

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHRISTINE L. WHITAKER and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Jacksonville, FL

*Docket No. 02-489; Submitted on the Record;  
Issued July 29, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant's emotional condition is causally related to her employment injury.

On May 20, 1994 appellant, then a 32-year-old distribution clerk, filed a claim for pain in her hands, wrists and arm. She related her pain to her work in operating a letter sorting machine and casing mail. Appellant stated that she first felt discomfort in 1992 and received treatment from the employing establishment's medical unit. In December 1993 the pain increased while she was performing considerable overtime on the letter-sorting machine during the Christmas season rush. The pain did not cease after Christmas. She was placed on light duty, underwent further medical treatment and stopped working on April 13, 1994.

The Office of Workers' Compensation Programs accepted appellant's claim for bilateral epicondylitis and began payment of temporary total disability compensation effective April 23, 1994. The Office subsequently accepted appellant's claims for bilateral carpal tunnel syndrome and bilateral thoracic outlet syndrome.

On October 11, 1994 appellant underwent surgery for release of the left carpal tunnel. On February 28, 1995 appellant underwent surgery for release of the right carpal tunnel.

In an October 3, 1995 report, Dr. Akua Owusu, a Board-certified psychiatrist, stated that appellant was self-referred due to depression. Dr. Owusu diagnosed major depression of moderate severity. He commented that appellant had chronic pain and some disability from ongoing medical problems which appeared to be contributing to her depression.

In a January 9, 1996 report, Dr. Eduardo A. Sanchez, a Board-certified psychiatrist, indicated that he could not state appellant's psychological problems were related to her orthopedic and neurological problems. Dr. Sanchez stated that appellant had a fragile psychological equilibrium and remaining idle due to her employment injury and the use of muscle relaxants might have encouraged further regression. He commented that appellant was

quite capable of exaggerating her physical symptoms. Dr. Sanchez stated that she had already become entrenched in using somatic complaints to deal with her personal distress. He diagnosed a major depression in partial remission. Dr. Sanchez indicated that appellant might have a personality disorder not otherwise specified. He concluded that appellant appeared to be psychologically impaired sufficiently to be unable to return to her work position. Dr. Sanchez added, however, that from a psychiatric standpoint he could not consider appellant's condition as being related to her employment injury.

The Office referred appellant, together with a statement of accepted facts and the case record, to resolve a conflict in the medical evidence on the status of appellant's physical condition and her ability to return to work. In a September 11, 1998 report, Dr. Abraham Rogozinski, a Board-certified orthopedic surgeon, diagnosed status post bilateral carpal tunnel release, history of clinical depression and fibromyalgia. Dr. Rogozinski commented that there was no clinical evidence for lateral epicondylitis. He stated that appellant's work-related bilateral carpal tunnel syndrome had not resolved but was in a steady state condition. Dr. Rogozinski indicated that the other conditions were not related to the employment injury. He reported that appellant could not return to her work as a distribution clerk or the physical activities of her date-of-injury job. Dr. Rogozinski stated that appellant's cervical condition was not related to a work injury. He indicated that he did not believe appellant had bilateral epicondylitis, carpal tunnel release syndrome or thoracic outlet syndrome. Dr. Rogozinski stated that, other than repetitive keyboard work, he would not place significant restrictions on appellant. He commented, however, that he would presume, based on his evaluation, that appellant's depression precluded her from maintaining full-time employment.

In a February 19, 1999 letter, the employing establishment offered appellant a position as a modified distribution clerk, with a limitation of repetitive wrist movements to 30-minute spans each hour. In a February 23, 1999 response, appellant indicated that she did not either accept or reject the job offer but indicated that she would wait for the Office's determination of whether the job offer was suitable. In a February 26, 1999 letter, the Office informed appellant that it found the position suitable for her. The Office warned that refusal to accept the job without demonstration that the refusal was reasonable would cause the termination of her compensation.

In a March 10, 1999 letter, appellant stated that she did not think the job offer was suitable. She indicated that she was unable to work due to physical pain and her psychological condition, noting that some days she was unable to get out of bed. Appellant submitted a March 4, 1999 note from Dr. Robert J. Kleinhans, a Board-certified orthopedic surgeon, who indicated that appellant could not perform the offered position because she could not perform any repetitive work.

In an April 22, 1999 letter, the Office requested that appellant submit a current medical report concerning her emotional condition, including a rationalized opinion on the cause of the condition and an opinion on whether she was capable of performing the duties of the offered position. In a January 24, 2000 letter, the Office noted that appellant had only submitted copies of office notes and not the narrative report requested in the April 22, 1999 letter.

In a May 10, 2000 decision, the Office denied appellant's claim for medical benefits for her depression on the grounds that the medical evidence of record established that her depression was not causally related to her employment injury.

Appellant requested a hearing before an Office hearing representative which was conducted on September 26, 2000. Subsequent to the hearing, her representative submitted additional medical evidence, including a June 13, 2000 deposition from Dr. Carlos Torrellas, a psychiatrist, who discussed his treatment of appellant for depression, noting that he usually saw appellant at least every 60 days. Dr. Torrellas diagnosed moderate depression. He stated that appellant had underlying psychological issues that may have increased the severity of her depression. He commented that there was a causal relationship between appellant's employment injury and her depression. Dr. Torrellas stated that appellant developed the pain syndrome from her injury and indicated that the chronicity and severity of the pain caused appellant to develop her depression. He concluded that appellant was not malingering because her symptoms had been consistent in her complaints. Dr. Torrellas stated that appellant still needed treatment for her depression. He indicated that appellant would not fully recover from her depression unless her ability to tolerate pain significantly improved or there was some relief of her condition. Dr. Torrellas stated that appellant was not capable of returning to work.

In a December 19, 2000 decision, the Office hearing representative therefore affirmed the Office's May 12, 2000 report.

Appellant appealed to the Board but then withdrew the appeal to seek reconsideration before the Office.<sup>1</sup> Her representative resubmitted Dr. Torrellas' deposition. In a September 10, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and therefore insufficient to warrant review of the prior decision.

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

Dr. Sanchez, in his January 9, 1996 report, stated that appellant's depression was not causally related to her employment. He commented that appellant had a fragile psychological equilibrium and stated that appellant was using somatic complaints to deal with personal stress. Dr. Sanchez commented that she was capable of exaggerating her symptoms. Dr. Torrellas, however, stated that appellant's employment injury caused chronic pain which in turn caused appellant's depression. He concluded that appellant's complaints had been consistent over an extended period, which showed that she was not engaged in malingering.<sup>2</sup> There exists, therefore, a conflict in the medical evidence on whether appellant's depression is causally related to her employment injury. The case must therefore be remanded for referral of appellant, together with a statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The specialist should be requested to examine appellant, give a diagnosis of her condition and provide his or her rationalized opinion on whether

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<sup>1</sup> Docket No. 01-960 (order dismissing appeal, issued June 27, 2001).

<sup>2</sup> Based on this disposition, the issue of the Office's denial of reconsideration is moot.

appellant's emotional condition was causally related to appellant's employment injury. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated September 10, 2001 and December 19, 2000 are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC  
July 29, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member