

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NADER G. MICHAEL and U.S. POSTAL SERVICE,
POST OFFICE, Laguna Niguel, CA

*Docket No. 99-1125; Submitted on the Record;
Issued May 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he has any disability due to his accepted employment injury of somatoform pain disorder.

On February 1, 1995 appellant, then a 41-year-old mail carrier, filed a traumatic injury claim for a back injury sustained on January 28, 1995 when he fell while carrying a heavy tray. The Office of Workers' Compensation Programs accepted the claim for thoracic strain.

On September 18, 1995 appellant filed a traumatic injury claim for a back injury sustained on August 17, 1995 when he was unloading 10 skids from a truck to floor level. The Office accepted the claim for cervical disc disorder and cervicgia. He worked intermittently beginning October 25, 1995 and was working approximately 16 hours per week as of February 11, 1997.

In an October 1, 1997 report, Dr. Robert C. Sutter, Jr., noted that appellant was back to working four hours per day four days a week. A physical examination revealed continued "moderate spasm in the cervical paraspinal muscles bilaterally, worse on right side," symmetrical strength in the upper extremities, lack of five centimeters touching chin to chest and appellant "still feels that he perceives pinprick, vibration and temperature less well in the left hand and arm as compared with the right." Dr. Sutter concluded that appellant continued to be symptomatic and that appellant could not increase his working schedule.

In a December 2, 1997 report, Dr. Robert Moore, a second opinion Board-certified psychiatrist and neurologist, concluded that appellant was capable of working full time with restrictions on bending and lifting. Dr. Moore indicated that appellant had a normal neurological examination, normal diagnostic studies and that appellant "presents primarily with subjective symptomatology."

On December 22, 1997 the Office issued a notice of proposed termination of compensation on the basis that appellant was no longer disabled due to his accepted employment injury based upon Dr. Moore's opinion.

In a decision dated February 4, 1998, the Office finalized the termination of appellant's compensation benefits.

On February 24, 1998 appellant requested an oral hearing and submitted evidence in support of his request.

In a February 21, 1998 report, Dr. Sutter noted that he had reviewed Dr. Moore's report and disagreed that appellant had no employment-related disability. Dr. Sutter opined that appellant had somatoform disorder which "directly grew out of the injury that he suffered to his back." Regarding appellant's work capability, Dr. Sutter noted:

"Although I think he should start resuming normal activities as much as possible, I think the pain that he has does limit his activities. It also frightens him and this produces additional pain, tension and results in a vicious feedback cycle.

"The reason that I have encouraged [appellant] to do his part-time work, is that I think until he can convince himself that he can do these things without causing permanent damage, that he will not be able to move past this current pain cycle."

By decision dated November 20, 1998, the hearing representative affirmed the February 4, 1998 decision terminating compensation benefits, but remanded due to a conflict in the medical opinion evidence regarding the issue of the diagnosis of somatoform pain disorder and its relationship to appellant's accepted employment injury.

On December 22, 1998 the Office referred appellant, together with a list of questions, medical records and statement of accepted facts, to Dr. David J. Sheffner, a Board-certified psychiatrist and neurologist, to resolve the conflict in the medical opinion evidence regarding appellant's somatoform pain disorder. In a January 14, 1999 report, Dr. Sheffner diagnosed somatoform pain disorder and concluded that his "quantitative disability rating stemming from his somatoform pain disorder is most appropriately and accurately made by Dr. Sutter. Dr. Sheffner concluded that appellant was "psychiatrically functioning within his normal limits in his work as a real estate broker" and that appellant "conceives of his disability in orthopedic (and not psychiatric) terms."

By decision dated February 3, 1999, the Office accepted the condition of somatoform pain disorder, but found that appellant required no medical treatment or had any disability due to this condition.

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

When an employee claims a continuing disability causally related to an accepted employment injury, he or she 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 accepted injury. As part of this burden, appellant must submit rationalized medical

evidence based on a complete and accurate factual and medical background showing causal relationship.¹ The opinion of the physician must be based on a complete factual and medical background of the claimant,² must be one of reasonable medical certainty³ 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.⁴

The Office correctly identified that there was a conflict of medical opinion on the question of whether appellant had any disability due to her accepted employment injury, which precluded him from working full time. An Office referral physician, Dr. Moore concluded that appellant had no continuing disability due to his accepted employment injury and was capable of working full time. Appellant's attending physician, Dr. Sutter, stated in a February 21, 1998 report, that he had reviewed Dr. Moore's report and disagreed that appellant had no continuing disability and could work full time.

To resolve this conflict of medical opinion, the Office referred appellant, the case record and a statement of accepted facts to Dr. Sheffner. In a January 14, 1999 report, Dr. Sheffner diagnosed somatoform pain disorder and concluded that his "quantitative disability rating stemming from his somatoform pain disorder is most appropriately and accurately made by Dr. Sutter and indicated that appellant was "psychiatrically functioning within his normal limits in his work as a real estate broker."

The Board has held that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion evidence, the opinion of such specialist, if sufficiently well rationalized and based on a proper medical background, must be given special weight.⁵ The Board has also held that in a situation where the Office secures an opinion from an impartial medical specialist and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.⁶

Although Dr. Sheffner concurred that appellant's somatoform pain disorder was related to his accepted employment injury and stated that appellant was "psychiatrically functioning within his normal limits in his work as a real estate broker." Dr. Sheffner's report does not directly answer the question of whether an employment-related psychological or emotional condition prevented appellant from working full time. The case will be remanded to the Office for it to obtain a supplemental report from Dr. Sheffner answering this question and providing rationale for the answer.

¹ See *Armando Colon*, 41 ECAB 563 (1990).

² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

³ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁴ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁵ *Solomon Polen*, 51 ECAB ____ (Docket No. 97-1794, issued March 1, 2000).

⁶ *Roger W. Griffith*, 51 ECAB ____ (Docket No. 98-1080, issued May 2, 2000).

The decision of the Office of Workers' Compensation Programs dated February 3, 1999 is hereby set aside and the case remanded for further development consistent with the above opinion.

Dated, Washington, DC
May 21, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member