

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. LOWE and DEPARTMENT OF VETERANS AFFAIRS,
SHERIDAN VETERANS HOSPITAL, Sheridan, WY

*Docket No. 99-1507; Submitted on the Record;
Issued January 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective November 7, 1998; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on December 23, 1998.

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation.

Appellant, an accounting technician, filed a claim on April 24, 1987 alleging on that date she injured her neck, shoulder and finger when a window she was opening slammed shut. The Office accepted appellant's claim for contusion right hand, strain right trapezius and aggravation of congenital abnormality of the brachial plexus. The Office expanded appellant's claim to include conversion disorder on June 5, 1990.

On September 11, 1998 the Office notified appellant that it proposed to terminate her compensation. By decision dated October 14, 1998, the Office terminated appellant's compensation effective November 7, 1998. Appellant requested reconsideration on November 22, 1998 and submitted additional evidence. By decision dated December 23, 1998, the Office declined to reopen appellant's claim on the merits finding that the evidence submitted was repetitious.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to justify termination or modification of compensation.¹ 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

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁴

In this case, the Office accepted that appellant sustained several physical conditions as a result of her April 24, 1987 employment injury, including surgery on June 1, 1988. Following her surgery, appellant lost the use of her right upper extremity. The Office referred appellant for a second opinion evaluation with Dr. Robert C. Murphy, a Board-certified psychiatrist. In his May 24, 1990 report, Dr. Murphy diagnosed conversion disorder as the cause of appellant's paralyzed right arm. He stated:

“The March 24, 1987 work incident functioned as a trigger to the development of her arm paralysis. Because she seems to have been an over-conscientious worker, it is possible that she would not have developed a disabling psychiatric disorder without some such incident.”

Following this report, Dr. Murphy became appellant's treating psychiatrist.

Appellant's physician, Dr. Gerald L. Baker, a Board-certified orthopedic surgeon, noted that appellant's right upper extremity was “functionless” and stated that appellant had a severe underlying emotional condition which resulted in a lack of function in her right upper extremity.

The Office referred appellant for second opinion evaluations on January 27, 1998. In report dated March 11, 1998, Dr. Jeffrey Hrutkay, a Board-certified orthopedic surgeon, noted appellant's history of injury, medical treatment and performed a physical examination. He responded to specific questions from the Office finding that subsequent to the surgery in June 1988 appellant developed a conversion disorder resulting in a useless right upper extremity. Dr. Hrutkay stated that there was motor function on electromyogram and nerve conduction velocity testing, but that appellant was completely unable to use her right upper extremity. He found that appellant had no objective findings and no work related musculoskeletal conditions in her right upper extremity. Dr. Hrutkay stated that appellant was not disabled orthopedically and that there was no physiological reason for appellant's inability to utilize her right upper extremity.

Dr. David McCann, a Board-certified psychiatrist and Office second opinion physician, examined appellant on July 7, 1998. Dr. McCann noted appellant's history of injury, family history and results of psychological testing. He diagnosed conversion disorder, major depressive disorder, anxiety disorder and eating disorder. Dr. McCann stated that appellant's right arm paralysis was a conversion disorder which occurs when people are unable to deal with their emotions and commonly want to avoid one situation and receive the benefits of another. He

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

related that the paralysis with conversion disorder is caused entirely by psychological factors not external factors. Dr. McCann added: "However, in the classic understanding of the problem, it may be influenced by motivation. In this case, because of the patient's chronically disturbed emotional state, she is not motivated to go to work."

In response to specific questions from the Office, Dr. McCann restated that conversion disorder was caused entirely by psychological factors and not by external events. He concluded that appellant's right upper extremity paralysis resulting from conversion disorder was not caused by one of appellant's work injuries. Dr. McCann stated that appellant was totally disabled but that this disability was due to psychological conditions which were not work related.

The Board finds that Dr. McCann's report is not sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits. The Office accepted that appellant developed a conversion disorder as a consequence of her accepted employment-related physical condition. Despite his theories regarding the cause and motivation behind conversion disorders, Dr. McCann did not state that appellant's conversion disorder had ceased or that there are no residuals causally related to this condition. Without affirmative medical evidence explaining why appellant's conversion disorder and any medical residuals had ceased, the Office has failed to meet its burden of proof to terminate appellant's compensation benefits.⁵

The December 23 and October 14, 1998 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, DC
January 19, 2001

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁵ Due to the disposition of this issue, it is not necessary for the Board to address whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on December 23, 1998.

Michael J. Walsh, Chairman, dissenting:

I respectfully dissent in this case from a finding by the majority that a conflict in the medical evidence exists requiring appointment of a referee. My review of the evidence dictates that termination of benefits be upheld and that the Office Workers' Compensation Programs' refusal to reopen based on a petition for reconsideration should be affirmed. Dr. Robert C. Murphy, a Board-certified psychiatrist and Office referral physician, stated in a May 24, 1990 report that appellant had conversion disorder affecting her right arm and that a March 24, 1987 work incident functioned as a trigger to its development. He qualified it by stating, "it is possible she would not have developed a disabling disorder without some such incident." In other words it could have occurred with or without some such event.

On March 11, 1998 eight years later, Dr. Jeffrey Hrutkay, a Board-certified orthopedic surgeon and Office referral physician, reported no work-related conditions in appellant's right upper arm and that there was no psychological reason for appellant's inability to use her right arm.

A third, second opinion physician, Dr. David McCann, a Board-certified psychiatrist, reexamined appellant on July 7, 1998 and diagnosed conversion disorder, major depression disorder, anxiety disorder and eating disorder, none of which was work related.

Her treating physician, Dr. Gerald L. Baker, a Board-certified orthopedic surgeon, in a report offered November 20, 1996, stated that after her injury in 1987 she developed a "functionless" right upper extremity. He noted that she had developed repetitious motion syndrome in her left upper extremity and "suspected" this was due to overuse of her right extremity. Dr. Baker opined that severe emotional response to injuries is considered "almost a normal phenomenon or response." He found that, because of her upper extremity problems, she could not return to work.

On October 14, 1998 the Office, based on the contemporaneous medical evidence of Drs. Hrutkay and McCann terminated compensation. I believe the Office met its burden to terminate based on the opinions of these two physicians.⁶

Subsequent to termination, appellant requested reconsideration and offered in evidence, the reports of Drs. Murphy, Baker and Meredith Miller, a Board-certified neurosurgeon.

Dr. Baker, the treating doctor stated in an October 22, 1998 opinion "even at the time of that diagnosis (November 20, 1996 -- functionless upper extremity) no one was able to provide an absolute or concrete answer as to why the limb had become functionless. "Potential psychological\emotional functions were a consideration." This statement serves to confirm a speculative diagnosis in 1996. Further, Dr. Baker pointed out even though there is an inability "to explain the functionless status of her right upper extremity" benefits should still be paid. This report is clearly deficient in establishing a basis for a "conflict" in medical opinion,

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990) the Office carries the burden of proving disability has ceased.

requiring the appointment of a referee physician, as urged by the majority. As further, evidence on reconsideration, a November 2, 1998 report of Dr. Murphy was offered. In toto it reads:

“[Appellant] was a patient of mine before I retired. She tells me your office wants information from me about her employability.

“She is totally work disabled with depression, long-standing hysterical paralysis of her right arm and a phobia which makes it difficult for her to venture outside her home.

This report 8½ years after the original report makes no comment as to causation, does not reflect any examination was made and would be insufficient to create a conflict with the medical evidence of record at the time of the termination.

Finally, the report of Dr. Miller dated October 26, 1998 was offered. Her impression was that appellant was overweight, hypertensive and had some emotional problems including “possible” conversion reaction. Dr. Miller did not address causation and was speculative on the issue of conversion reaction.

I do not believe any or all of these reports are sufficient to create a conflict with the reports rendered in support of the termination.

I would therefore affirm the Office’s October 14, 1998 decision terminating compensation and its December 23, 1998 decision refusing to reopen the case for a merit review.

Michael J. Walsh
Chairman