

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DANIEL W. POLANSKEY and DEPARTMENT OF THE ARMY,  
ARMY MOBILITY EQUIPMENT RESEARCH & DEVELOPMENT COMMAND,  
FORT BELVOIR, VA

*Docket No. 98-2030; Submitted on the Record;  
Issued September 18, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for an attendant's allowance.

The case has been on appeal previously.<sup>1</sup> In an April 9, 1984 order, the Board granted the motion of the Director of the Office to remand the case. The Director stated that the Office had not responded timely to appellant's request for reconsideration of the Office's decision to terminate his compensation for a cervical strain arising from a February 12, 1973 employment injury and had therefore deprived him of an opportunity to seek an appeal on the merits of the case. He indicated that on remand the Office would issue a *de novo* decision. In an April 22, 1985 decision, the Board found that the Office had not met its burden of proof in terminating appellant's temporary total disability compensation. The Office subsequently accepted that appellant had an emotional disorder as a consequence of employment injury. In a July 20, 1994 decision, the Board affirmed the decision of an Office hearing representative who found that the Office had properly suspended appellant's compensation for refusal to undergo a medical examination as directed by the Office. The Office subsequently reinstated appellant's compensation after he underwent a medical examination.

In an August 28, 1997 report, Dr. Nicholas G. Colletti, a Board-certified family practitioner, indicated that he had treated appellant for approximately 25 years. Dr. Colletti noted that appellant suffered from severely disabling chronic cervical sprain; severe cervical osteoarthritis and disc space narrowing at C5-6 and C6-7, compatible with discogenic disease; and severe emotional disorders, particularly severe clinical depression. He stated that appellant had severe chronic cervical pain as a result of his employment injury. Dr. Colletti noted

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<sup>1</sup> Docket No. 94-962 (issued July 20, 1994); Docket No. 85-448 (issued April 22, 1985); Docket No. 84-612 (Order Granting Remand issued April 9, 1984). The history of the case is contained in the prior decisions and is incorporated by reference.

appellant had severe neck pain accompanied by headaches and was only able to walk and move with great difficulty and pain. He reported that appellant also had a chronic tremor in his arms, which made fine motion and, occasionally, gross motor coordination very difficult or impossible. Dr. Colletti noted appellant suffered from a crippling clinical depression, which was caused by his disability and pain. He stated that he had recently become aware that appellant might be eligible for in-home care to assist him with bathing, dressing, feeding, ambulation and administration of medications, among other services. Dr. Colletti commented that he stated for many years that appellant was totally disabled and indicated that appellant would benefit greatly from services of an in-home care provider to assist him.

The Office requested additional information on appellant's need for an attendant. In an October 24, 1997 form report, Dr. Colletti indicated that appellant could walk and feed himself unassisted, but needed assistance for travel, dressing, bathing, getting out of bed, getting out of doors and taking exercise. He stated that an attendant would help appellant rise, wash, dress and eat. The form asked for an outline of all other facts with regard to appellant's behavior or activity which were pertinent to the need for an attendant. Dr. Colletti responded that appellant had severe gross tremors of the arms. In a November 13, 1997 decision, the Office denied appellant's request for an attendant's allowance on the grounds that Dr. Colletti had stated that the need for an attendant was due to severe gross tremors in the arms which was not a work-related condition. In a February 24, 1998 decision, the Office reissued the November 13, 1997 decision due to a technical flaw in the original November 13, 1997 decision.<sup>2</sup>

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

The Federal Employees' Compensation Act<sup>3</sup> provides for an attendant's allowance under section 8111(a),<sup>4</sup> which states:

"The Secretary of Labor may pay an employee who had been awarded compensation an additional sum of not more than \$1,500.00 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind or has lost the use of both hands or both feet, or is paralyzed and unable to walk or because of other disability resulting from the injury making him so helpless as to require constant attendance."

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<sup>2</sup> The Office noted that one page of the November 13, 1997 decision contained the name and docket file number of a claimant other than appellant.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8111(a).

Under this provision, the Office may pay an attendant's allowance upon finding that a claimant is so helpless that he or she is in need of constant care.<sup>5</sup> The claimant is not required to need around-the-clock care. He or she only has to have a continually recurring need for assistance in personal matters. The attendant's allowance, however, is not intended to pay an attendant for the performance of domestic and housekeeping chores such as cooking, cleaning, doing the laundry or providing transportation services. It is intended to pay an attendant for assisting in his or her personal needs such as dressing, bathing, or using the toilet.<sup>6</sup> Additionally, a claimant bears the burden of proof in establishing by competent medical evidence that he or she requires attendant care within the meaning of the Act.<sup>7</sup> An attendant's allowance is not granted simply upon request of a disabled employee or upon the request of a physician. The need for attendant care must be established by rationalized medical opinion evidence.<sup>8</sup>

In the initial request for an attendant, Dr. Colletti indicated that appellant had severe cervical pain due to his employment injury and had a crippling clinical depression, which had been accepted as causally related to the employment injury. He noted appellant was able to walk and move only with great difficulty and spent most of his days in bed. Dr. Colletti commented that he had only recently become aware that appellant might be eligible for in-home care to assist with bathing, dressing, feeding, ambulation and taking medications. He stated that appellant would greatly benefit from the services of an in-home care provider to help with these activities and he was totally and permanently disabled. In the subsequent form report, Dr. Colletti indicated that appellant needed assistance with dressing, bathing, rising from bed and taking exercise. He therefore submitted medical evidence that appellant was totally disabled due to his employment injury and consequential injuries and needed assistance in personal needs such as bathing, dressing and taking medication.

The Office found that Dr. Colletti had concluded appellant needed an attendant's allowance solely because of the tremors in his arms, which had not been accepted as related to the employment injury. Dr. Colletti's initial report, however, indicated that appellant was totally disabled due to severe cervical pain and his clinical depression and that the tremors of his arms was only a part of appellant's disability. The Office did not seek clarification from Dr. Colletti on whether the tremors in appellant's arms were caused by the employment injury or were a consequence of the treatment appellant received for the employment injury.

Dr. Colletti's report lacks sufficient detailed rationale to establish that appellant's need for an attendant's allowance is causally related to the effects of the employment injury. His reports, however, are not contradicted by any other medical evidence of record. Dr. Colletti's reports therefore are sufficient to require further development of the record by the Office.<sup>9</sup> The case, therefore, will be remanded for such development. On remand, the Office should request

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<sup>5</sup> *Grant S. Pfeiffer*, 42 ECAB 647 (1991).

<sup>6</sup> *Bonnie M. Schreiber*, 46 ECAB 989 (1995).

<sup>7</sup> *See Cynthia S. Snipes (Edward S. Snipes)*, 33 ECAB 379 (1981).

<sup>8</sup> *See Kenneth Williams*, 32 ECAB 1829 (1981).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989).

clarification from Dr. Colletti on the cause of the tremors in appellant's arms and should request a more detailed explanation on how the effects of the employment injury placed appellant in need of assistance in his personal matters of care. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated February 24, 1998 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC  
September 18, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member