

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONDRA V. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, PA

*Docket No. 97-2079; Submitted on the Record;
Issued January 18, 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 met its burden of proof to terminate appellant's compensation benefits, effective October 16, 1995, on the grounds that appellant's disability due to her employment injury had ceased by that date.

On October 22, 1995 appellant, then a 29-year-old clerk, filed a traumatic injury claim alleging that she "hit left side of head above ear-back" on October 15, 1995 while in the performance of duty.

In support of her claim, appellant submitted a medical report dated October 15, 1995 from an attending physician stating that she had been treated that day for a scalp contusion and hyperventilation caused when she hit her head on a door as she lost her balance sitting down. The doctor noted that appellant could return to restricted duty on October 17, 1995. In a medical report dated October 17, 1995, Dr. James B. Stephenson, appellant's treating physician and a Board-certified surgeon, stated that appellant had sustained an acute injury and was totally disabled from work commencing October 15, 1995. In a medical report dated October 26, 1995, Dr. Stephenson stated that appellant has sustained postconcussive cephalgia, cervical sprain and strain, lumbosacral sprain, bilateral carpal tunnel syndrome¹ and was totally disabled from work.

On November 3, 1995 appellant filed a claim for wage loss from November 30 to December 15, 1995.

In a work restriction evaluation report dated November 22, 1995, Dr. Stephenson stated that appellant was totally disabled due to stiffness in arm, neck and head caused by cold air.

¹ Dr. Stephenson noted throughout his reports that appellant's carpal tunnel syndrome was not related to the October 15, 1995 incident.

On December 7, 1995 the employing establishment referred appellant to Dr. Charles Winkelman, Board-certified in psychiatry and neurology, for a fitness-for-duty examination.

On December 18, 1995 the Office accepted appellant's claim for scalp contusion. The Office also notified appellant that if she had lost time from work as a result of her accepted injury beyond 45 days, she could claim wage-loss compensation by filing a Form CA-7.

In an attending physician's report dated December 20, 1995, Dr. Stephenson stated that on October 15, 1995 appellant sustained trauma to the occipital region of the head while at work. He diagnosed as postconcussive cephalgia, cervical sprain and strain and lumbosacral strain and stated that appellant had been totally disabled since October 15, 1995.

In a medical report dated December 28, 1995, Dr. Stephenson related appellant's history of injury, noting that she stated that she had a severe headache at work on October 15, 1995 which caused her to slump into a chair, hitting her head on the back of the chair. He noted that cold air blowing from an air duct, as further related by appellant, contributed to her headache. Dr. Stephenson related appellant's subjective complaints of pain and her perception of an unbalanced feeling. He then noted findings based on physical examination conducted on October 17, 1995, finding scalp contusion, left trapezius and sternocleidomastoid muscle tenderness and tenderness in the lower back region. Dr. Stephenson added that appellant had a positive Romberg test "where she drifted off to the left upon standing," and that "[h]er gait was unsteady and she was unable to walk on her toes." He also noted that an October 25, 1995 computerized tomography (CT) head scan was read as normal, as were cervical spine x-rays. Dr. Stephenson also noted that right knee x-rays were unchanged from a 1986 trauma. He concluded that since appellant's headaches persisted since October 15, 1995, they were causally related to her accepted injury.

In a medical report dated January 9, 1996, Dr. Winkelman noted appellant's injury history that on October 15, 1995 she had fallen and sustained very mild head trauma without loss of consciousness. He related that appellant stated that she had not returned to work since October 15, 1995 because she kept losing her balance, had fallen numerous times, had occipital headaches radiating into the neck, left shoulder and mid-portion of the back, neck pain in the left shoulder and weakness in the right leg which she relates was caused when she fell on October 16, 1995. Dr. Winkelman related that appellant reported that she had no illnesses but had injured her right knee in an automobile accident in 1986 and that she had been placed in a light-duty status as a result of bilateral carpal tunnel syndrome. Upon examination, Dr. Winkelman stated that appellant was unable "to fully flex her neck or extend her head nor rotate her head to oppose her chin to each shoulder." Upon examination, appellant reportedly had a normal cranial examination with well-outlined optic discs and normal vasculature, and that her extraocular movements were intact. Dr. Winkelman further noted that appellant's motor system revealed reflexes to be diffusely, but symmetrically depressed in both arms and in the legs; that appellant's plantar responses were downgoing bilaterally; and that there was no atrophy or vesiculations. He noted that "every muscle in each extremity was weak," that she had a positive Hoover's sign, and that she was unable to elevate her leg and "maintain it against gravity." Dr. Winkelman also found that her sensory testing was intact with no evidence of cerebella dysfunction. He further noted that appellant, by history, had sustained a mild head trauma to the

occipital area without loss of consciousness, but that a CT scan and cervical spine film were normal with no mention of alteration in the cervical lordosis. Dr. Winkelman further noted that a right leg x-ray revealed “evidence of trauma.” He found a “functional motor weakness that is so significant on examination that, if real, would preclude her from even walking or getting up from a chair.” Dr. Winkelman noted that the trauma effects on the head had ceased, that appellant was neither partially nor permanently disabled, and that she could return to her regular duties without restriction.

On January 11, 1996 appellant filed a claim for wage loss from December 16, 1995 to January 11, 1996.

In attending physician’s supplemental reports dated January 13 and February 1, 1996, Dr. Stephenson stated that appellant had postconcussive cephalgia, cervical and lumbosacral sprain and strain, and an internal derangement of the right knee as a result of the work-related injury sustained on October 15, 1995. He also noted that appellant was totally disabled from work.

On February 13, 1996 the Office, in a decision, denied appellant’s claim on the grounds that the medical evidence failed to establish that appellant had a continuing disability beyond October 16, 1995, that appellant had sustained wage loss beyond that date, or that the evidence supported “an expansion of the claim to include additional medical conditions.”

On March 6, 1996 appellant filed a claim for wage loss from February 3 to March 21, 1996.

On March 11, 1996 appellant requested an oral hearing on the Office’s February 13, 1996 decision denying benefits.²

In an attending physician’s supplemental report dated March 21, 1996, Dr. Stephenson stated that appellant had postconcussive cephalgia, cervical and lumbosacral sprain and strain, and an internal derangement of the right knee as a result of a work-related injury sustained on October 15, 1995. He also noted that appellant was totally disabled from work.

In an attending physician’s supplemental report dated May 1, 1996, Dr. Stephenson stated that appellant had work-related postconcussive cephalgia, cervical and lumbosacral sprain and strain, and internal derangement of the right knee and nonwork-related carpal tunnel syndrome. He noted that appellant should restart physical therapy. Dr. Stephenson noted that on May 8, 1996 he had advised appellant that she could return to work.³ He also checked a box noting that her disability for regular work would continue for more than 90 days.

² The Board notes that the date on appellant’s letter was March 1, 1995 versus March 1, 1996.

³ The Board notes that the date of the report was May 1, 1996 although he stated that the date of his notification to appellant that she could return to work was May 8, 1996.

On October 22, 1996 a hearing was held in Philadelphia, Pennsylvania. On December 13, 1996 the Office's hearing representative issued a decision, finalized on the same day, affirming the Office's February 13, 1996 decision.

On January 6, 1997 appellant requested reconsideration of the hearing representative's decision. In support of her request, appellant submitted a December 11, 1996 medical report from Dr. Stephenson wherein he stated that he had examined appellant on October 17, 1995 and determined that she had sustained a scalp contusion which occurred on October 15, 1995 while appellant was at work. He noted that during his examination appellant had neck pain and felt off balance. Dr. Stephenson stated: "[Appellant] did actually lose her balance at home one time, injuring the right knee on October 16, 1995."⁴ Upon examination on October 17, 1995 he noted tenderness of the left trapezius and sternocleidomastoid muscles which decreased her range of neck motion and noted tenderness in the lower back over the sacroiliac region. Dr. Stephenson also noted a positive Romberg test and a negative CT scan. He stated that appellant's headaches have persisted since her October 15, 1995 incident. Dr. Stephenson added that: "The posterior neck muscles insert into the occiput region of the head at the area of impact of the metal door, thus the causal relationship between the head injury and cervical sprain and strain [is established]."

In a March 17, 1997 merit decision, the Office denied modification of the December 13, 1996 hearing representative's decision.

The Office accepted that appellant sustained a scalp contusion on October 15, 1995. Dr. Stevenson submitted medical reports which stated that appellant's October 15, 1995 work-related injury caused additional medical conditions including postconcussive cephalgia, cervical sprain and strain, lumbosacral strain and a right knee condition which resulted from a fall at home the day after the scalp contusion.

Dr. Winkelman, Board-certified in psychiatry and neurology, conducted a fitness-for-duty examination on appellant on January 6, 1996 and found that the trauma effects on her head had ceased, that she was neither partially nor permanently disabled, and that she could return to her regular duties without restriction. The Office's procedure manual⁵ states that a physician who performs a fitness-for-duty examination of the claimant for the employing establishment may not be considered a second opinion specialist for purposes of creating a conflict in medical evidence. A report from such a physician must receive due consideration, however, and if the findings or conclusions differ materially from those of the treating physician, the claims examiner should make an immediate second opinion referral. The record does not disclose a second opinion referral.

The Board finds that the Office improperly terminated appellant's compensation on October 17, 1995.

⁴ He did not indicate whether this incident was in 1995 or in 1996. However, Dr. Winkelman noted appellant's relating a fall on October 16, 1995.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9(b) (March 1995).

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁶ 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.⁷ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment related condition which require further medical treatment.⁹

In this case, the Office terminated appellant's benefits on the grounds that Dr. Stevenson's medical reports failed to establish that she had continuing residuals from her October 15, 1995 work-related injury. However, the doctor's reports are sufficiently well reasoned regarding the mechanism of injury and the effects that the fall had on her head to establish an inference that appellant has continued residuals from her work-related injury. There is no evidence from a physician who examined appellant that all residuals of her employment injury have ceased. Thus the Office has failed in its burden of proof to establish that appellant no longer had residuals from her work-related injury. The March 17, 1997 decision regarding appellant's continued benefits must be reversed.

With respect to whether appellant sustained consequential injuries, the medical record in this case establishes a consistent history of diagnosed conditions that Dr. Stevenson noted were causally related to appellant's work-related injury. In particular, his December 28, 1995 and December 11, 1996 reports related appellant's history of injury and reflected his consistent medical diagnosis of postconcussive cephalgia, cervical sprain and strain, lumbosacral sprain and right knee condition, all of which he attributed to appellant's work-related injury. The case therefore must be remanded to the Office for further evidentiary development on this issue. Upon remand, the Office should refer appellant together with the medical record and a statement of accepted facts to a second opinion specialist for a determination as to whether appellant's postconcussive traumatic cephalgia, cervical sprain and strain, lumbosacral strain and right knee condition were related to the accepted employment injury and whether any of the injuries resulted from subsequent falls at home as reported by Dr. Winkleman in his January 9, 1996 report.

⁶ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁷ *Id.*

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *Id.*

The March 17, 1997 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further action consistent with this opinion.

Dated, Washington, D.C.
January 18, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member