U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA INGRAM and FEDERAL DEPOSIT INSURANCE CORPORATION, Monmouth, N.J.

Docket No. 97-979; Submitted on the Record;
Issued December 10, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on June 27, 1995, effective July 23, 1995.

On December 17, 1993 appellant, then a 39 year-old claims technician, filed a Form CA-1, notice of traumatic injury, stating that, while she was seated at her desk, she pulled open the top drawer of a two drawer file cabinet and the cabinet tipped over injuring her left leg and knee. Appellant's case was accepted for a contusion of the left leg. Appellant stopped work on December 17, 1993 and has not worked since.

Appellant began treatment with Dr. Mark Friedman, a Board-certified physiatrist, on December 17, 1993. Dr. Friedman opined that appellant had pain and swelling of the knee. He also concluded that appellant had a torn meniscus and was disabled from her activities. He recommended appellant be evaluated for surgery.

By letter dated July 15, 1994, the Office referred appellant to Dr. Harvey L. Baron, a Board-certified orthopedist, for a second opinion evaluation. Dr. Baron was provided with a statement of accepted facts, a list of medical questions, and copies of medical reports, including the February 7, 1994 magnetic resonance imaging (MRI) report.

In a September 26, 1994 report, Dr. Baron stated that he examined appellant on July 28, 1994. He stated that appellant sustained an injury to her back (which the Office never accepted) and left knee when a file cabinet fell on her. Dr. Baron concluded that the left knee showed the possibility of a tear along the inferior border of the medial meniscus. He opined that the mechanism of the injury was consistent with a person with a planted foot while seated and who "jumped" out of the way of the falling file drawer and twisted at the same time.

In a September 21, 1994 letter, the Office asked Dr. Baron to clarify his conclusion that there was a causal relationship between the diagnosis of torn meniscus and the stated injury of

December 17, 1993 as appellant never mentioned "jumping out of the way" of the falling file drawer in her own description of how the injury occurred.

In an October 18, 1994 report, Dr. Baron indicated that appellant mentioned the "jump" during the examination. Dr. Baron further indicated that if a person was seated while the accident occurred, as the statement of accepted facts indicated, then the mechanism of injury was unlikely for a blow in the lower leg. Dr. Baron opined that appellant should be able to return to work.

On December 7, 1994 the Office informed appellant that there was a conflict of medical opinion between Dr. Friedman and Dr. Baron on the issue of causal relationship and referred appellant to Dr. Herbert Bloom, for an impartial medical evaluation. The Office provided Dr. Bloom with the entire case record, a statement of accepted facts and specific questions.

In a January 9, 1995 report, Dr. Bloom concluded that, after his examination of appellant and review of the objective studies, there were no objective abnormalities related to appellant's accident. Dr. Bloom found that the MRI report was not impressive and, even if appellant did have a small meniscus tear as described in the MRI, he felt that it would not account for appellant's complaints. Dr. Bloom further opined that the accident described would not likely produce a tear of the meniscus and he did not believe that the diagnosis of torn meniscus should be accepted. Dr. Bloom stated that there was no objective evidence of permanent disability and stated that appellant was capable of working. Dr. Bloom additionally recommended that appellant undergo arthroscopy on the basis of her complaints.

In March 1995 the Office approved the arthroscopic procedure.

In a letter dated May 1, 1995, the Office advised appellant that they proposed to terminate medical benefits on the basis that the weight of the medical evidence of record established that appellant no longer suffered any residuals attributable to her employment.

On May 24, 1995 appellant underwent an arthroscopic procedure on her left knee.

On June 5 and June 9, 1995 the Office received Dr. Mohammad Shafi, a Board-certified orthopedist's May 24, 1995 report of the arthroscopic procedure. The postoperative diagnosis was traumatic osteochondritis dessicans of the femoral condyle. The medial meniscus was reported as intact.

On June 8, 1995 the Office sent a copy of the postoperative report to Dr. Bloom with the request that he review the arthroscopy and advise if his opinion regarding the causal relationship of appellant's condition had changed.

In a June 14, 1995 report, Dr. Bloom noted that the preoperative diagnosis was patellofemoral chondromalacia with torn meniscus. The postoperative diagnosis was traumatic osteochondritis dessicans of the femoral condyle. Dr. Bloom stated that osteochondritis dessicans of the femoral condyle is a condition that usually develops in childhood or teens. He noted that Dr. Shafi describes chondromalacia. Dr. Bloom opined that it was unlikely that the

chondromalacia would have been the result of the accident described and stated that his previously rendered opinion was unchanged.

By decision dated June 27, 1995, the Office terminated compensation benefits, effective July 23, 1995, on the basis that the medical evidence of record established that appellant did not have a continuing injury-related disability nor any residual disability as a result of her employment injury.

Appellant requested a hearing before an Office representative which was held on March 18, 1996. At the hearing, appellant was represented by Mr. Thomas R. Uliase, Esquire. Appellant described the accident, the nature of her injuries, and testified to the progression of her condition and the medical care she received. Appellant requested and was allowed an additional 30 days to submit additional evidence.

In a May 4, 1995 medical report, Dr. Alfred J. Tria, Jr., a Board-certified orthopedist, suggested that appellant might be suffering from an element of reflex sympathetic dystrophy and suggested a neurologic evaluation. Alternatively, Dr. Tria stated that appellant might be suffering from post-traumatic chondromalacia patella.

By decision dated October 29, 1996, the Office hearing representative affirmed the Office's June 27, 1995 decision on the grounds that appellant no longer had any residual of disability related to the work injury. The hearing representative accorded determinative weight to the reports of Dr. Bloom.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on June 27, 1995, effective July 23, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[1] 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.[2] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[3] The Office has met its burden in this case.

In the present case, the Office accepted that appellant sustained a contusion of the left leg due to factors of her federal employment. A conflict in medical opinion was created between Dr. Friedman, appellant's treating physician and a Board-certified physiatrist, and Dr. Baron, an Office referral physician and a Board-certified orthopedist, as to the causal relationship of appellant's current disability and whether the residuals of the work injury had ceased. Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is a disagreement

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] *Id.*

[3] *Id.*

between the physician making the examination for the United States and the physician of the employee, a third physician will be appointed to make an examination.[4] Based on the conflict in medical opinion, the Office referred appellant for examination to Dr. Bloom, a Board-certified orthopedist.

Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist is entitled to special weight if sufficiently well rationalized and based upon a proper factual review of the case.[5] The Board finds that Dr. Bloom's reports of January 9 and June 14, 1995 are sufficiently rationalized and responsive to the Office's inquiries to be entitled to special weight.

In his January 9, 1995 report, Dr. Bloom opined that there were no objective abnormalities related to appellant's accident and concluded that there were no objective evidence of permanent disability and that appellant was capable of working. He also recommended that appellant undergo arthroscopic surgery as a diagnostic tool. In a report of June 14, 1995, Dr. Bloom evaluated the results of the arthroscopic surgery which reported chondromalacia and revealed an intact medial meniscus. Dr. Bloom opined that this condition would unlikely have been the result of the described work incident. Therefore, Dr. Bloom stated that his previously rendered opinion remained unchanged. Dr. Bloom's conclusion is supported by medical rationale and is fully responsive to the inquiries of the Office. The Board finds that the reports of Dr. Bloom are entitled to special weight and are sufficient to support the termination of appellant's wage-loss benefits.

The October 29, 1996 decision of the Office of Workers' Compensation Program is affirmed.

Dated, Washington, D.C.
December 10, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott

[4] 5 U.S.C. § 8123(a).

[5] *Glenn C. Chasteen*, 42 ECAB 493 (1991).

Alternate Member