

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEGGY L. SAMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

*Docket No. 99-1724; Submitted on the Record;
Issued March 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

The Board has duly reviewed the case on appeal and finds that the Office did not meet its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

On January 8, 1990 appellant, then a 37-year-old clerk/stenographer, filed a traumatic injury claim alleging that on January 4, 1990 she sustained right wrist and forearm pain and numbness while typing. She did not immediately stop work. On March 3, 1990 appellant filed an occupational disease claim alleging that constant repetitive motions of word processing caused carpal tunnel syndrome or overuse syndrome of the right wrist. On June 6, 1990 the Office accepted that appellant sustained a right wrist strain. The accepted condition was later expanded to include right carpal tunnel syndrome and bilateral upper extremity chronic pain syndrome. She missed intermittent periods of work until January 13, 1995 and has not worked since.

On June 7, 1997 the Office referred appellant, together with the medical record, a statement of accepted facts and a set of questions, to Dr. Jeffrey Sabin, a Board-certified orthopedic surgeon and Dr. Laura Klein, a Board-certified psychiatrist, for second opinion evaluations. Based on these reports, by letter dated October 6, 1997, the Office proposed to terminate appellant's compensation benefits. She submitted additional medical evidence. By

¹ See *Patricia A. Keller*, 45 ECAB 278 (1993).

decision dated November 10, 1997, the Office terminated appellant's compensation effective December 7, 1997, finding that the weight of the medical evidence rested with the opinions of Drs. Sabin and Klein. Appellant, through counsel, requested a hearing, that was held on July 22, 1998 and submitted additional medical evidence to the Office. By decision dated February 22, 1999, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The relevant medical evidence includes form reports from Dr. Timothy O. Hall, Board-certified in physical medicine and rehabilitation, who began treating appellant in 1992. He opined that appellant could not work and diagnosed, *inter alia*, overuse syndrome, which involved many different types of pain and sympathetic dysfunction. In a June 5, 1996 letter, Dr. Hall advised that he did not think appellant was capable of returning to regular work due to her physical limitations and psychological dysfunction. In a July 25, 1996 report, he stated:

“The relationship between [appellant] and her employer has deteriorated to the point where her return to work is not only a physical strain, but an emotional one as well. At this point, [her] psychological situation worsens intolerably from both a physical and emotional perspective when considering returning to work in her previous job.

“As I have opined in the past, [she] is not able to return to her previous place of employment. Whether or not she is able to return to any employment ever is another issue. I do not, however, think she is going to return to her work at the [employing establishment].

“Again, the combination of physical pain and emotional response is simply overwhelming for [her]. I think it would be in everyone's best interests to simply accept the fact [that she] is not going to return to work and try to make appropriate arrangements.”

In a report also dated July 25, 1996, Dr. P. Michael Moffett, a Board-certified psychiatrist, advised that he had treated appellant since December 8, 1995 and diagnosed a moderately severe major depression caused by “her sympathetically maintained pain disorder.” Dr. Moffett advised that appellant's pain was not expected to improve and found that she could not work due to the psychological limitations imposed by her major depression.

Dr. Sabin provided a report dated August 12, 1997, in which he opined that chronic pain, which was largely psychological in nature, constituted the majority of appellant's problem. He stated that she demonstrated no objective evidence of wrist strain, carpal tunnel syndrome, overuse syndrome or reflex sympathetic dystrophy. He concluded that there was no physical reason why appellant could not return to light duty. Dr. Sabin noted that there appeared to be a marked psychological overlay, which could make it impossible for her to return to work.

Dr. Klein provided a report dated September 24, 1997, in which she diagnosed pain disorder associated with both psychological factors and a general medical condition and dysthymic disorder. In discussing appellant's pain disorder, she advised that appellant's preexisting dysthymic disorder played a greater role in maintaining her pain and could be contributing to her difficulty in returning to work. Dr. Klein concluded that there was no

psychiatric reason that prevented appellant from returning to work, but deferred evaluation of her physical work restrictions to a neurologist.

In a report dated November 1, 1997, Dr. Hall advised that appellant had a complex regional pain disorder, noting that there can be many symptoms due to a centralized pain syndrome which have no objective peripheral findings and reiterated his conclusion that appellant “definitely” had centralization of her chronic pain syndrome from diagnoses of overuse syndrome, tendinitis/inflammatory disease, entrapment neuropathies and neurogenic pain. He opined that appellant’s psychological problems were caused by her employment injury. In a January 6, 1998 report, Dr. Hall again diagnosed sympathetic pain, diffuse myofascial pain, mood disturbance and sleep disturbance.

By report dated November 3, 1997, Dr. Moffett noted that he had reviewed Dr. Klein’s report. He disagreed with her conclusions and opined that appellant’s pain disorder was “entirely explained by her medical condition.”

Dr. Russell A. Parker, an osteopathic physician who had been treating appellant with acupuncture, provided a December 8, 1997 report, in which he opined that appellant continued to have “life-altering” pain caused by her employment injury.

When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,² to resolve the conflict in the medical opinion.

In this case, the Office accepted that appellant sustained carpal tunnel syndrome and an employment-related bilateral upper extremity chronic pain syndrome. Appellant’s treating psychiatrist, Dr. Hall, opined that the combination of pain and appellant’s emotional response overwhelmed her and she could not return to work at the employing establishment. Her treating psychiatrist, Dr. Moffett, advised that her pain was not expected to improve and that she could not work due to the depression caused by her pain disorder. Dr. Sabin, who provided an orthopedic evaluation for the Office, opined that there were no physical symptoms or findings to disable appellant from returning to light duty. Dr. Klein, who provided a psychiatric evaluation for the Office, advised that, other than self-imposed reasons, there was no psychiatric basis preventing appellant from returning to work.

The Board finds that the reports of appellant’s treating physicians, Drs. Hall and Moffett and the physicians who provided second opinions for the Office, Drs. Klein and Sabin, are of equal value. There is a conflict on the issue of whether appellant continues to be disabled from her employment-related wrist and chronic pain conditions. Consequently, the Office did not meet its burden of proof in terminating appellant’s compensation effective December 7, 1997.³

² 5 U.S.C. § 8123(a).

³ See *Gail D. Painton*, 41 ECAB 492 (1990). To resolve this conflict, the Office should have referred the case record, including all test results and a statement of accepted facts to a Board-certified specialist for resolution of the conflict. It is also recommended that the files for the instant case number 13-1114296 and that for number 13-870867 be doubled.

The decision of the Office of Workers' Compensation Programs dated February 22, 1999 is hereby reversed.

Dated, Washington, DC
March 23, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member