

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HOANG Y. MICHALSKY and U.S. POSTAL SERVICE,  
POST OFFICE, Los Angeles, CA

*Docket No. 98-1785; Submitted on the Record;  
Issued June 23, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that she had an emotional condition related to the accepted condition of bilateral carpal tunnel syndrome.

The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome and neurotic depression. Appellant worked intermittently from September 26, 1989 to April 14, 1991 and has been receiving temporary total disability benefits since April 15, 1991.

In a report dated September 11, 1995, a referral physician, Dr. Richard G. Ness, Board-certified psychiatrist and neurologist, considered appellant's history of injury, her personal background, performed a mental examination including a personal inventory test and reviewed the medical documents in the record. He diagnosed schizophrenia of the chronic paranoid type, a history of bilateral carpal tunnel syndrome and other soft tissue pain syndromes including fibromyalgia, Type II diabetes mellitus and arterial hypertension. Dr. Ness explained that appellant's paranoid schizophrenia was an independent mental illness, which was not proximately caused by any particular life event in mid adulthood but developed slowly and "insidiously" over time and that her "stress" at the job was a paranoid projection or misrepresentation. He stated that appellant's chronic depression was "basically caused by her self-awareness of having her major mental illness, which was her biggest life stressor." Dr. Ness further stated:

"... By all data, her specific CTS [carpal tunnel syndrome] has not been a sufficient stressor as to create an additional psychiatric disorder or measurable level of symptoms. The reverse is probably true, that her inner psychopathology has exaggerated her pain symptoms. Her CTS problems had negligible input into her psychiatric status.... Because of her own psychological conflicts [appellant] is experiencing more pain than is anatomically valid based on either a primary

somatoform process, a process of somatized depression, or a simple expression of delusional misperceptions about her own body.”

Dr. Ness concluded that appellant was unable to work due to her mental condition.

By decision dated May 21, 1996, the Office terminated benefits, finding that the evidence of record established that appellant no longer suffered from a condition causally related to her September 26, 1989 employment injury. By letter dated June 4, 1996, appellant requested written review of the record by an Office hearing representative and submitted additional evidence consisting of medical reports from her treating physicians, Dr. Joyce W. Yeh, a psychologist and Dr. Khang M. Nguyen, a psychiatrist.

In an undated report received by the Office on June 7, 1996, Drs. Yeh and Nguyen diagnosed a single episode of major depression with severe mood congruent psychotic features, pain disorder associated with both psychological factors and a general medical condition and hypochondriasis with poor insight. They stated that appellant initially developed depression in 1981 due to pressures from her work schedule and the carpal tunnel syndrome “exacerbated pain” she was already experiencing in her arms, hands and fingers as well as other parts of her body. They concluded that appellant’s depression was “precipitated, if not proximately caused, by her work condition and aggravated by her state of disability. Her pain disorder was caused by her CTS, which was proximately caused by her job. The hypochondriasis, which was developed after [appellant] was put on [w]orker’s [c]ompensation bears an indirect relationship with her employment.”

In a report dated May 14, 1996, Drs. Yeh and Nguyen explained that Dr. Nguyen is a Vietnamese speaking psychiatrist who treated appellant since August 1995 and Dr. Yeh provided psychotherapy since early 1993, initially once a week, but in the present once every two weeks. They stated that their report was based on a lengthy clinical relationship, a medical treatment history, an understanding of appellant’s cultural background and numerous tests, psychological tests performed in 1992. They strongly disagreed with Dr. Ness’ diagnosis of schizophrenia, paranoid type as they believed what Dr. Ness characterized as “disorganized thought processes” or “communication defect” reflected a cultural phenomenon rather than symptoms of a thought disorder. They explained that having been raised in Vietnam, appellant held traditional values of Asian cultures, which was “to give deference to authority figures, particularly to males,” and that a male authority figure might “cause anxiety and defensiveness beyond what may be expected for a person of Western background, [which was] even more true for [appellant] who always avoided being seen by a male counselor.” They stated that anxiety, sadness and anger would “always cause her to lose words, trend of thought and grammatical order of sentences.” They stated that appellant was not schizophrenic because, in part, she was not incoherent as resulted from loose association, appellant’s answers did not show her delusional system was “solid” or “crystallize[d]” like a typical schizophrenic, her self-observational skills were inconsistent with schizophrenia but reflected her deep sense of inferiority and damaged self-image, which was a symptom of depression.

By decision dated November 8, 1996, the Office hearing representative found that a conflict in the medical evidence existed between Drs. Ness, Yeh and Nguyen’s opinions as to whether appellant’s mental condition arose from her carpal tunnel syndrome and remanded the

case for the Office to refer appellant to an impartial medical specialist for another examination. The Office hearing representative noted that, since the conflict arose after the Office's May 21, 1995 decision terminating benefits, appellant's benefits would not be reinstated. The Office hearing representative also noted that appellant's emotional condition had been accepted as a consequence of the carpal tunnel syndrome, not as a consequence of other employment factors and, therefore, on remand only the carpal tunnel syndrome factor would be considered to resolve the issue.

By letter dated November 26, 1996, appellant requested to participate in the selection of the impartial medical specialist. She stated that part of the conflict in the medical evidence had been that Drs. Yeh and Nguyen believed that appellant's behavior during the examination with Dr. Ness was being misunderstood due to cultural and language differences arising from her Vietnamese background and requested that a female physician of Vietnamese ancestry who speaks Vietnamese be selected as the impartial medical specialist. She requested that, in the alternative, a female physician of Southeast Asian ancestry be appointed but if no female physician with these backgrounds was available that a male physician of Southeast Asian ancestry be selected.

Appellant also stated that, because she filed a stress claim, No. 90502-13, which was doubled with the present claim, No. 922760, she did not understand why the remand should be restricted to the emotional condition as arising from only appellant's carpal tunnel syndrome.

By letter dated December 3, 1996, the Office denied appellant's request, stating that the review of the file did not indicate there were difficulties in language. The Office stated that appellant graduated with a B.A. from California State University in 1982, that she demonstrated a command of the English language and the ability to communicate with her physicians and that she had lived in the United States for over twenty years. The Office stated that the prior stress claim appellant filed was a duplicate of appellant's claimed emotional condition as it related to her bilateral carpal tunnel syndrome and emphasized that the present claim was only for the work factors as they related to the carpal tunnel syndrome.

The Office referred appellant to an impartial medical specialist, Dr. Jaye-Jo Portanova, a Board-certified psychiatrist and neurologist. In a report dated May 21, 1997, Dr. Portanova considered appellant's history of injury, reviewed the psychological, psychiatric and orthopedic reports in the record, performed a physical examination and cognitive and memory tests and relied in part on the report of Dr. Jack H. Schnel, a psychologist, dated April 21, 1997, who performed numerous intelligence and mental tests on appellant. In his report, Dr. Schnel considered appellant's history of injury, reviewed the medical reports of record and performed a physical examination. He diagnosed undifferentiated somatoform disorder, hypochondriasis with poor insight, pain disorder associated with psychological factors, chronic and moderate major depressive disorder, personality disorder not otherwise specified, carpal tunnel syndrome in remission, unsubstantiated diabetes mellitus and moderate to severe psychosocial stressors.

Dr. Portanova's diagnoses duplicated Dr. Schnel's diagnoses. He stated that appellant's emotional condition was not work related and agreed with Dr. Schnel that it was "more a factor of her ingrained personality disorder as well as her documented depression predisposing her ability to respond to traditional treatment from her original illness." She stated that appellant

had symptomatology “somewhat” consistent with an avoidant, schizoid and paranoid personality, which was a major contributing factor in her “presentation.” Dr. Portanova stated that appellant was unable to perform her usual job due to her depression, which evolved from her debilitation from her other medical problems and her personality disorder.

By decision dated June 3, 1997, the Office denied appellant’s claim, stating that the weight of the medical evidence established that appellant had no emotional or psychiatric condition causally related to her resolved bilateral carpal tunnel syndrome.

The Board finds that appellant has not established that she had an emotional condition related to the accepted condition of bilateral carpal tunnel syndrome.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>1</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>3</sup>

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>4</sup> In the present case, a conflict arose between the opinion of the referral physician, Dr. Ness and appellant’s treating physicians, Drs. Yeh and Nguyen, as to whether appellant’s mental condition was related to her carpal tunnel syndrome and the Office referred appellant to Dr. Portanova, an impartial medical specialist, to resolve the conflict in the evidence. In his May 21, 1997 report, Dr. Portanova considered appellant’s history of injury, reviewed the psychological, psychiatric and orthopedic reports in the record

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> *Gary L. Fowler*, 45 ECAB 365, 371; *Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

and relied in part on Dr. Schnel's April 21, 1997 report. She diagnosed *inter alia*, severe major depressive disorder with psychotic features, undifferentiated somatoform disorder and hypochondriasis with poor insight. Dr. Portanova stated that appellant's emotional condition was not work related and agreed with Dr. Schnel that it "was more a factor of her ingrained personality disorder as well as her documented depression predisposing her ability to respond to traditional treatment from original illness." She stated that appellant had symptomatology, which was somewhat consistent with an avoidant, schizoid and paranoid personality and that was a major contributing factor in her presentation. Dr. Portanova stated that appellant was unable to perform her usual job due to her depression, which evolved from her debilitation from her other medical problems and her personality disorder.

The Board finds that Dr. Portanova's May 21, 1997 opinion is sufficiently well rationalized in establishing that appellant's depression is not related to her carpal tunnel syndrome but to other, nonwork-related factors. Although appellant contends on appeal that there was a denial of due process because there was not a conflict between Drs. Ness, Yeh and Nguyen prior to the referral to an impartial medical specialist and because Dr. Portanova, in not being Vietnamese or of Asian background was unaware of appellant's cultural differences and, therefore, was an unfair selection, appellant's contentions are without merit. Dr. Ness' opinion that appellant had nonwork-related schizophrenia was sufficiently rationalized to create a conflict with Drs. Yeh and Nguyen's reports that appellant did not have schizophrenia but had major depression that was either aggravated or caused by her carpal tunnel syndrome. Thus, referral to an impartial medical specialist was appropriate.<sup>5</sup>

Regarding appellant's objection to the selection of Dr. Portanova, under Office procedures a claimant who asks to participate in the selection of an impartial medical examiner or who objects to the selected physician must provide a valid reason.<sup>6</sup> Upon the claimant's request, the claimant will be afforded a list of three specialists acceptable to the Office, from which the claimant may choose.<sup>7</sup> The procedural opportunity for participation in the selection of an impartial medical examiner has been recognized by the Board.<sup>8</sup> However, this procedural opportunity is not an unqualified right under the Act. The Office has imposed limitations requiring that the employee provide a valid reason for any objection proffered against the designated impartial specialist. It is within the discretion of the Office to determine whether a claimant has provided a valid objection to a selected physician.

The Office considered appellant's request for an examination by an impartial medical specialist of Vietnamese or Asian background and reasonably concluded that the fact she had a college degree from California State University and that she had lived in the United States for

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<sup>5</sup> See *Bertha J. Soule*, 48 ECAB 314, 316 (1997).

<sup>6</sup> The Federal (FECA) Procedure Manual Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(4) (October 1990).

<sup>7</sup> *Id.*

<sup>8</sup> *Roger S. Wilcox*, 45 ECAB 265, 273-74 (1993).

over twenty years did not warrant the special selection requested. The Office, therefore, properly exercised its discretion in the selection of the impartial medical specialist.

Appellant also contends that the fact that she did not suffer from her depression prior to her work-related claim was not considered by Dr. Portanova and establishes that her present mental condition must be work related. However, the Board has held that the fact that appellant was asymptomatic before an employment injury is insufficient in itself to establish the requisite causal relationship.<sup>9</sup> As an impartial medical specialist, Dr. Portanova's opinion, which is well rationalized and complete, therefore, constitutes the weight of the evidence.

The decision of the Office of Workers' Compensation Programs dated June 3, 1997 is hereby affirmed.

Dated, Washington, D.C.  
June 23, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>9</sup> See *Thomas R. Horsfall*, 48 ECAB 180, 183 (1996).