

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTYE J. FORD and DEPARTMENT OF THE AIR FORCE, OKLAHOMA
CITY LOGISTICS CENTER, TINKER AIR FORCE BASE, OK

*Docket No. 97-1894; Submitted on the Record;
Issued October 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she had any disability or medical condition after February 21, 1992 causally related to factors of her federal employment.

On January 4, 1992 appellant then a 38-year-old preservation packer, sustained a crush injury to her lower left leg in the performance of duty.

On April 21, 1992 appellant filed a claim for compensation benefits for lost wages commencing on February 21, 1992.

By decision dated August 11, 1992, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that she had any employment-related disability on or after February 21, 1992.

In a report dated April 6, 1993, Dr. Samuel T. Moore, a Board-certified orthopedic surgeon, and an Office referral physician provided a history of appellant's condition and findings on examination. Dr. Moore diagnosed chronic pain syndrome, post traumatic with depression but stated that he found no objective findings of a current left leg condition. He stated his opinion that appellant's current left leg condition was not due to the January 4, 1992 employment injury and was, instead, a superimposed post-traumatic pain syndrome. Dr. Moore stated his opinion that appellant was disabled due to her psychosomatic problems, not her employment injury.

In a report dated May 3, 1993, Dr. William N. Harsha, a Board-certified orthopedic surgeon, related that appellant was experiencing pain in the left foot and leg.

In a report dated June 17, 1993, Dr. Harsha related that appellant was still experiencing discomfort in her left knee and that the findings would be consistent with a medial meniscal pathology.

By decision dated July 15, 1993, the Office terminated appellant's medical benefits on the grounds that the weight of the medical evidence of record established that appellant's January 4, 1992 employment injury had resolved.

By letter dated June 16, 1994, appellant requested reconsideration of the Office's July 15, 1993 decision.

In a report dated October 4, 1993, Dr. R. Keith Green, a licensed clinical psychologist, provided the results of a psychological evaluation and diagnosed major depression, recurrent. Dr. Green stated his opinion that appellant's condition was causally related to her employment injury.

By decision dated July 28, 1994, the Office denied modification of its previous decision.

By letter dated July 13, 1995, appellant requested reconsideration and submitted additional evidence.

In a report dated September 14, 1994, Dr. Harsha related appellant's complaint of left leg pain, stiffness and limitation of motion. He provided findings on examination and diagnosed chronic pain syndrome as part of a chronic reflex sympathetic dystrophy involving the left lower extremity, degenerative disc disease of the low back and chondromalacia of the left patella.

In a report dated March 6, 1995, Dr. Harsha related that appellant was having a problem with her left heel.

By letter dated August 28, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical records to Dr. Robert J. Outlaw, a Board-certified psychiatrist and Office referral physician, for evaluation and determination as to whether appellant had any employment-related psychiatric condition.

By letter dated August 28, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical records to Dr. Philip L. McCown, a Board-certified orthopedic surgeon and impartial medical specialist, for an examination and evaluation in order to resolve the conflict in medical opinion evidence between Dr. Harsha, appellant's attending physician and Dr. Moore, the Office referral physician, as to whether appellant had residuals from her employment-related left leg injury.

In a report dated September 15, 1995, Dr. Outlaw provided a history of appellant's condition and diagnosed depressive disorder, psychotic disorder and personality disorder with paranoid traits and stated his opinion that appellant's condition was directly related to her January 4, 1992 employment injury. He noted that she had a preexisting emotional condition but opined that her employment injury reactivated this condition. Dr. Outlaw stated his opinion that appellant was disabled and that he doubted that her condition would ever resolve so that she could return to work.

In a report dated September 14, 1995, Dr. McCown provided a history of appellant's condition and a detailed summary of the medical evidence as well as findings on examination.

He stated that he found no injury or impairment to appellant's left knee or left lower leg. Dr. McCown stated that, based on the medical records, appellant did have a soft tissue crushing/contusion injury as a result of her January 4, 1992 employment injury but it was apparent that the soft tissue damage had resolved within the first two weeks of injury. He stated that he found no evidence that appellant was physically disabled that her psychological problems might interfere with her work. Dr. McCown stated there was no medical evidence of any ongoing current orthopedic condition related to the January 4, 1992 injury, that her condition had resolved and he could find no explanation for her continued complaints of pain. He stated that appellant could return to full-duty work activities.

By decision dated October 12, 1995, the Office denied modification of its prior decision.

By letter dated October 1, 1996, appellant requested reconsideration and submitted additional evidence.

In a report dated June 6, 1996, Dr. B.J. Keller, a psychiatrist, related that after appellant's employment injury she was hospitalized for a long time and was treated with heavy doses of narcotic medications. Dr. Keller related that appellant reported experiencing chronic pain. He diagnosed major depression recurrent moderate to severe with psychotic features and chronic pain syndrome.

By letter dated October 24, 1996, the Office requested clarification from Dr. McCown. The Office asked why Dr. McCown related a condition of depression to her employment injury in light of the fact that he had determined that she had no ongoing current orthopedic condition related to the January 4, 1992 employment injury. In the letter, the Office also asked Dr. Outlaw how appellant's preexisting psychiatric condition could still be activated by an employment injury that had resolved. The Office sent Dr. McCown a copy of Dr. Outlaw's report and sent a copy of Dr. McCown's report to Dr. Outlaw.

By letter dated October 25, 1996, Dr. McCown stated that he had reviewed Dr. Outlaw's September 15, 1995 report and he stated that he did not mean to imply in his September 14, 1995 report that appellant's depression was in any way related to her alleged orthopedic injuries. He stated that he found no evidence of ongoing orthopedic injury and was merely making the observation that appellant was depressed. Dr. McCown stated that he did not know why she was depressed and could only state that it was not due to any ongoing orthopedic problem that he could determine.

By letter dated October 28, 1996, Dr. Outlaw related that appellant had two previous episodes of depression with hospitalization and suicidal thoughts and that this was historical evidence that her mental health was not totally healthy but that she had maintained a productive work life and marriage as well as social life for eight years prior to her injury, indicating that her mental health was stable until the employment injury. He stated that at the time of her employment injury it appeared that she suffered severe decompensation of her mental and emotional coping abilities and that her ongoing pain and other symptoms had persisted in spite of the fact that there was no physical evidence for disability. Dr. Outlaw stated his opinion that appellant's depressive and psychotic disorders were triggered by her employment injury and

these conditions were still causing her severe mental and emotional pain and dysfunction sufficient to render her totally disabled.

By decision dated October 31, 1996, the Office denied modification of its prior decision.¹

The Board finds that appellant has failed to meet her burden of proof to establish that she had any physical disability or medical condition after February 21, 1992 causally related to her January 4, 1992 employment-related leg injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.² 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 the employment injury and supports that conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In this case, appellant sustained a work-related injury to her left leg on January 4, 1992. Following decisions dated August 11, 1992, July 15, 1993 and July 28, 1994 in which the Office found no evidence of a continuing work-related disability or medical condition, the Office determined that a conflict in medical opinion evidence existed between Dr. Harsha, appellant's attending Board-certified orthopedic surgeon, and Dr. Moore, a Board-certified orthopedic surgeon and Office referral physician, as to whether appellant had any continuing disability or medical condition causally related to her January 4, 1992 employment-related left leg injury. The Office referred appellant to Dr. McCown, a Board-certified orthopedic surgeon and impartial medical specialist, to resolve the conflict in medical opinion.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵

In a report dated September 14, 1995, Dr. McCown provided a history of appellant's condition and a detailed summary of the medical evidence as well as findings on examination. He stated that he found no injury or impairment to appellant's left knee or left lower leg.

¹ The Board notes that appellant submitted new evidence with her appeal to the Board. This evidence was not before the Office at the time it issued its October 31, 1996 decision, and therefore the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

³ *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

Dr. McCown stated that, based on the medical records, appellant had a soft tissue crushing/contusion injury as a result of her January 4, 1992 employment injury but it was apparent that the soft tissue damage had resolved within the first two weeks of injury. He stated that he found no evidence that appellant was physically disabled but that she had psychological problems which might interfere with her work. Dr. McCown stated there was no medical evidence of any ongoing current orthopedic condition related to the January 4, 1992 injury, that her condition had resolved, and he could find no explanation for her continued complaints of pain. He stated that appellant could return to full-duty work activities.

The Board finds that the thorough and well-rationalized opinion of Dr. McCown that appellant's January 4, 1992 employment-related leg injury had resolved is entitled to special weight and that the Office properly denied appellant's claim based upon his opinion.

The Board further finds, however, that this case is not in posture for a decision regarding appellant's claim for an employment-related emotional condition.

In a report dated September 15, 1995, Dr. Outlaw, a Board-certified psychiatrist and Office referral physician, provided a history of appellant's condition and diagnosed depressive disorder, psychotic disorder and personality disorder with paranoid traits. He stated his opinion that appellant's depression was directly related to her January 4, 1992 employment injury. Dr. Outlaw noted that she had a preexisting emotional condition but opined that her employment injury reactivated this condition. He stated his opinion that appellant was totally disabled.

By letter dated October 28, 1996, Dr. Outlaw related that appellant experienced depression prior to her 1992 employment injury but that she had maintained a productive work life and social life for eight years prior to her injury, indicating that her mental health was stable until the employment injury. He stated that at the time of her employment injury it appeared that she suffered severe decompensation of her mental and emotional coping abilities and that her ongoing pain and other symptoms had persisted in spite of the fact that there was no evidence of any physical disability. Dr. Outlaw stated his opinion that appellant's depressive and psychotic disorders were triggered by her employment injury and these conditions were still causing her severe mental and emotional pain and dysfunction sufficient to render her totally disabled.

Although Dr. Outlaw failed to provide sufficient medical rationale to establish that appellant's claimed emotional condition was causally related to her 1992 leg injury, his reports constitute substantial uncontroverted evidence in support of appellant's claim and are sufficient to require that the case be remanded for further development of the claim.⁶

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related emotional condition. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁶ See *John J. Carlone*, 41 ECAB 354, 358 (1989); *Robert A. Redmond*, 40 ECAB 796, 801 (1989); *Horace Langhorne*, 29 ECAB 820, 821 (1978).

The October 31, 1996 decision of the Office of Workers' Compensation Programs is affirmed as to the determination that appellant's employment-related leg injury had resolved but, as to the claimed emotional condition, the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
October 13, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member