

In the Medical Services of
Denise Graham, Claimant
Contested Case No: 07-148H
PROPOSED & FINAL ORDER

May 19, 2009

DENISE GRAHAM, Petitioner
SEDGWICK CLAIMS MGMT SERVICES INC, Respondent
Before David D. Lipton, Administrative Law Judge

Pursuant to Notice, a hearing convened on September 5, 2008 in Portland, Oregon before David D. Lipton, Administrative Law Judge. Claimant was present and was represented by Christine Frost. The employer, Qwest, and its claims management service, Sedgwick Claims Management Services, were represented by Amy Osenar. The hearing was continued for additional evidence and depositions. The record closed at the time of recorded closing argument on April 15, 2009.

Exhibits 1-27 were received from the Workers' Compensation Division and are admitted

ISSUE

In WCB case number 07-00148H, Claimant protests the Medical Review Unit's November 14, 2007 Order addressing Claimant's work hardening program.

FINDINGS OF FACT

Claimant was compensably injured on October 4, 2006 when the van that she was driving was struck by a dump truck. The impact to her vehicle was on the driver's side. Claimant was transported to the emergency room at the Oregon Health Sciences Center by ambulance. She was discharged two days later.

On October 16, 2006 Claimant came under the care of Fernando Proano, M.D. Claimant complained of left rib pain, left leg pain where there was an open wound, various other wounds, glass imbedded in her left hand, abdominal pain, headaches and neck pain. On physical examination, Dr. Proano noted mild right paralumbar tenderness near the right flank without spasm, swelling or ecchymosis. He diagnosed Claimant's injuries as a head injury with scalp laceration, loss of consciousness and mild post-concussion syndrome, a possible fracture of a left lower rib, abdominal pain probably a result of contusion, cervical strain and wounds of the left hand, wrist and lower legs.

Claimant returned to Dr. Proano on October 23. By that time a rib fracture had been ruled out. On physical examination he reported that Claimant's lumbar spine was negative. He referred Claimant for occupational therapy and physical therapy.

Claimant was examined by the physical therapist on October 25, 2006. Among the findings relevant to this proceeding, Claimant's lumbar flexion was full, extension was decreased slightly and lateral flexion was greater than normal bilaterally.

On November 3, 2006 Sedgwick issued a Notice of Acceptance for a disabling October 4, 2006 injury consisting of a small left apical pneumothorax, scalp laceration, left lower rib fracture, abdominal contusion, cervical strain, left hand and wrist lacerations with foreign bodies, and bilateral lower leg abrasions and contusions.

On October 3, 2006 Claimant was examined by Dorian Quinn, D. C. Claimant complained of pain and spasm of the paraspinal muscles from her neck to her sacrum. Dr. Quinn did not diagnose a low back condition.

When Dr. Proano examined Claimant on November 29, 2006 he reported that Claimant was not improving and perhaps worsening with regard to her cognitive functions and panic type episodes. He referred Claimant to Marlene Dietrich, M.D. Dr. Dietrich examined Claimant on January 4, 2007. She obtained a history of cognitive complaints following the head injury. These complaints were consistent with a post-concussive syndrome.

Claimant returned to Dr. Proano on January 29, 2007. She complained of significant vertigo, dizziness and headache for the past seven days.

A neuropsychological evaluation was conducted by Andrew Ellis, PhD on January 31, 2007. After examining Claimant he concluded that the injury had not produced a lasting negative impact on Claimant's overall intellectual functioning. He felt that Claimant's headache and reading difficulties could be a result of subtle visual changes resulting from her concussion.

At Sedgwick's request Claimant was examined by Larry Friedman, PhD on February 6, 2007. At the examination, Claimant complained of headaches and vertigo. He noted that Claimant had suffered a mild closed head injury (concussion) from the motor vehicle accident. He did not feel that there was objective evidence of neuropsychological injury or impairment.

On February 8, 2007 Claimant was examined at Sedgwick's request by Lynne Bell, M.D., Robert Staver, M.D. and M. Earl Duncan, D.C. At the time of the examination, Claimant complained of vertigo, nausea, right thumb pain, right shoulder pain, left ankle pain, right leg pain, left hand pain and memory problems. They felt that Claimant's conditions had become medically stationary without impairment except for her cervical strain.

Claimant was examined by Danielle Erb, M.D. on February 22, 2007. She agreed that for the most part Claimant's physical injuries were resolved. However, Claimant's symptoms of concussion and depression/anxiety continued. She recommended a neuro-optometric evaluation.

Dr. Proano referred Claimant to Bruce Wojciechowski, O.D. for a neuro-optometric evaluation. He recommended that Claimant continue receiving behavioral counseling and vestibular rehabilitation.

Claimant was examined by Chiropractor Quinn on March 16, 2007. She complained of acute sharp low back pain. Dr. Quinn reported that the condition was sudden in onset and of an unknown cause. When Claimant was examined by Dr. Proano three days later he reported that Claimant had experienced increased neck and back symptoms performing work activity on

March 16.

On March 21, 2007 Sedgwick amended the Notice of Acceptance to add the condition of concussion.

Responding to a comment by Chiropractor Duncan, Dr. Proano noted on March 30, 2007 that Claimant suffered an oculomotor dysfunction for which corrective lenses and therapy had been prescribed.

On April 2, 2007 Dr. Proano stated that Claimant's condition was not medically stationary for cervical, thoracic and lumbar strains and cerebral concussion. He attributed Claimant's vision disturbance to her concussion and cervical strain.

Claimant returned to Dr. Erb on April 23, 2007. Claimant's condition had improved following receipt of the glasses prescribed by Dr. Wojciechowski. Claimant's overall condition was "moving forward". She was instructed to return as needed.

Claimant returned to Dr. Proano on April 30. He reported that Claimant was medically stationary with respect to her spinal conditions, left ankle and right knee. She had not suffered any significant cognitive impairment as a result of the motor vehicle accident. He recommended a short period of counseling to address her anxiety about returning to work.

Claimant returned to Dr. Proano on June 20. She had experienced an increase in her vertigo. When Dr. Proano examined Claimant again five days later Claimant described tightness of her neck and back for the past three weeks and increasing vertigo. Dr. Proano recommended continuing Claimant's treatment for her concussion and her vestibular therapy.

Claimant also returned to Dr. Erb. She noted a waxing and waning of Claimant's inner ear dysfunction and recommended continuing habituation exercises and vision therapy.

On August 24, 2007 Claimant requested that the acceptance of her claim be expanded to include concussion with post-concussion syndrome. On September 17, 2007 Claimant requested that her claim acceptance be expanded to include a right wrist strain. On October 22, 2007 Sedgwick denied the claim for post-concussion syndrome. However that same date it modified the Notice of Acceptance to add the condition of right wrist strain.

Dr. Proano responded to an inquiry from Claimant's attorney on October 3, 2007 by concurring with a summary of their earlier conversation. He described a post-concussive syndrome as a condition where the sequelae of a concussion lasts for greater than two to four weeks. The symptoms include headache, mental difficulties, cognitive problems, visual problems, balance problems and sometimes anxiety. Addressing Dr. Bell's suggestion that Claimant presented with excessive somatic focus or somatoform tendencies, he responded that Claimant was a detailed oriented individual who was not magnifying her symptoms.

This latter point was further addressed by Dr. Ellis who confirmed the summary of his conversation with Claimant's attorney on October 10, 2007. Rather than exaggerating her

symptoms, he described Claimant as an individual who found it difficult not to be able to do her job. What Dr. Bell saw as a somatoform disorder, Dr. Ellis perceived as indicative of Claimant's preexisting perfectionist personality type.

At Sedgwick's request Claimant was examined by psychiatrist Lawrence Binder, M.D. on December 27, 2007. He recognized the diagnosis of post- concussive syndrome. Objective evidence to support the diagnosis is found in problems with vision, balance or vestibular function and cognitive abilities. He was unable to comment on Dr. Wojciechowski's findings and opinion as they are outside of his area of expertise. However he did not find in the record evidence of vestibular problems/balance problems and no objective evidence of cognitive problems. On a different matter, he agreed with Dr. Ellis that Claimant is highly self-critical and perceives herself as performing worse than she really is.

In response to an inquiry from Sedgwick's attorney, on January 22, 2008 Dr. Friedman provided a different perspective opining that Claimant was simply overreacting to her circumstances. Both Dr. Friedman and Dr. Bell discarded the diagnosis of post-concussive syndrome in general and particularly in Claimant's case. In her January 24, 2008 response to an inquiry from Sedgwick's attorney, Dr. Bell reported that Claimant's symptoms had worsened since the accident.

At Sedgwick's request Claimant was examined by ophthalmologist William Baer, M.D. on January 24, 2008. By this time, Claimant was no longer requiring the use of the glasses prescribed by Dr. Wojciechowski. Her eye examination was normal with her eyesight adequately corrected. Any visual disturbance which Claimant may have demonstrated and which he did not relate to the motor vehicle accident, was no longer present.

Claimant was also examined at Sedgwick's request on January 24, 2008 by William DeBolt, M.D. He obtained a history that Claimant was working full time utilizing a lifting limitation of 40 to 60 pounds. On examination there were no symptoms although Claimant described that occasionally she still experienced some and could not be as active as she had been prior to the motor vehicle accident. Dr. DeBolt reported that Claimant's post-concussive syndrome was resolving and was manifested by a mild imbalance of the left leg, a change in her migraine headache pattern and other factors. He described a conditions similar to that describe by Dr. Proano on October 3, 2007. Dr. DeBolt stated that Claimant's current neurological complaints related to a large degree to the motor vehicle accident and Claimant's post-concussive syndrome. He did not address Claimant's eye muscle imbalance as this is an area outside of his expertise.

Dr. Binder was cross examined on April 11, 2008. He described the symptoms of post-concussive syndrome with headache, complaints of memory or attention difficulty and dizziness as the three most common symptoms. Additional symptoms include vision problems, tinnitus, anxiety, sometimes depression and fatigue. He distinguished between post-concussive syndrome and concussion. He recognized that prior to the motor vehicle accident Claimant had a history of visual problems and headaches. Claimant has experienced headaches since her late teens and early twenties. However, after the motor vehicle accident they were more frequent and the treatment changed. Likewise Claimant's vision problems following the motor vehicle accident

were different than her problems before the accident. Dr. Wojciechowski's treatment corrected the post-accident condition. Dr. Binder also confirmed his earlier observation in concurrence with the opinion of Dr. Ellis that Claimant's personality includes her being more reactive to situations and stressors and events than the average person.

On April 21, 2008 Dr. Proano recommended adding the diagnosis of lumbar strain to the claim. A lumbar Magnetic Resonance Imaging (MRI) scan was done on July 11, 2008. It was interpreted to reveal degenerative disc disease and right disc protrusion at L5-S1. Sedgwick denied the claim for lumbar strain on July 23, 2008.

On August 22, 2008 Dr. Erb concurred with a summary of her conversation with Claimant's attorney. She described post-concussive syndrome and mild traumatic brain injury as two terms for the same condition. She based her diagnosis on Claimant's Glasgow coma scale score of 14, her scalp laceration, increasing headaches, balance difficulties, fatigue, impaired sleep and vision disturbances which were different from those Claimant had previously. Rather than Claimant's symptoms worsening over time, Claimant had consistently improved.

Concurring with a summary of his conversation with Claimant's attorney, on September 4, 2008 Dr. Ellis noted that Claimant's rapid and persistent return to work following the accident demonstrated that she was not a malingerer or demonstrating a somatic focus.

Dr. Proano and Dr. Staver disagree about the presence of evidence for a lumbar strain shortly after the October 4, 2006 accident.

When the symptoms of Claimant's concussion (or closed head injury) did not resolve within two to four weeks of her accident the diagnosis necessarily changed to post-concussive syndrome (or mild traumatic head injury).

In response to Dr. Proano's 2007 recommendation that Claimant attend a work hardening program, Claimant presented to Progressive Rehab Associates. Sedgwick's Claimant's manager discussed the referral with Dr. Proano. They agreed that Claimant would receive work hardening at NW Occupational Health Center. Claimant was thereafter referred to NW Occupational Health Center and Claimant was advised of her appointments.

OPINION AND CONCLUSION

Claimant requested a hearing from the Medical Review Unit's November 14, 2007 Order. The Order dismissed the Request for Administrative Review of an alleged refusal to provide a work hardening program. The medical reviewer found that the dispute was essentially moot since Sedgwick had implement the treatment Claimant's attending physician, Dr. Proano, and the claims examiner agreed to. Nothing at hearing suggests the circumstances are not as described by the medical reviewer. Consequently, the Administrative Order will be affirmed.

ORDER

IT IS HEREBY ORDERED:

In WCB case number 07-00148H, the November 14, 2007 Administrative Order is affirmed;