U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FERRILYN M. GERMAN and U.S. POSTAL SERVICE,
POST OFFICE, Charleston, SC

Docket No. 97-1195; Submitted on the Record;
Issued September 16, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly found that appellant did not sustain a recurrence of disability beginning March 10, 1992 causally related to her April 18, 1988 employment injury.

On April 18, 1988 appellant, a 37-year-old motor vehicle operator, was involved in a highway accident in which her truck swerved off the road to avoid an oncoming vehicle and struck an electrical pole. The Office accepted appellant's claim for multiple contusions, cervical strain, lumbar strain, an aggravation of cervical arthritis and post-traumatic stress disorder (PTSD). Appellant was off work until May 8, 1988, when she was released to light duty as a modified distribution clerk. Appellant was again placed on total disability on August 16, 1990 and remained off work until September 19, 1990, when she returned to work in the modified distribution position.

The Office scheduled appellant for a second opinion examination with Dr. Howard Brilliant, a Board-certified orthopedic surgeon, to determine appellant's current condition. In a report dated February 5, 1991, Dr. Brilliant found that no further treatment was indicated and that appellant could work an eight-hour day.

In a report dated February 21, 1991, Dr. Carlyle Barfield, Board-certified in internal medicine, stated that he had nothing further to offer appellant and from then on would see her only as needed.

On January 7, 1993 appellant filed a Form CA-2 claim for recurrence of disability, claiming that she had sustained a recurrence of her April 18, 1988 employment injury on March 10, 1992.[1] In support of her claim, appellant submitted three medical reports: a February 3, 1993 report from Dr. Bartolo Barone, a Board-certified neurosurgeon, who reviewed

[1] On this date, March 10, 1992, the employment establishment had terminated appellant for forging a supervisor's signature to a document for an insurance company.

appellant's history, made findings on examination and diagnosed low back pain; a June 7, 1993 report from Dr. Christopher Harmon, a specialist in psychiatry, who had treated her since August 24, 1992 for depression which he advised was exacerbated by pain and financial stressors resulting from her accident and a September 20, 1993 report from Dr. J.E. Fulcher, a Board-certified radiologist, who opined that appellant was totally and permanently disabled due to cervical spine disc disease and lumbar spine herniated discs with peripheral neuropathy secondary to her April 19, 1988 work accident.

The Office scheduled a second-opinion examination with Dr. John M. Roberts, Board-certified in psychiatry and neurology. In a report dated November 24, 1994, Dr. Roberts stated that appellant was totally disabled due to PTSD which was caused by her April 1988 work accident and not her March 1992 separation from the employing establishment. He advised that "[a]lthough appellant was performing suitable light-duty work, her pain, frustration, anxiety and irritability were increasing to the point where she had gone to the emergency room and was removed from work for a six-week period with several other shorter absences documented in the notes of her treating physician." Dr. Roberts stated that appellant's fibromyalgia condition and chronic pain were increasing to the point where she could not perform even light-duty work which required repetitive hand and arm movements or light lifting and that her current total disability was the combined result of the symptoms of PTSD and psychological factors contributing to her physical condition and chronic pain syndrome. He opined that "[g]iven her frequent absences and one reportedly as long as six weeks prior to her separation on March 10, 1992, "her inability to persist with even light-duty work would, more likely than not, have occurred in the spring or summer of 1992." With regard to the date appellant's recurrence of disability began, Dr. Roberts opined that March 10, 1992 could be inferred to be "as reasonable a date as any."

By letter dated December 9, 1994, the employing establishment noted that appellant had worked consistently through March 10, 1992, at which time she was terminated for reasons unrelated to her employment injury and that work within appellant's medical restrictions would have remained available had she not been terminated from employment for falsification of documents submitted to her insurance company.

By decision dated July 25, 1995, the Office denied appellant's claim for compensation beginning March 10, 1992 on the grounds that the evidence of record failed to establish that she had sustained a recurrence of disability on that date.

By letters dated August 2, 1995 and April 11, 1996, appellant's attorney requested an oral hearing, which was eventually held on October 25, 1996. Appellant testified at the hearing that due to the stress she experienced dealing with her employer, plus responsibilities at home and financial difficulties, she had suffered a mental breakdown.

By letter dated November 12, 1996, the employing establishment responded to appellant's assertions. The employing establishment reasserted that appellant was working full-time prior to her termination on March 10, 1992, noting that she had only used fourteen days of annual leave and six days of sick leave from February 1991 through March 1992 and that none of these absences were documented as related to her work injury.

By decision dated December 10, 1996, the Office affirmed the hearing representative's July 25, 1995 decision.

The Board finds that this case is not in posture for decision.

When an employee, who is disabled from the job she held when injured on account of employment residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

In the present case, appellant has submitted supporting medical evidence consisting of medical reports from five physicians, issued from February 1993 through November 1994, which indicated that appellant still suffered residual pain and/or psychological symptoms from her April 18, 1988 employment accident. Dr. Barone, a Board-certified neurosurgeon, diagnosed low back pain based on appellant's history and on his examination of appellant in his February 3, 1993 report. Dr. Fulcher opined, in his September 20, 1993 report, that appellant was totally and permanently disabled due to cervical spine disc disease and lumbar spine herniated discs with peripheral neuropathy secondary to her April 19, 1988 work accident. Dr. Harmon stated in his June 7, 1993 report that he had been treating appellant since August 24, 1992 for depression aggravated by pain and financial stressors resulting from her work accident. In addition, Dr. Roberts, the Office referral physician, stated in his November 24, 1994 report that appellant was totally disabled due to PTSD resulting from her April 1988 work accident. Dr. Roberts opined that, notwithstanding the fact that appellant had been performing suitable light-duty work, her pain, frustration, anxiety and irritability had been increasing to the extent that she had gone to the emergency room and had been removed from work by her treating physician on several occasions prior to her separation on March 10, 1992, including one period which lasted six weeks. Based on this evidence, he advised that appellant's fibromyalgia condition and chronic pain were increasing to the point where she could not perform even light-duty work which required repetitive hand and arm movements or light lifting and that her current total disability was the combined result of the symptoms of PTSD and psychological factors which contributed to her physical condition and chronic pain syndrome. Dr. Roberts, therefore concluded that appellant probably would have been disabled from performing even light-duty work in the spring or summer of 1992 and that March 10, 1992 could reasonably be considered the date appellant's recurrence of disability began. The Board finds that Dr. Roberts sufficiently described appellant's symptoms in detail and how her April 18, 1988 employment injury would have been competent to cause or aggravate her physical and psychological conditions beginning March 10, 1992.

The Board finds that the evidence submitted by appellant, which indicates that she developed a worsening in the nature and extent of her injury-related conditions and contains

[2] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

medical opinions that the conditions found were consistent with the history of development, given the absence of any opposing medical evidence,[3] is sufficient to require further development of the record.[4] Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, the medical evidence of record is sufficient to require further development of the case record by the Office.

On remand, therefore, because the evidence in this case record has not been adequately developed, the Office must determine whether appellant met her burden of establishing that on March 10, 1992, the date she allegedly experienced a recurrence of her employment-related disability, a worsening had occurred in the nature and extent of her injury-related conditions, rendering her unable to perform the light-duty job and entitling her to continuing compensation for total disability. Accordingly, the Office should further develop the medical evidence by requesting that the case be referred to a Board-certified neurosurgeon to submit a rationalized medical opinion on whether appellant currently suffers residuals from her employment-related back condition and to a Board-certified psychiatrist to submit a rationalized medical opinion on whether appellant currently suffers residuals from her employment-related psychological condition and, if so, whether she sustained a recurrence of these conditions as of March 10, 1992. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated December 10, 1996 is set aside and the case is remanded for further action in accordance with this decision of the Board.

Dated, Washington, D.C.
September 16, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[3] The Board notes that the opinions of Drs. Brilliant and Barfield, which the hearing representative relied on in finding that appellant was not experiencing residuals from her work accident as of March 10, 1992, were issued in February 1991, more than one year prior to appellant's alleged recurrence.

[4] *John J. Carlone,* 41 ECAB 354 (1989).