

Case: *Noelle L. McCullough, by her guardian Barbara Williams vs. Job Ready, Inc. and North American Specialty Insurance Company, Alaska Workers' Comp. App. Comm'n Dec. No. 151 (April 12, 2011)*

Facts: On April 8, 2002, Noelle L. McCullough (McCullough) was injured when she was patted or slapped on the back by a client's father while she was working as an activity therapist for Job Ready, Inc. (Job Ready). McCullough and Job Ready disputed the severity of the pat or slap. McCullough asserted that after the incident, she had ongoing pain in her back and right shoulder blade. However, no doctor found any objective basis for her pain. Her family and friends testified that prior to the April incident McCullough was active and outgoing and afterward, she was fatigued and in pain. Job Ready paid McCullough temporary total disability benefits for six months, and paid her permanent partial impairment benefits. Her medical bills were paid from 2002 until August 2004. After that, Job Ready controverted her benefits based on an employer medical evaluation (EME) conducted in May 2004. The report by Drs. Bell and Fuller concluded that no objective findings of pathology in the record backed up McCullough's subjective pain complaints, and therefore there was no "valid diagnosis, attributable to the work incident[.]" Another of the EME doctors, Dr. Glass, reported:

There is no history of a pre-existing psychiatric disorder; however, Ms. McCullough's current report of subjective pain complaints – somatoform disorder (307.80) – is because of pre-existing constitutional and developmental factors and ongoing psychosocial issues.

. . . .

The incident of 04/08/02 did not aggravate, accelerate, or combine with any underlying psychological condition to produce Ms. McCullough's current condition or need for psychiatric/medical care. That said, her current subjective pain complaints having no organic basis would relate to psychosocial circumstances/issues and pre-existing personality factors. Patients with somatoform disorders develop and/or maintain physical symptoms as a way of dealing with personal problems/conflicts only; somatoform disorders (307.80) are not caused by actual tissue pathology or injury.

In a June 2004 response to an inquiry from Job Ready, Dr. Kohl wrote that she agreed with Dr. Glass's opinion, who assessed McCullough as having a somatic disorder, but could not say whether the work-related incident in April 2002 was a cause of her current need for treatment. Dr. Kohl referred McCullough to Joella Beard, M.D., who saw McCullough on September 10, 2004. When Dr. Beard was deposed on March 28, 2005, she stated that she agreed with the opinion that

McCullough had a somatoform disorder that was not caused or worsened by the April 8, 2002, incident.

Eileen Ha, M.D., began treating McCullough in November 2004. Having diagnosed McCullough as suffering from a Depressive Disorder Not Otherwise Specified (NOS) and chronic pain disorder, Dr. Ha reiterated those diagnoses in a letter dated August 7, 2007. McCullough had a psychiatric evaluation by William G. Campbell, M.D., on June 25, 2007. Dr. Campbell disagreed with Dr. Ha's diagnosis of Depressive Disorder NOS, instead, diagnosing Post-Traumatic Stress Disorder. He agreed with her diagnosis of chronic pain disorder.

Ronald N. Turco, M.D., a psychiatrist, performed a second independent medical evaluation of McCullough in December 2006. Dr. Turco remarked that although he made no psychiatric diagnosis, McCullough might have a "pain disorder." In a follow-up letter dated October 16, 2007, Dr. Turco addressed Dr. Campbell's report and Dr. Ha's letter. He commented:

I note [Dr. Campbell] spent only one hour with Ms. McCullough and did not do any psychological testing. . . . Dr. Campbell has noted that he did not feel that Ms. McCullough was consciously exaggerating symptoms and this may well be the case. Individuals with somatization disorder, "pain disorder," do actually believe that they are experiencing some sort of problem even in the face of repetitive normal examinations. . . . [Dr. Campbell] makes a diagnosis of post-traumatic stress disorder which is not in the realm of believability at least from my perspective. Dr. Eileen Ha has essentially taken surface information from Ms. McCullough and authored a letter of August 7, 2007. I do not find Dr. Ha's letter convincing.

The board applied the presumption of compensability and decided that McCullough did not prove by a preponderance of the evidence that her present need for treatment was related to the work incident. McCullough appeals.

Applicable law: AS 23.30.120(a) presumption of compensability and related case law.

Issue: Does substantial evidence support the board's conclusion that McCullough's condition was not work-related?

Holding/analysis: The commission concluded that the board properly applied the compensability presumption and its conclusion that McCullough's condition was not work-related was supported by substantial evidence. The board had substantial evidence in the form of numerous doctors' opinions that McCullough suffered from a somatoform disorder that was not related to her employment with Job Ready. Moreover, the commission noted that the opinions of Dr. Campbell and Dr. Ha, who were most supportive of McCullough's position that her psychiatric problems were compensable, were less persuasive because

they did not agree on a diagnosis and Dr. Turco discredited their opinions. The commission observed that the testimony from McCullough's friends and family was not probative because timing alone could not prove causation.

Note: This case is on appeal to the Alaska Supreme Court.