U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM LAWLER and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Philadelphia, PA

Docket No. 97-1542; Submitted on the Record;
Issued August 2, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issues are: (1) whether appellant has any continuing disability on or after September 1, 1993; and (2) whether appellant has met his burden of proof in establishing that he developed an emotional condition as a consequence of his accepted employment injury.

The Board has duly reviewed the case on appeal and finds that appellant has no continuing disability on or after September 1, 1993 causally related to his accepted employment injury.

Appellant filed a claim alleging that on January 3, 1991 he slipped in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for acute lower back strain, contusion left foot and hand. Appellant filed a notice of recurrence of disability on April 5, 1991. The Office entered appellant on the periodic rolls for total disability on September 12, 1991. The Office proposed to terminate appellant's compensation benefits on July 29, 1993 and by decision dated September 1, 1993 the Office terminated appellant's benefits. Appellant requested an oral hearing and by decision dated February 6, 1995 and finalized February 7, 1995, the hearing representative affirmed the Office's decision. Appellant requested reconsideration on several occasions and the Office denied modification of its September 1, 1993 decision on January 22, 1996 and March 20, 1997.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify 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] Furthermore, the right to medical

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

[2] *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.[3] 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.[4]

In this case, appellant's attending physicians, Dr. Richard H. Kaplan and Dr. Judith Peterson, physicians Board-certified in physical medicine and rehabilitation, continued to submit reports supporting appellant's total disability for work. The Office referred appellant for a second opinion evaluation with Dr. Richard Bennett, a Board-certified neurologist, who completed a report on December 9, 1992 and found that appellant had no neurological impairment and stated that appellant could return to his date-of-injury position without restriction.

In a report dated January 13, 1993, Dr. Peterson stated that appellant was severely limited in his ability to tolerate travel, standing and walking. She stated that appellant felt that his limitations were new since his fall. Dr. Peterson stated on March 17, 1993 that appellant was completely disabled.

Section 8123(a) of the Federal Employees' Compensation Act,[5] provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." Due to the conflict of medical opinion between appellant's attending physicians, Drs. Kaplan and Peterson and the second opinion physician, Dr. Bennett, regarding whether appellant continued to be disabled due to his employment injury, the Office properly referred appellant to Dr. Paul L. Liebert, a Board-certified orthopedic surgeon, for an impartial medical examination.

In his report dated April 12, 1993, Dr. Liebert noted appellant's history of injury, medical history and performed a physical examination. He diagnosed lumbosacral and cervical sprains. Dr. Liebert stated that appellant's objective findings did not correlate with his subjective complaints and that he found indications of magnification of symptoms. He stated, "I believe that this patient has reached maximum medical improvement and, in my opinion, does not have any work-related process or problem which now would preclude him from return[ing] to work to his preinjury level of employment…."

In situations were there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[6] In this case, Dr. Liebert's report is based on a proper factual background, extensive review of the medical records and provides reasoning in

[3] *Furman G. Peake,* 41 ECAB 361, 364 (1990).

[4] *Id.*

[5] 5 U.S.C. §§ 8101-8193, 8123(a).

[6] *Nathan L. Harrell,* 41 ECAB 401, 407 (1990).

support of his opinion that appellant is no longer disabled due to his accepted employment injury. The Board finds that Dr. Liebert's report is entitled to the weight of the medical evidence and that the Office met its burden of proof to terminate appellant's compensation benefits in its September 1, 1993 decision.

Following the Office's September 1, 1993 decision, appellant submitted additional medical evidence including reports and notes from Drs. Peterson and Kaplan. On August 11, 1993 Drs. Peterson and Kaplan completed a report and noted appellant's history of injury. The physicians noted that appellant's condition was stable with neck and low back pain. Drs. Peterson and Kaplan reviewed Dr. Liebert's report. However, the physicians concluded that appellant was completely disabled for normal employment. Dr. Peterson completed a report on April 21, 1994 and stated that appellant was under her care for injuries sustained in a work-related incident on January 3, 1991. She diagnosed acute cervical and lumbar strain and sprain, chronic myofascial pain syndrome cervical and bilateral lumbar radiculopathy and carpal tunnel syndrome. Dr. Peterson stated that appellant was disabled. These reports are not sufficient to establish appellant's continuing disability as the physicians did not provide an opinion on the causal relationship between appellant's accepted employment injury and his current conditions or disability.

In a report dated November 29, 1994, Dr. Peterson noted appellant's history of injury and stated that appellant had not returned to work since the date of his original injuries. She related Dr. Kaplan's findings on March 24, 1992 and stated that electromyographic examinations have documented lumbosacral radiculopathy. Dr. Peterson stated that appellant's complaints of low back pain and lumbosacral radiculopathy were directly and causally a result of his employment injury. Dr. Peterson completed a narrative report on April 5, 1995 and listed appellant's findings on physical examination including constrictions in cervical and lumbosacral mobility, trigger points in the paraspinal region and left C8-T1 radiculopathy. Dr. Peterson stated that there were objective physical findings, objective diagnostic correlation of appellant's ongoing significant complaints of pain and vocational disability. She stated, "I do believe he is disabled directly as a result of his involvement in the work-related slip and fall."

While these reports contain an opinion that appellant's current condition is causally related to his history of injury, Dr. Peterson did not provide any medical rationale explaining how or why she believed this to be true. Medical rationale supporting the causal relationship between appellant's current condition or disability and his employment injury is required to overcome the weight of Dr. Liebert's report which provided reasons for concluding that appellant was no longer disabled and that his accepted employment injury had concluded without residuals. Furthermore, as these physicians were on one side of the conflict that Dr. Liebert resolved, the additional reports from Drs. Peterson and Kaplan are insufficient to overcome the weight accorded Dr. Liebert's report as the impartial medical specialist or to create a new conflict with it.[7]

The remainder of the medical evidence submitted by appellant consists mainly of treatment notes in which Dr. Peterson did not provide a history of injury or an opinion on the

[7] *Dorothy Sidwell,* 41 ECAB 857, 874 (1990).

causal relationship between appellant's diagnosed conditions and his accepted employment injuries. For these reasons, the treatment notes are insufficient to create a conflict with Dr. Liebert's or to overcome the weight accorded this report.

Appellant also submitted reports from Dr. Ernest F. Rosato, a Board-certified surgeon, noting appellant's conditions including tumors. Dr. Rosato did not provide a history including appellant's employment injury and did not provide any opinion that any diagnosed conditions were causally related to appellant's employment injury. Dr. Richard J. Schwab, a Board-certified internist, noted treating appellant for sleep disorders and also failed to provide a history of injury or opinion on causal relationship. As these reports do not establish that appellant's diagnosed conditions are causally related to his accepted employment injury, they are insufficient to meet appellant's burden of proof in establishing continuing disability.

Appellant submitted a report dated September 20, 1995 from Dr. James D. Brady, a chiropractor, who provided a history of injury and found muscle spasms. Dr. Brady did not indicate that he had x-rayed appellant's spine and did not diagnose a spinal subluxation as demonstrated by x-ray. Section 8101(2) of the Act[8] provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. As Dr. Brady did not diagnose a spinal subluxation he is not a physician for the purposes of the Act and his report is therefore insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical opinion evidence from a physician opining that his current condition and resulting disability is causally related to his accepted employment injury he has failed to meet his burden of proof in establishing continuing disability on or after September 1, 1993.

The Board further finds that appellant has not met his burden of proof in establishing that he developed an emotional condition as a result of his accepted employment injury.

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Larson[9] in his treatise on workers' compensation, once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.[10]

[8] 5 U.S.C. §§ 8101-8193, 8101(2).

[9] Larson 813.11(a).

[10] *Clement Jay After Buffalo,* 45 ECAB 707, 715 (1994).

In support of his claim for an emotional condition, appellant submitted reports from Richard F. Toplin and Judith S. Berman, M.Ed. and licensed psychologists. Section 8101(2) of the Act defines physicians to include clinical psychologists. There is nothing in the record establishing that Mr. Toplin and Ms. Berman are clinical psychologists and their reports cannot provide the necessary medical opinion evidence to meet appellant's burden of proof.

Appellant also provided a report dated March 17, 1994 from Dr. Neville H. Kotwal, a Board-certified psychiatrist, who noted appellant's history of injury and statement that he had been depressed since his employment injury. He diagnosed major depression -- rule out organic affective disorder. However, Dr. Kotwal did not provide an opinion on the causal relationship between appellant's diagnosed condition and his accepted employment injury. Therefore his report is insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated March 20, 1997 is hereby affirmed.

Dated, Washington, D.C.
August 2, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member