

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE WHETER KING and FEDERAL EMERGENCY MANAGEMENT
AGENCY, Chicago, IL

*Docket No. 99-777; Submitted on the Record;
Issued June 20, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after June 18, 1994 causally related to her November 18, 1993 employment injury.

On December 6, 1993 appellant, then a 53-year-old disaster relief worker, filed a notice of traumatic injury (Form CA-1) and claim for continuation of pay compensation, alleging that on November 18, 1993 she sustained an electrical shock throughout her body when her metal rolling chair touched unsecured electrical wires. On the reverse side of the claim form appellant's supervisor noted that appellant first received medical care on November 18, 1993 and she stopped work on that date.

In support of her claim, appellant submitted an electrocardiogram report dated November 18, 1993. Appellant also submitted a medical report dated November 18, 1993 from a physician whose signature is illegible. The form noted that appellant felt a jolt in her lower extremities and back after she was shocked and that she tried to stand following the incident but was unable to do so due to weakness and numbness. Additionally, appellant submitted a urinalysis report and nurse's notes dated November 18, 1993 noting appellant's vital signs. Appellant also submitted a note from Dr. Jeffrey D. Kopin, a Board-certified internist, dated November 29, 1993, who stated that appellant was advised to limit her workday to six hours for two weeks.

By letter dated March 4, 1994, the Office of Workers' Compensation Programs accepted appellant's claim for electrocution and post-traumatic stress disorder (PTSD) sustained on November 18, 1993. The Office requested that appellant submit a narrative medical report from her attending physician, including history of injury, findings and results of all tests and x-rays, diagnosis, clinical course of treatment, prognosis, period and extent of disability, and an opinion regarding the relationship between any continuing disability and appellant's accepted injury. The Office authorized psychotherapy to not exceed 120 days.

On June 12, 1996 appellant filed a claim for recurrence of disability (Form CA-2a), alleging that on July 18, 1994 she sustained PTSD related to her November 18, 1993 employment injury. Appellant later amended her claim to include brittle diabetes. She alleged that, due to her “unrecognizable” and “ongoing” PTSD, depression and anxiety attacks, she performed poorly at work and became isolated, forgetful and confused. Appellant noted that, since her November 18, 1993 employment injury, she worked from May 14 to June 11, 1994 in Maine, July 14 to August 6, 1994 in Georgia and attended a certification and training seminar in Maryland from June 1 to 6, 1994. Appellant stopped work August 6, 1994.

In support of her claim, appellant submitted a comprehensive psychological evaluation dated June 28, 1996, by Dr. David O. Colpak, a clinical psychologist. In his evaluation, Dr. Colpak described the results of the following administered tests: (1) Wechsler Adult Intelligence Scale-Revised; (2) Bender Motor Gestalt Test; (3) Wechsler Memory Scale; (4) House-Tree-Person Test; (5) Rorschach; (6) Thematic Apperception Test; (7) Three Wishes/Fears; and (8) the Wide Range Achievement Test-Revised, Level II. He diagnosed an organic mental disorder, NOS, major depression, panic disorder with agoraphobia, chronic PTSD, attention deficit disorder (ADD), continuous alcohol abuse, polysubstance abuse in remission, narcissistic personality disorder, and multiple medical difficulties, including diabetes, based on a complete factual and medical history and clinical examination of appellant. Dr. Colpak stated that ideally, appellant should be referred to a psychiatric hospital followed by discharge to a halfway house. He further stated that, in lieu of hospitalization, appellant should be referred to a psychiatrist to assess potential benefits from psychotropic medication and outpatient psychotherapy. Appellant also submitted a mental functioning work sheet by Dr. Colpak dated June 28, 1996. On the work sheet, he indicated that appellant was moderately limited in her ability to sustain the following work activities: (1) understand, remember and carry out very short and simple instructions; (2) make simple work-related decisions; (3) ask simple questions or request assistance; (4) maintain socially appropriate behavior and hygiene; (5) be aware of normal hazards and take appropriate precautions; and (6) travel in unfamiliar places or use public transportation. Dr. Colpak further indicated that appellant was markedly limited in her ability to sustain the following work activities: (1) understand and remember locations and work-related procedures; (2) understand, remember and carry out detailed instructions, (3) maintain attention and concentration to maintain employment; (4) perform activities within a schedule and maintain regular attendance; (5) ability to work without supervision; (6) work in coordination or in proximity to others without being distracted by them; (7) complete a normal workday without interruptions from symptoms; (8) interact appropriately with the general public; (9) respond appropriately to criticism from supervisors; (10) get along with coworkers; and (11) respond appropriately to changes in the work setting.

Appellant also submitted blood sugar level reports dated from January 31, 1994 to May 17, 1996, from Dr. James L. Rosenzweig, a Board-certified internist and endocrinologist. The January 31 and July 15, 1994, November 13, 1995 and May 17, 1996, reports showed that appellant’s blood sugar level was under fair to poor control and the April 24, 1995 report showed that it was under good control. Further, appellant submitted letters from Dr. Rosenzweig dated January 25, 1994 to May 14, 1996 prescribing daily insulin doses and reporting appellant’s blood and urine sugar levels and urine acetone levels.

Appellant also submitted an unsigned, undated report for the Massachusetts Department of Public Welfare. By a checkmark, the report revealed that appellant “has a physical and/or mental impairment(s) that meets or is equivalent to the Department’s Medical Standards or the Social Security Insurance Listing of Impairments and is expected to last” more than one year. The report also noted that the date of appellant’s most recent examination was April 30, 1995 and by checkmark indicated that her condition was chronic with no improvement expected. Also by checkmark, the report revealed that appellant sustained impairments of the endocrine and multiple body systems and medically equivalent/combination of impairments. Dr. Colpak’s report revealed that appellant was an insulin-dependent diabetic with diabetic neuropathy and that she had difficulties with anxiety, poor concentration, memory loss, depression, palpitations, fatigue and PTSD since her electrocution on November 18, 1993. He also noted that appellant had a history of menopausal symptoms, which severely affect her functioning but she was unwilling to be treated with estrogens. By checkmark, the report revealed that appellant could walk ¼ mile, stand for 2 hours daily, sit for 2 hours daily, stand and sit intermittently for 4 hours daily, bend/stoop occasionally, had a significant gross motor restriction and could reasonably be expected to lift/carry 10 pounds occasionally. Finally, the report revealed appellant’s symptoms, treatment and medication relating to her diabetes.

Appellant submitted April 30 and May 1, 1996 mental functioning work sheets from Mr. Bruce Roberts, M.A., a counselor. In his report, Mr. Roberts diagnosed PTSD, depressive disorder, insulin-dependent diabetes, traumatic menopause, poverty, joblessness and health problems. He opined that appellant’s condition stemmed from the traumatic electrocution she sustained on the job working for the employing establishment. He stated that the employment injury “appears to have led to loss of stability in her diabetes and other systemic problems.” Mr. Roberts discussed appellant’s symptoms and his clinical impressions.

Appellant submitted a narrative statement dated May 30, 1996 describing the November 18, 1993 employment incident and her subsequent work and medical histories. Appellant also submitted a chronological description of her November 18, 1993 employment injury and subsequent work history, dates and nature of medical treatment received, symptoms and actions by the Office regarding her claim. Appellant further submitted an undated billing statement from Deaconess Hospital and diabetes monitoring records dated March 11 to May 14, 1996.

Appellant also submitted a Social Security Administration decision dated November 21, 1996 accepting her claim for social security disability benefits. The administrative law judge found that appellant’s depression, anxiety and diabetes mellitus rendered her disabled, as defined in the Social Security Act,¹ since November 18, 1993.

By decision dated September 22, 1997, the Office denied appellant’s recurrence of disability claim on the grounds that the evidence of file failed to establish that the alleged recurrence was causally related to her November 18, 1993 employment injury. The Office found that the evidence submitted from Mr. Roberts had no probative value because he is not a

¹ 20 C.F.R. §§ 404.1520(d) and 416.920(d).

physician as defined under the Federal Employees' Compensation Act.² The Office further found that the medical evidence submitted from Drs. Colpak and Rosenzweig failed to address the issue of whether appellant's alleged recurrence of disability was causally related to her November 18, 1993 employment injury.

By letter dated November 29, 1997, appellant requested an oral hearing before an Office hearing representative.

Appellant submitted a letter, dated January 16, 1998, from Dr. Rosenzweig asserting that appellant had numerous medical problems including insulin-dependent diabetes, anxiety stress disorder, closed angle glaucoma, neuropathy, diabetic retinopathy and the sequelae of her November 18, 1993 electrocution. He further noted that appellant's diabetes control was suboptimal and that her blood glucose level fluctuated regularly. Dr. Rosenzweig opined that appellant's attempts to return to work were unsuccessful because of "difficulty controlling her diabetes and the general sequelae of an electrocution accident."

On May 20, 1998 an oral hearing was held before an Office hearing representative. Appellant testified that, prior to her injury, she was a controlled insulin-dependent diabetic without complications or hospitalizations. Appellant reviewed the history of her November 18, 1993 employment injury as well as her work duties at the employing establishment. She testified that she was released to work in April 1994 by Dr. Rosenzweig but he thought it was too soon as her diabetes was brittle and moderately controlled. Appellant stated that, when she returned to work, she was assigned to a disaster in Maine for 10 or 12 days and was responsible for a "very nothing job" to limit her stress. Next, appellant attended a training seminar in Maryland where she "started to deteriorate" and "fell apart." She further testified that she was next assigned to a job in Georgia for 18 days in July 1993 but was unable to work every day and hid in her hotel room. Appellant stated that she did not work again, lost her apartment and applied for welfare and social security disability insurance. She remarked that the employing establishment called her about 10 times to work but she was unable to do so because her diabetes was out of control. Appellant testified that Dr. Rosenzweig treated her diabetes and related problems with her legs and eyes. She further testified that Mr. Roberts was her "lifeline" and that her condition improved under his care. Appellant stated that she would like to resume work for the employing establishment and that Dr. Rosenzweig believed that she might be able to do so in a nonemergency capacity. Appellant testified that she did not file her recurrence of disability claim until 1996 because her mental state prevented her from doing so. She explained that gathering the necessary paperwork was overwhelming and she was unable to leave her home to go food shopping for over a year. A report from Dr. Rosenzweig was received as exhibit one.

A chronological description of appellant's medical and work histories subsequent to the November 18, 1993 employment incident, dated May 20, 1998, was entered into the record.

By decision dated August 19, 1998, the Office hearing representative affirmed the September 22, 1997 decision on the basis that appellant failed to establish that her alleged recurrence of disability was causally related to her November 18, 1993 employment injury.

² 5 U.S.C. §§ 8101-8193.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or after June 5, 1996 causally related to her November 18, 1993 employment injury.

The employee has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the original injury.³ Such proof must include medical evidence that the claimed recurrence of disability is causally related to the accepted employment injury.⁴ As part of this burden, appellant must furnish 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 employment factors and supports that conclusion with sound medical reasoning.⁵ Whether a particular employment incident causes disability is a medical issue which must be resolved by competent rationalized medical opinion evidence.⁶ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.⁷

In this case, the Office accepted appellant's claim for electrocution and PTSD sustained on November 18, 1993. Therefore, the remaining issue is whether appellant's alleged recurrence of disability on or after June 18, 1994 is causally related to her November 18, 1993 employment injury.

The evidence of record does not contain rationalized medical opinion evidence, based on a complete and accurate factual and medical history, showing that appellant's alleged recurrence of disability is causally related to her November 18, 1993 employment injury. In his June 28, 1996 report, Dr. Colpak diagnosed an organic mental disorder, NOS, major depression, panic disorder with agoraphobia, chronic PTSD, ADD, continuous alcohol abuse, polysubstance abuse in remission, narcissistic personality disorder and multiple medical conditions. He failed to specifically address the issue of whether appellant's conditions are causally related to her November 18, 1993 employment injury. The mental functioning work sheet by Dr. Colpak, dated June 28, 1996, addressed appellant's ability to perform at work explained the manifestations of her condition but also failed to address the causal relationship issue. Dr. Rosenzweig's January 16, 1998 report described the history of appellant's condition and her attempts to return to work, but it failed to address the relationship between her employment injury and the alleged recurrence of injury. The blood sugar reports from Dr. Rosenzweig dated January 31, 1994 to May 17, 1996, did not refer to appellant's medical history or address the causal relationship issue. Moreover, the blood sugar reports were not contemporaneous with appellant's alleged recurrence of disability. Similarly, the undated, unsigned medical report for the Massachusetts Department of Public Welfare is of no probative value as it was not signed by

³ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

⁴ *See id.*

⁵ *Id.*

⁶ *See Buddy L. Spaulding*, 40 ECAB 1002, 1007 (1989).

⁷ *Alfredo Rodriguez*, *supra* note 3.

a qualified physician and was not contemporaneous with appellant's alleged recurrence of disability as it was based on an April 30, 1995 examination. Mr. Roberts' April 30, 1996 report has no probative value as he is not a physician within the meaning of the Federal Employees' Compensation Act and, therefore, is not qualified to render a medical opinion regarding causal relationship, a medical issue.⁸ Appellant's May 30, 1996 narrative statement describing her November 18, 1993 employment injury and subsequent work and medical histories, as well as the chronology of events addressing the same, are not medical opinion evidence and, therefore, have no probative value in determining whether the alleged recurrence of disability is causally related to her accepted employment injury. Similarly, appellant's May 20, 1998 statement describing the chronology of medical and employment-related events from November 18, 1993 to May 20, 1998 has no probative value. Appellant's May 20, 1998 hearing testimony provided her view of the factual history of her November 18, 1993 employment injury and alleged recurrence of disability, but appellant's statements regarding causal relationship are of no probative value as appellant is not qualified to render an opinion regarding medical issues.⁹ The Social Security Administration decision dated November 21, 1996 is not determinative with regard to appellant's eligibility for benefits under the Federal Employees' Compensation Act Federal Employees' Compensation Act.¹⁰ Evidence submitted prior to the Office's March 4, 1994 acceptance of appellant's traumatic injury claim dated is prior to appellant's June 12, 1996 recurrence of disability claim and has no probative value with regard to her disability on or after that date.

⁸ In relevant part, section 8101(2) of the Federal Employees' Compensation Act states: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law." 5 U.S.C. § 8101 (2); *see also Arnold A. Alley*, 44 ECAB 912 (1993) (finding that a state-licensed professional counselor who was not a clinical psychologist was not a "physician" within the meaning of the Federal Employees' Compensation Act and, therefore, was not competent to render a medical opinion on the issue of causal relationship, a medical issue.)

⁹ *See James A. Long*, 40 ECAB 538 (1989).

¹⁰ *See Daniel DeParini*, 44 ECAB 657 (1993).

The decision of the Office of Workers' Compensation Programs dated August 19, 1998 is affirmed.¹¹

Dated, Washington, D.C.
June 20, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ Accompanying her request for an appeal before the Board, appellant submitted additional factual evidence. Evidence may not be reviewed for the first time on appeal that was not before the Office at the time it issued its August 19, 1998 decision, the final decision in the case. *George A. Hirsch*, 47 ECAB 520, 526 (1996); *see also* 20 C.F.R. § 501.2(c).