employment.

On November 6, 1996 Dr. O'Hara diagnosed severe degenerative disc disease and stated that appellant was unable to work due to the condition.

By decision dated December 13, 1996, the Office finalized the termination of benefits because the evidence failed to establish that appellant suffered residuals from her accepted employment injury. In an accompanying memorandum, the Office noted that the weight of the medical evidence continued to rest with the opinions of Drs. McDermott and Emmons.

The Board finds that the Office met its burden to terminate appellant's benefits.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.² Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.³ To terminate authorization or

¹ *Frederick Justiniano*, 45 ECAB 491 (1994).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁴

In the present case, appellant submitted medical opinion evidence from two of her treating physicians addressing her present condition. Dr. Wright, appellant's treating physician and a Board-certified neurological surgeon, opined that appellant required a myelogram because she suffered from cervical pain with a neurologic change. On May 26, 1994 he specifically stated, however, that he did not distinguish between an on-the-job mechanism causing appellant's injury and the natural progression of a degenerative change. Although the Office requested that Dr. Wright clarify whether appellant continued to suffer from an employment-related condition, Dr. Wright only stated that his opinion of May 26, 1994 remained unchanged. Dr. O'Hara, a Board-certified internist, also treated appellant for cervical degenerative disc disease, cervical radiculopathy and depression. In his treatment notes dated July 12 and September 2, 1994, June 12, July 10, September 8 and October 2, 1995, January 5 and February 5, 1996, he failed to address the cause of these conditions. Responding to the Office's request for clarification regarding the cause of the conditions, Dr. O'Hara only indicated on November 11, 1996 that appellant had a severe degenerative disease which was disabling. Appellant also submitted medical reports from Drs. Walters, Bennett, Ames and Schual-Berke, each of whom diagnosed a cervical condition, but failed to address the cause of the condition. In summary, appellant failed to provide any current opinion evidence relating her present conditions to her employment.

In contrast, the Office's referral physician's, Dr. McDermott, a Board-certified orthopedic surgeon, and Dr. Emmons, a Board-certified neurosurgeon, provided a detailed, well-reasoned medical opinion on August 30, 1994 explaining that appellant's cervical condition was no longer employment related based on appellant's history, orthopedic and neurologic examinations showing no objective abnormalities and x-ray evidence. The opinion of Drs. McDermott and Emmons was bolstered by the July 6, 1993 opinion of Dr. Birkeland, an orthopedic surgeon and Dr. Weiss, a Board-certified neurologist and psychiatrist, who also explained that based on their orthopedic and neurologic examinations and objective testing that appellant's cervical condition was not work related. Moreover, Dr. Clark, a Board-certified psychiatrist, conducted a thorough psychiatric evaluation on July 6, 1993 and he explained that appellant's depressive disorder was in remission.

Accordingly, because all the recent medical opinion evidence addressing whether appellant continues to suffer residuals of her accepted injuries indicates that her conditions have resolved and because this evidence is rationalized, the Office has met its burden to terminate appellant's benefits.⁵

The decision of the Office of Workers' Compensation Programs dated December 13, 1996 is affirmed.

⁴ *Id.*

⁵ *Judith A. Peot*, 46 ECAB 1036 (1995).

Dated, Washington, D.C.
March 1, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member