

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTORIA D. HILL and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, FEDERAL BUILDING, Philadelphia, Pa.

*Docket No. 98-2455; Submitted on the Record;
Issued June 24, 1999*

DECISION and ORDER

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

The issues are whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from her accepted orthopedic injury and whether appellant established that her bilateral shoulder condition was causally related to work factors.

The Board has carefully reviewed the record evidence and finds that the Office met its burden of proof in terminating appellant's compensation on the basis of the impartial medical examiner's opinion that her orthopedic injuries had resolved. The Board also finds that appellant failed to meet her burden of proof in establishing that her shoulder condition was causally related to the initial work injury.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office burden

¹ 5 U.S.C § 8101 *et seq.* (1974).

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant's notice of traumatic injury, filed on October 17, 1990, was accepted for an acute lumbosacral sprain with radiculopathy after she fell and hurt the right side of her back and buttocks while attempting to open a stuck file drawer. Appellant returned to light duty but stopped all work on February 22, 1991 and received appropriate compensation. Subsequently, the Office accepted a depression disorder resulting from the back injury, based on the May 23 and August 11, 1991 reports of Dr. Maurice D. Pressman, a Board-certified psychiatrist.

On July 25, 1995 the Office issued a notice of proposed termination of compensation on the grounds that the report of the impartial medical examiner, Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, established that appellant had no continuing orthopedic disability resulting from the October 1990 work injury. Appellant's attorney responded to the Office's notice and argued that Dr. Mattei's report was based on conjecture and speculation, that the opinion of Dr. Marc L. Kahn, a Board-certified orthopedic surgeon, should be accorded probative weight because he is appellant's treating physician and that the Office had authorized appellant's right shoulder surgery.

On August 25, 1995 the Office terminated appellant's compensation for orthopedic disability, based on Dr. Mattei's report.⁷ The Office noted that appellant's shoulder condition had not been accepted as work related and surgery to repair rotator cuff tears was not authorized.

Appellant requested an oral hearing, which was held on April 3, 1996. On June 13, 1996 the hearing representative affirmed the termination of appellant's compensation.⁸ The hearing representative also determined that appellant had failed to submit a rationalized medical report establishing a causal relationship between her shoulder problems and the initial work injury.

On February 20, 1997 appellant requested reconsideration and submitted an April 23, 1996 report from Dr. Joseph A. Libby, Board-certified in internal medicine, who had taken over

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

⁷ The Office noted that appellant would continue to receive total disability compensation for her depressive disorder.

⁸ Appellant initially appealed this decision to the Board, which granted her request to withdraw her appeal so that she could request reconsideration before the Office. Docket No. 97-178 (issued on February 12, 1997).

the practice of Dr. Lance Gooberman, appellant's long-term treating physician for her back problems, as well as Dr. Gooberman's treatment records.

On May 20, 1998 the Office denied appellant's request on the grounds that the medical evidence was insufficient to warrant modification of its prior decision. The Office found that Dr. Libby's report lacked medical rationale and was thus insufficiently probative to challenge the opinion of the impartial medical examiner. The Office also found that the medical evidence was insufficient to establish a work-related shoulder condition.

The Board finds that Dr. Mattei's December 14, 1993 report constitutes the weight of the medical opinion evidence and is sufficient to meet the Office's burden of proof. The Office properly referred appellant to Dr. Mattei when a conflict in the medical opinion evidence developed.⁹ Dr. Gooberman, stated on March 10, 1993 that appellant was still disabled because of her October 1990 injury. Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon, to whom the Office had referred appellant for a second opinion evaluation, reviewed the medical treatment records and concluded on October 1, 1991 that appellant had no ratable disability on an orthopedic or neurological basis, that her disability was functional, not organic and that she could physically return to her usual work as a loan specialist.

Dr. E. Michael Okin, a Board-certified orthopedic surgeon, to whom the Office had referred appellant, diagnosed chronic pain syndrome on June 5, 1992 and stated that appellant had full range of motion of both shoulders with normal motor function. Dr. Okin added that magnetic resonance imaging (MRI) scans were normal and showed no rotator cuff tears. On December 4, 1992 Dr. Okin stated that the exact etiology of appellant's neck and shoulder pain was "hard to differentiate" because she had chronic pain syndrome.

By contrast, Dr. Kahn diagnosed impingement syndrome in both shoulders, along with rotator cuff tears and opined that these injuries, as well as appellant's knee problems, were "a direct result of the accident at work on October 17, 1990." Although the June 10, 1992 surgery revealed no tear but only an abrasion and the left shoulder surgery was not done, Dr. Kahn concluded that appellant "certainly received" the shoulder injuries in the 1990 accident.

Dr. Mattei examined appellant on December 8, 1993 and reviewed her medical treatment records as well as a statement of accepted facts. He concluded that appellant exhibited degenerative changes in her spinal column, shoulder joints and left knee, which were "not a result of the accident" in 1990 that appellant described. After analyzing the results of the many objective tests done on appellant, Dr. Mattei stated that the degenerative changes were "typical" of appellant's age group and preexisted the 1990 incident. He added that appellant had no orthopedic problems that would substantiate her multiple, subjective complaints of pain and that she had developed a pain syndrome that had no objective basis.

In resolving the conflict, Dr. Mattei provided medical rationale for his conclusion that appellant had no further orthopedic disability--namely, that he found no clinical signs or

⁹ See *Dallas E. Mopps*, 44 ECAB 454, 456 (1993) (finding that the Office properly referred the claim to an impartial medical examiner because of a conflict in the opinions of a psychiatrist and a psychologist).

objective indications to support her complaints. By contrast, neither Dr. Kahn nor Dr. Goberman explained why appellant's bilateral shoulder condition was causally related to the 1990 incident or how appellant's chronic pain syndrome, first diagnosed in March 1992 by Dr. Daniel J. Ragone, physical medicine and rehabilitation, resulted from the 1990 incident.

In fact, Dr. Henry E. David, an osteopathic practitioner, to whom Dr. Goberman had referred appellant for consultation and who diagnosed the acute lumbosacral sprain and radiculopathy accepted by the Office as work related, stated on January 29, 1991 that appellant was overall improved and "should attempt to return to work."

Neither physician explained how an incident of falling backward onto the floor and hitting a chair in 1990 could cause tendinitis/bursitis in both shoulder joints, as diagnosed by Dr. Ragone, or result in rotator cuff damage in 1992. While Dr. Goberman exhaustively reviewed his treatment of appellant, he failed to provide medical rationale for his conclusion that appellant's low back pain radiating into her lower extremities was related to the 1990 incident. Thus, the Board finds that the reports of Drs. Goberman and Kahn are insufficiently probative to detract from the weight of Dr. Mattei's opinion.¹⁰

On reconsideration, appellant submitted a report from Dr. Libby, who first began treating appellant on April 23, 1996 and reviewed her medical history after taking over Dr. Goberman's practice. He stated that Dr. Goberman's notes mentioned appellant's complaints of new pain in both shoulders in early 1991. In February 1991, about three months after the file drawer incident, appellant's right knee gave out on her at work and she began using a cane.

Appellant complained of pain in her shoulders from using the cane to Dr. Goberman and Dr. Libby noted the rotator cuff tears confirmed by Dr. Kahn after MRI scans. Dr. Libby concluded within a reasonable degree of medical certainty that appellant's "rotator cuff tears are the direct result of use of a cane to assist walking due to the back injuries and resultant radicular symptomatology into her right leg which was a direct result" of the 1990 incident.

Dr. Libby failed to explain how he determined from the medical records that appellant's use of a cane resulted in rotator cuff problems, or even how the accepted back sprain resulted in appellant's right knee giving away. Nor does Dr. Libby relate why a knee giving away required the medical use of a cane. Finally, while appellant's back pain may have radiated into her lower extremities, the record contains no medical evidence to support any causal relationship between appellant's right knee condition and her employment. Inasmuch as the opinion of a referee physician is accorded special weight in resolving a conflict between a treating physician and a second opinion physician, the Board finds that Dr. Libby's opinion is not well rationalized and is, therefore, insufficiently probative to challenge that of Dr. Mattei.¹¹

¹⁰ See *Brady L. Fowler*, 44 ECAB 343, 352 (1992) (finding that the impartial medical examiner's opinion was sufficiently rationalized and based upon a proper factual background and therefore represented the weight of the medical evidence establishing that appellant had no continuing disability causally related to the accepted back injury).

¹¹ See *Roger Dingess*, 47 ECAB 123, 127 (1995) (finding that the conclusion of the impartial medical examiner that appellant's artery occlusion in his left hand was caused by work factors was entitled to special weight).

While Dr. Libby was not appellant's original treating physician, his report is based on the voluminous records compiled by Dr. Goberman and not on his own examination and findings. Inasmuch as Dr. Goberman's opinion initially created the conflict and Dr. Libby relied on his predecessor's records, Dr. Libby's opinion is not sufficient to create conflict.¹²

The May 20, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 24, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² See *Thomas Bauer*, 46 ECAB 257, 265 (1994) (finding that the additional report from appellant's physician concerning his emotional condition was insufficient to overcome the special weight accorded to the impartial medical examiner's opinion).