

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA STRYKER and DEPARTMENT OF VETERANS AFFAIRS,  
LYONS VETERANS HOSPITAL, Lyons, NJ

*Docket No. 99-654; Submitted on the Record;  
Issued March 6, 2001*

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DECISION and ORDER

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

The issue is whether appellant had any disability or residuals requiring medical treatment after July 18, 1997, the date the Office of Workers' Compensation Programs terminated compensation due to her accepted employment-related aggravation of cervical radiculopathy.<sup>1</sup>

The Office accepted that on October 8, 1993 appellant, then a 50-year-old psychiatric nurse, sustained exacerbation of cervical radiculopathy when a patient attacked her. Appellant did not return to work and she received appropriate compensation benefits. On August 5, 1996 appellant was determined to be disabled within the meaning of the Social Security Act and on October 3, 1996 she was granted disability retirement benefits by the Office of Personnel Management (OPM).

Appellant was involved in a nonwork-related motor vehicle accident on February 5, 1995 and sustained "severe pain in her neck, headache, pain in her low back, pain radiating into both her arms and pain radiating into her right leg."

By report dated April 17, 1995, Dr. A. Ronald Sorvino, a Board-certified psychiatrist, diagnosed appellant as having dysthymia secondary to chronic pain. He noted that appellant developed a "major depression secondary to the accident of October 8, 1993."<sup>2</sup> In a report dated September 5, 1995, Dr. Sorvino noted that appellant was attacked by a psychiatric patient, that she injured her neck, arm and back and that she had not returned to work due to ongoing pain, depression and anxiety. Dr. Sorvino opined that "[b]ecause of the ongoing pain, she has

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<sup>1</sup> No appeal from the decision approving the amount of attorney's fees has been made.

<sup>2</sup> In undated reports, Dr. Peter Crecca, a Board-certified psychiatrist, indicated that appellant reported that she was depressed and had sleep disturbances related to pain caused by her accepted injury. He noted that appellant's problems may be aggravated in part due to discontinuation of Vicodin (a narcotic analgesic).

developed a chronic low grade depression for which she requires antidepressant medication, tranquilizers and psychiatric treatment.”

By report dated October 31, 1995, Dr. Edward J. Zampella, a Board-certified neurosurgeon and appellant’s treating physician, noted that he had referred appellant to Dr. Sorvino “for treatment of chronic pain-related depression, which both Dr. Sorvino and I feel is a direct result of an accident, which occurred on October 8, 1993 at the [employing establishment].” Dr. Zampella also opined that, regarding appellant’s motor vehicle accident on February 5, 1995, “I do not feel that this was a contributing factor and I feel that her depression results from the chronic pain, which had its onset in 1993.” On an attending physician’s supplemental form report dated October 31, 1995, Dr. Zampella indicated that appellant was totally disabled with the diagnoses “cervical disc disorder [with] myelopathy [and] cervical stenosis.”

The Office determined that a second opinion examination was needed and on February 2, 1996 referred appellant to Dr. John P. Greenberg, a Board-certified neurosurgeon. In a February 29, 1996 report, he reviewed the statement of accepted facts and appellant’s medical history, examined appellant, reviewed her diagnostic studies and noted that residual symptoms included persistent neck pain, particularly the right side of her neck extending from the base of her skull to her right shoulder. Dr. Greenberg stated that her pain corresponded to the distribution of the right trapezius muscle, without limitation of movement and depression “since the time of this incident.” He performed neurologic testing which he noted to be essentially normal<sup>3</sup> and he found “no detectable weakness, reflex changes, sensory abnormality, in nerve root or peripheral nerve distribution to either arm.” Dr. Greenberg stated that, “like her arms, neurological exam[ination] of her lower extremities was also normal.”

Dr. Greenberg noted that there was no clinical evidence of residual depression apparent at the time of examination, but that appellant claimed that she had depressive manifestations which prevented her from working. He opined that appellant’s employment injury “obviously exacerbated or aggravated a preexisting condition of the cervical spine, which could be characterized as cervical spondylosis with degenerative disc changes at C4-5 and C5-6 levels associated with a mild cervical spinal stenosis at the same two levels.” Dr. Greenberg noted that there was “no clinical evidence at this time to suggest that [appellant] suffered renewed cervical disc bulge or herniation or associated cervical radiculopathy related to the same neck injury sustained on October 8, 1993 at this time or previously related to the same incident.” He stated that appellant’s “major residual disability at this time appears related to post-traumatic depressive illness, which apparently evolved several weeks following this incident.” Dr. Greenberg opined that appellant “is fully recovered at this time and could return to her usual work activity as a nurse.” He further stated, regarding appellant’s post-traumatic depressive illness, that treatment and medication since the injury “has been adequate to permit [appellant] to return to her usual work activity as a nurse at this time.” However, Dr. Greenberg recommended further psychiatric evaluation to verify his opinion regarding appellant’s emotional condition.

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<sup>3</sup> Dr. Greenberg noted that appellant’s neck was supple with full range of motion in all directions, normal lordotic curvature, no tenderness over the cervical spinous processes or cervical paravertebral muscles, asymptomatic head, neck and shoulder compressive manipulations and no nerve root irritation manifestations in either arm.

By letter dated March 4, 1996, Dr. Sorvino stated that appellant's pain caused her current depressive state and ongoing anxiety and he opined that the marked increase in pain was at least a major etiological agent in her developing a moderate to severe depression.

By report dated April 5, 1996, Dr. Zampella noted that, in 1990, appellant injured her lower back while reaching down to pick up something out of a laundry basket, which resulted in an L4-5 disc herniation with coincident lumbar lateral and central stenosis and L5 radiculopathy. He indicated that she underwent an L3-4, L4-5 laminectomy with decompressive foraminotomies and exploration of the left L4-5 disc and that two years postoperatively she had recurrence of low back and leg symptoms. Dr. Zampella opined that at that time appellant "continues to suffer from the symptoms and I believe that she is at this point permanently disabled secondary to chronic cervical and lumbar radiculopathy." He also opined that appellant would require continued treatment on a long-term basis.

By report dated May 29, 1996, Dr. Zampella noted that he was treating appellant on a regular basis for her ongoing symptoms of cervical radiculopathy which occurred as a result of her October 8, 1993 injuries. Dr. Zampella noted that appellant had experienced a previous injury in 1985 and that she had demonstrated objective evidence of cervical spondylosis, but that she was fully functional and without symptoms prior to the October 8, 1993 injury. He indicated that in late 1994 he had referred appellant to Dr. Sorvino and that she was "suffering from a situational reactive depression, which was contributed to by her chronic pain and her failure to respond to treatment." Dr. Zampella noted that appellant had diminished biceps reflexes on the right as compared to the left which confirmed the C6 radiculopathy and that magnetic resonance imaging (MRI) revealed disc disease at C4-5 and C5-6. He opined that appellant had a permanent disability.

By report dated July 2, 1996, Dr. Zampella noted that appellant had a positive Spurling maneuver that produced pain bilaterally radiating down her arms and into the thumbs, that she had limitation of cervical spine movement with flexion, extension and lateral rotation, that she had full strength on a neurologic basis upon upper extremity testing and that movement of her arms produced pain at the shoulders.

On May 23, 1996 the Office determined that Dr. Greenberg's report constituted the weight of the medical opinion evidence of record and terminated appellant's compensation benefits effective May 26, 1996.

Thereafter, appellant requested an oral hearing, which was held on December 17, 1996.<sup>4</sup> The hearing representative remanded the case for further development to resolve a conflict in medical opinion evidence between Dr. Greenberg and Dr. Zapella.

Upon remand, the Office referred appellant, together with the statement of accepted facts, questions to be addressed and the complete case record, to Dr. Michael Brand, a Board-certified neurosurgeon. By report dated April 2, 1997, he reviewed the statement of accepted facts and appellant's complete factual and medical history and indicated that appellant's symptoms at this time differed only in intensity from the symptoms she experienced in 1985. Dr. Brand examined appellant, noted her subjective complaints of pain upon palpation or movement and noted a normal motor system examination and normal muscle function testing and found no evidence of atrophy. He opined that "[appellant] has no objective evidence of any neurological deficit based upon my examination at this time" and that she had "no evidence ... of any structural neurologic abnormalities having been produced by that event either at the level of the cervical spinal cord, cervical nerve roots, brachial plexus or peripheral nerves of either upper extremity." Dr. Brand concluded that "There is no evidence whatsoever that [appellant] ... is currently disabled from employment on a neurological basis."

By letter dated May 23, 1997, the Office requested further clarification from Dr. Brand.

By response dated May 30, 1997, Dr. Brand opined:

"[T]here is no neurological basis to support Dr. Zampella's claim that the symptoms suffered by [appellant] are causally related to the work injury of October 8, 1993. The symptom complex as delineated in my report coupled with the neurological findings are totally and categorically inconsistent with [appellants] work-related injury of October 8, 1993. In this regard I disagree with Dr. Zampella's opinion."

Dr. Brand also reviewed Dr. Greenberg's report of February 29, 1996 and agreed with his conclusions that appellant sustained "soft tissue injuries as the consequence of her work-related trauma which in all reasonable probability at that time aggravated her underlying cervical spondylosis." Dr. Brand stated that "there is no clinical evidence at this time that appellant suffered renewed cervical disc bulge or herniation or associated cervical radiculopathy related to the same injury sustained on October 8, 1993 at this time or previously related to the same incident."

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<sup>4</sup> At the hearing appellant submitted a May 29, 1996 report from Dr. Zampella which stated that to a reasonable degree of certainty "the symptoms [appellant] suffers at this point are causally related to the October 8, 1993 incident."

Appellant submitted a report dated January 9, 1997 from Dr. Crecca, which noted:

“[Appellant] was evaluated by me on November 21, 1996 and given a diagnosis of major depression and chronic pain. [Appellant] reports that this illness and her symptoms arose secondary to problems she experienced while working as a nurse at the [employing establishment]. [She] remains under my care and will need continued treatment.”

Appellant also submitted an April 16, 1996 work restriction evaluation form report from Dr. Zampella, which indicated that appellant was totally disabled, and previous reports from Dr. Zampella already of record. Additionally submitted was an October 15, 1997 report from Dr. Brian D. Beyerl, a Board-certified neurosurgeon, which discussed her symptoms and noted as a diagnosis “probable degenerative changes of the cervical spine with no definite evidence of radiculopathy on either electromyogram (EMG) and nerve conduction testing or objective clinical testing.”

On June 12, 1997 the Office issued a notice of proposed termination of compensation finding that the weight of the medical opinion evidence was represented by Dr. Brand which established that appellant had no further disability causally related to her accepted employment injury. Appellant was given 30 days within which to submit further evidence or argument if she disagreed with the proposed action.

Appellant resubmitted several medical reports previously of record and copies of actions taken by OPM and Social Security Administration granting her disability benefits.

By decision dated July 18, 1997, the Office finalized its termination of appellant’s compensation benefits finding that Dr. Brand constituted the weight of medical opinion evidence of record and established that appellant had no disability causally related to her accepted employment injury.

By letter dated May 19, 1998, appellant, through her representative, requested reconsideration of the July 18, 1997 decision.<sup>5</sup>

Appellant submitted arguments contending that the reports of Dr. Brand should not be accorded special weight and that her accepted conditions should include her psychiatric and podiatric conditions. She also claimed that accepted conditions should include cervical and lumbar spondylosis, depression secondary to chronic pain, heel spur syndrome and chronic cervical and lumbar radiculopathy. Appellant argued that the reports of Drs. Greenberg and Brand were improperly obtained as a result of “doctor shopping” and be excluded from the record. Appellant submitted a medical report dated January 21, 1998 from Dr. Vera Khrakovsky, a podiatrist, which noted that appellant “is getting heel spur syndrome due to a prolonged period of altered gait due to constant neck pain secondary to trauma that she received October 8, 1993.”

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<sup>5</sup> Appellant requested an oral hearing but withdrew this request in the May 19, 1998 letter and requested reconsideration.

By decision dated October 10, 1998, the Office denied modification of the July 18, 1997 decision.

The Board finds that the weight of the medical evidence or record establishes that appellant had no further disability or residuals, after July 18, 1997, causally related to her accepted employment-related aggravation of cervical radiculopathy.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>6</sup> 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 it is no longer related to the employment.<sup>7</sup> However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.<sup>8</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>9</sup>

In the present case, the Office met its burden to terminate appellant's compensation, based upon the well-rationalized report of Dr. Brand, the impartial medical specialist. He found, in a well-rationalized report based upon an accurate factual and medical history, that appellant had no objective evidence of any neurological deficit and no evidence of any structural neurologic abnormalities having been produced by the work incident either at the level of the cervical spinal cord, cervical nerve roots, brachial plexus or peripheral nerves of either upper extremity. Dr. Brand found no evidence to support that appellant had any disability or residuals of her employment injury on a neurological basis. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>10</sup> In this case, the Board finds that Dr. Brand's impartial medical reports are entitled to special weight and they represent the weight of the medical opinion evidence. Dr. Brand's opinion is that appellant's employment-related disability had ceased and that any continuing medical condition was not related to the accepted injury. He found no objective evidence of injury residuals or deficits. Accordingly, the Office has met its burden of proof to support termination of appellant's compensation after July 18, 1997.

The medical evidence from Dr. Zampella that was submitted in support of continuing disability and continuing injury residuals is insufficient to overcome the well-rationalized report of Dr. Brand. The Board has held that additional medical evidence from a physician who was on

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<sup>6</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>7</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>8</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

<sup>9</sup> *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

<sup>10</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

one side of an identified conflict in medical opinion evidence which was resolved by an impartial medical examiner is insufficient to overcome the special weight accorded to the impartial medical examiner's report or to create a new conflict.<sup>11</sup> Accordingly, the impartial medical opinion of Dr. Brand remains the weight of the medical opinion evidence.

Further, the medical evidence of record is insufficient to establish that appellant developed heel spur syndrome causally related to her accepted employment injuries. Dr. Khrakovsky failed to support her opinion on causal relation with sufficient supporting medical rationale. The Board notes, however, there is medical opinion evidence of record which suggests that appellant may have developed a consequential emotional condition causally related to her accepted employment injury. Dr. Zampella opined that appellant had depression resulting from her chronic pain due to her employment injury. Dr. Sorvino and Dr. Crecca, both psychiatrists, related the development of appellant's depression, in part, to pain due to the October 8, 1993 injury. Dr. Greenberg noted that appellant had residuals, which he diagnosed as post-traumatic depression illness and recommended further psychiatric evaluation. These reports are generally supportive of a consequential emotional injury claim.

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup> This holds true in consequential injury claims as well as in initial traumatic injury and occupational illness claims. Although none of appellant's treating physicians' reports contains rationale sufficient to discharge her burden of proving by the weight of reliable, substantial and probative evidence that she developed a consequential emotional condition causally related to her October 8, 1993 injury, the reports constitute substantial, uncontradicted evidence and raise an uncontroverted inference of causal relationship.<sup>13</sup>

For this reason, the Board will remand the case to the Office for further development of the consequential emotional condition claim.

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<sup>11</sup> See *Thomas Bauer*, 46 ECAB 257 (1994); *Virginia Davis-Banks*, 44 ECAB 389 (1993).

<sup>12</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>13</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); see also *Cheryl A. Monnell*, 40 ECAB 545 (1989).

The decision of the Office of Workers' Compensation Programs dated October 10, 1998 is hereby affirmed with respect to the termination of appellant's monetary compensation benefits. The case is remanded for further development of the psychiatric condition in accordance with this decision of the Board.

Dated, Washington, DC  
March 6, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member