

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMANDA L. KUNZE and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, OH

*Docket No. 99-2042; Submitted on the Record;
Issued February 14, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits on the grounds that she had no continuing disability resulting from the accepted work injury.

In this case, appellant, then a 30-year-old temporary substitute mail carrier, slipped and fell down steps while in the performance of her duties on February 3, 1967. The Office accepted the claim for left shoulder and neck strain and a subsequent condition for an anxiety neurosis with psycho-physiological features.

By decision dated July 15, 1977, the Office reduced appellant's compensation on the basis that she had the capacity to earn wages as a switchboard operator. By decision dated March 26, 1979, appellant's request for reconsideration was denied.

In an October 23, 1973 report, Dr. Hulusi Tuatay, a Board-certified psychiatrist, reported appellant's personal and employment history. He noted that, when appellant was 9 and 10 years old, she sleep walked which was a form of hysterical neurosis-disassociate type. After noting appellant's current complaints and providing a psychiatric evaluation, Dr. Tuatay diagnosed anxiety neurosis with psycho-physiological features. He explained that appellant has an anxiety neurosis with psychosomatic features which appear in various physical complaints. Dr. Tuatay opined that it was difficult to decide whether appellant had chronic anxiety neurosis from her early childhood or if the work accident accentuated symptoms of an encapsulated anxiety neurosis. He additionally stated that it was difficult to determine how much of appellant's complaints were based on physical causes and how much is based on psychogenic causes, but opined that more than 50 percent was based upon psychogenic causes.

As there were no other psychological reports of record, the Office referred appellant to Dr. Dale W. Peters, a Board-certified psychiatrist. In a February 14, 1977 report, Dr. Peters noted that appellant had persistent back pain in her lower back after the work injury and that she

was undergoing treatment for hypertension, which was present before the work injury. He found that, from a psychiatric standpoint, appellant was correctly oriented and that the two psychological tests administered showed an essentially normal personality with an absence of mental aberrations. Dr. Peters opined that appellant's illness was primarily physical. "Anyone required by fate to endure chronic pain will show symptoms of irritability, anxiousness and depression on occasion as a consequence of the chronic stress imposed by a painful condition which does not yield to treatment." He diagnosed anxiety secondary to physical illness and stated that there was no mental reason why appellant could not be employed. Dr. Peters also stated that he did not consider gainful employment feasible as long as appellant continued to experience back and arthritic pain.

Regarding appellant's accepted orthopedic conditions, the Office, in a December 5, 1996 letter to appellant's attending physician, Dr. T. Paul Evans, a general practitioner, asked him to clarify his February 28, 1994 report in which he stated "I feel that the patient has chronic cervical and lumbar back pain which, at this time, is unrelated to the initial injury of February 2, 1967." The Office further inquired as to whether there were any residuals from appellant's February 2, 1967 injury.

In a November 15, 1996 report, Dr. Louis Bowman, an osteopath, noted that he was responding to the letter directed to Dr. Evans. Dr. Bowman provided a history of appellant's work injury which included an understanding of the accepted work conditions and noted that there was some evidence of disc disease and nerve root disease at the cervical level and also at the lumbar level. Based on the results of his examination and his conversation with appellant, Dr. Bowman opined that appellant's accepted conditions of left shoulder and cervical muscle strain had resolved. He provided a full explanation of his examination findings to support his opinion that there were no current medical findings to support any residuals from appellant's original muscle strain 30 years ago. Based on his conversation with appellant and her medical history, Dr. Bowman opined that appellant had an old injury dating to 30 years ago for which she is having no problems now. He noted that appellant has a history of arthritis and fibromyalgia and that she is having problems with those conditions, but they are unrelated to the chronic cervical and lumbar back pain 30 years ago. Dr. Bowman noted that both electromyogram (EMG) and computerized tomography (CT) scanning revealed some evidence of radiculopathy of the cervical and lumbar spine, but opined that this did not seem to be causing appellant any discomfort or problems. He further noted that there was no evidence of any psychiatric disorder or anxiety neurosis as evidenced by the examinations from previous psychiatrists, but noted that appellant was on an antidepressant. Dr. Bowman recommended that appellant pursue treatment for her fibromyalgia.

In an August 5, 1997 report, Dr. Evans noted that he first examined appellant on February 28, 1994 for complaints unrelated to the initial injury of February 2, 1967. He noted appellant's subsequent diagnoses and stated that on March 11, 1996 he had reassured appellant that there was nothing seriously wrong with her. Dr. Evans stated that there were no residuals from her February 2, 1967 injury and that she was released from care in the clinic on November 15, 1996. Regarding appellant's accepted orthopedic conditions, Dr. Evans stated that he felt appellant sustained a rather trivial industrial injury February 2, 1967. He stated that such sprains and strains were self-limiting and heal within a six- to eight-week period.

Dr. Evans concluded that appellant's complaints resolved with an approximate date of April 1, 1967. He further opined that appellant was having problems with her recent fibromyalgia and arthritic conditions which were unrelated to the chronic cervical and lumbar back pain of 30 years ago.

In an August 11, 1998 decision, the Office terminated appellant's compensation finding that she no longer had residual disability from her employment-related conditions. Appellant requested a hearing and, in an April 15, 1999 decision, an Office hearing representative found that the weight of the evidence established that appellant's disability due to the employment injury had ceased. Accordingly, the Office's August 11, 1998 decision was affirmed.

The Board finds that the Office improperly terminated appellant's compensation regarding her accepted anxiety condition, but properly terminated her compensation regarding the accepted orthopedic conditions.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³ The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The Board notes that the record contains only the reports of Drs. Tuatay and Peters regarding appellant's anxiety condition. There is no indication from the medical evidence of record that appellant had a further treatment for an anxiety condition after 1977. In terminating appellant's benefits for her accepted psychiatric condition, the Office determined that the weight of the medical evidence rested with Dr. Peters' report. In his February 14, 1977 report, Dr. Peters had diagnosed anxiety secondary to physical illness. He stated that, although there was no mental reason why appellant could not be employed, he did not consider gainful employment feasible as long as appellant continued to experience back and arthritic pain. The Board notes, however, that, at the time the Office hearing representative rendered her decision on September 15, 1999, Dr. Peters' February 14, 1977 report was 22 years old. Not only was this medical evidence stale, but it does not show that the accepted condition had ceased or that no medical treatment was still needed to treat the condition. In lieu of directing appellant to undergo a psychiatric evaluation to determine whether the accepted anxiety condition secondary to physical illness had ceased, the hearing representative simply substituted her reasoning for a definitive psychiatric report, even though she acknowledged that Dr. Peters' report was "not

¹ 5 U.S.C. §§ 8101-8193.

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

clear.” Accordingly, the Office did not meet its burden of proof in finding that appellant was not suffering from a work-related psychiatric condition.

The Board finds that the reports of Drs. Bowman and Evans show that appellant has no physical condition remaining that is causally related to the employment injury. These physicians stated that appellant had no objective findings to show any residual effects from appellant’s muscle strain 30 years ago. Dr. Evans further concluded that, due to the nature of appellant’s work injury, her complaints should have resolved with an approximate date of April 1, 1967. Both physicians demonstrated an understanding of the factual and medical record and presented unequivocal, well-rationalized opinions. These reports therefore show that appellant had no disability remaining due to the accepted work-related orthopedic conditions. Although Dr. Peters diagnosed anxiety secondary to physical illness, he stated that appellant was suffering from back and arthritic pain. The Office did not accept any back conditions nor is there any evidence in the record causally relating appellant’s arthritic pain to her work injury of 1967. Moreover, Drs. Bowman and Evans opined that appellant’s conditions of fibromyalgia and arthritis were not related to the work injury. Accordingly, the Office met its burden of proof regarding appellant’s accepted work-related orthopedic conditions causally related to the initial injury.

The decisions of the Office of Workers’ Compensation Programs dated April 15, 1999 and August 11, 1998 are hereby affirmed with respect to appellant’s orthopedic condition has ceased; and reversed with respect to the cessation of appellant’s anxiety condition.

Dated, Washington, D.C.
February 14, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member