U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERONICA L. FIORENTINO and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Coatesville, PA

Docket No. 99-1252; Submitted on the Record;
Issued August 3, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to compensation on the grounds that she refused an offer of suitable work; and (2) whether the Office met its burden of proof in terminating appellant's compensation benefits effective January 6, 1999.

On January 25, 1998 appellant, then a 44-year-old psychiatric nursing assistant, filed a claim alleging that on that day she sustained injuries to her knees, side and stomach when she tripped and fell while trying to escape a threatening patient. She stopped working on January 25, 1998 and did not return. Subsequent to the date of the incident, appellant began to notice soreness in other areas of her body. The Office accepted her claim for lumbosacral, left shoulder, left ankle and bilateral knee sprains, and contusions to the abdomen and chest and began payment of compensation benefits. In an August 18, 1998 decision, the Office terminated appellant's wage-loss compensation on the grounds that she failed to accept an offer of suitable employment.[1] In a decision dated January 11, 1999, the Office terminated appellant's entitlement to compensation benefits, effective January 6, 1999, on the grounds that appellant's accepted medical conditions had resolved.

The Board finds that the Office improperly terminated appellant's wage-loss compensation on the grounds that she refused an offer of suitable work.

Section 8106(c)(2) of the Federal Employees' Compensation Act states: "a partially disabled employee who: (1) refuses to seek suitable work; or (2) refuses or neglects to work after suitable work is offered is not entitled to compensation."[2] An employee who refuses or

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[1] The Office initially issued its decision on August 4, 1998. However, the Office subsequently determined that the August 4, 1998 decision contained an error in that it terminated both wage-loss and medical benefits. The Office corrected this mistake in a reissued decision dated August 18, 1998, which terminated only wage-loss compensation.

[2] 5 U.S.C. § 8106(c)(2).

neglects to work after suitable work has been offered to him has the burden of showing that such refusal to work was justified.[3]

On June 1, 1998 appellant's treating physician, Dr. James Stephenson, a Board-certified surgeon, indicated on a physical capacity evaluation form that appellant could return to light-duty work, four hours a day, with restrictions. Dr. Stephenson specifically indicated that appellant could sit four hours a day, walk two hours and stand for three hours, and could perform repetitive movements of the wrists. He further indicated that appellant could push and pull up to 20 pounds for up to 2 hours and could lift up to 10 pounds, but could not reach above the shoulder, twist, squat, kneel or climb. Dr. Stephenson specified that appellant would require 15-minute breaks every 2 hours, immediate assistance for lifting, a contoured back support chair and an ergonomic computer work station. He anticipated that appellant would be able to increase her workday to eight hours in six to eight weeks.

In a July 1, 1998 letter, the employing establishment offered appellant a position as a clerk receptionist, four hours a day, five days a week. The position description indicated that appellant would primarily sit and type, file and take telephone messages, and would not be required to perform outside of her physical restrictions.

In a July 2, 1998 letter, the Office informed appellant that it found the position of clerk receptionist to be suitable and indicated that the position was still available at the employing establishment. The Office indicated that she had the opportunity to accept the position at no penalty. The Office stated that appellant had 30 days to accept the position or provide an explanation for refusing it. The Office indicated that if appellant failed to accept the position, any explanation or evidence which she provided would be considered prior to determining whether her reasons for refusing the job were justified. The Office concluded that if appellant failed to accept the offered position and failed to demonstrate that the failure is justified, her right to compensation would be jeopardized.

On July 15, 1998 appellant notified the employing establishment that she declined the job offer and referenced an attached medical report from Dr. Stephenson by way of explanation. In the attached report dated July 14, 1998, Dr. Stephenson checked a box indicating that appellant was totally incapacitated and stated: "unable to sit more than 20 minutes. Other restrictions remain in effect. DX herniated disc, L5-S1."

The Board finds that the Office improperly terminated appellant's compensation on the grounds that she refused suitable work.

The Office terminated appellant's compensation in the August 18, 1998 decision, finding that appellant had failed to respond to the Office's July 2, 1998 job suitability letter and that the medical evidence provided to the employing establishment, which indicated that appellant was unable to work due to a herniated disc, was insufficient to justify her refusal of the position as the physician provided no rationale for his conclusions and as a herniated disc is not an accepted employment condition. The Office's letter and decision in this case, however, were contrary to the Office's procedures. First, the Office's procedures provide that if medical reports in the file document a condition which has arisen since the compensable injury and this condition disables

[3] 20 C.F.R. § 10.124.

the claimant from the offered job, the job will be considered unsuitable, even if the subsequently acquired condition is not work related.[4] Thus, a medical condition which was not accepted by the Office as employment related may constitute sufficient reason for declining an offered position. The Office, therefore, improperly terminated appellant's compensation on August 18, 1998, on the grounds that she refused an offer of suitable work.

The Board further finds that the Office met its burden of proof to terminate appellant's compensation benefits effective January 6, 1999.

Subsequent to the Office's August 18, 1998 decision, in a letter dated November 23, 1998, the Office proposed to terminate appellant's compensation benefits. After reviewing appellant's objections to the proposed termination, by decision dated January 11, 1999, the Office terminated appellant's compensation and medical benefits effective January 6, 1999.[5]

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.[6] 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.[7] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[8] 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.[9]

In addition to the June 1 and July 14, 1998 medical reports from Dr. Stephenson discussed above, the record also contains a June 23, 1998 disability slip signed by Dr. Stephenson, in which the physician indicates that appellant is totally disabled for work from May 5 through July 13, 1998, due to her work injury, but does not otherwise explain the reasons for his conclusion. Appellant also submitted a June 29, 1998 attending physician's report from Dr. Stephenson in which he diagnoses contusions of the anterior chest, abdomen and left flank, and strains of both knees, left ankle, lumbosacral region and left shoulder. Dr. Stephenson indicated by checkmarks that the diagnosed conditions were causally related to appellant's employment, and that she was totally disabled for work.

Appellant also submitted a June 5, 1998 report from Dr. Daniel J. Kane, a physiatrist who performed a complete electrodiagnostic evaluation of appellant. In his report, Dr. Kane reviewed appellant's medical and employment history, including her history of injury, and listed

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[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.4.b(1) (December 1993).

[5] The Office's memorandum accompanying the decision, dated January 6, 1999, contains a typographical error in which it terminates appellant's benefits effective January 6, 1998. This is clearly an error, as it predates appellant's date of injury, January 25, 1998.

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

[7] *Id.*

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

[9] *Id.*

his findings on physical and electrodiagnostic examination. He concluded that testing revealed evidence of right medical nerve entrapment at the level of the carpal tunnel, and evidence of less severe medial nerve entrapment on the left side. Dr. Kane did not give an opinion as to the cause of these conditions, or whether appellant had any disability as a result of these conditions.

The record also contains a July 30, 1998 report from Dr. Jeffrey S. Yablon, a Board-certified neurological surgeon to whom appellant was referred by Dr. Stephenson. In his report Dr. Yablon discussed appellant's medical and employment history, and reviewed the report of a July 3, 1998 computerized tomography (CT) scan, which revealed spinal stenosis at L3-4 and L4-5 with L5 being worse, and also a possible left sided herniated disc at L5-S1. After performing a complete physical examination, Dr. Yablon concluded that appellant was suffering from chronic back pain, "contributed to by her spinal stenosis, by her obesity and by probably muscular sprain/strain." He stated that appellant was not a candidate for surgery, as she did not have any spinal claudication or any neurological deficits. Dr. Yablon concluded that he would obtain the results of further studies to review, and would see appellant back in his office afterwards. In a follow up report dated August 27, 1998, he noted that appellant still complained of low back pain, but had no other complaints. Dr. Yablon stated that he discussed possible treatment options with appellant, and that she indicated that she did not wish to pursue, at that time, any epidural steroid treatment or surgery. He concluded that there was no need for any further neurological follow-up.

On August 20, 1998 the Office referred appellant, together with a statement of accepted facts, the medical opinions of record and a list of issues to be addressed, to Dr. Steven J. Valentino, an osteopath, for a second opinion examination. In his report dated September 16, 1998, Dr. Valentino noted that a review of appellant's medical file revealed that x-rays of the lumbar spine performed on March 14, 1998 showed arthritic changes of the facet joints and osteophytic formations. The x-ray report further indicated, however, that there had been no changes since appellant's prior x-ray taken on July 17, 1997. He concluded, therefore, that this would indicate that appellant's January 25, 1998 work injury did not alter the architecture of her lumbar spine. Dr. Valentino documented his findings on physical examination and reviewed all of the remaining medical evidence of record, including the CT scans and electrodiagnostic studies. He diagnosed resolved strains of both knees, the lumbosacral area, left ankle and left shoulder, and resolved contusions of the abdomen and chest. Dr. Valentino concluded:

> "Based on today's evaluation I find [appellant] has fully, totally and completely recovered from her work-related injury of January 25, 1998 without residual or need for ongoing supervised medical care. She has reached maximum medical improvement. There is no evidence of residual injury or impairment such that she is capable of returning to her preinjury position full time, full duty without restrictions. The effects of her work injury are not present. She has returned to her preinjury level. The age related degenerative changes exacerbated by her obesity which are shown on her diagnostic studies have no causal relationship to the work injury in question."

In a letter dated December 18, 1998, appellant, through counsel, objected to the Office's notice of proposed termination, but did not submit any additional evidence.

The Board finds that the weight of the medical opinion evidence rests with Dr. Valentino's well-rationalized narrative report. Dr. Valentino provided a history of injury and

appellant's medical history, reviewed the results of all tests, and performed a complete physical examination. He noted that all of appellant's employment-related conditions had completely resolved, and that appellant had no disability for work. Therefore, the Office properly relied on Dr. Valentino's report in terminating appellant's benefits. Furthermore, although Dr. Stephenson continues to assert that appellant is totally disabled due to her accepted employment injuries, he provides no objective findings and no explanation to support his conclusion. In addition, his opinion regarding the causal relationship between appellant's current condition and her accepted employment injuries was expressed solely by checkmark. Therefore, his opinion is not sufficiently rationalized to create a conflict with that of Dr. Valentino.[10] The only remaining physicians of record, Drs. Kane and Yablon, do not offer any opinion on the issue of disability and do not discuss the causal relationship, if any, between appellant's diagnosed conditions and her January 25, 1998 employment injury. As Dr. Valentino stated that appellant had no objective signs of her accepted conditions, that her current medical conditions were not related to her employment injury and that she could return to her regular full-time employment, the Office met its burden of proof to terminate appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated January 11, 1999 is affirmed. The decision of the Office dated August 18, 1998 is hereby reversed.

Dated, Washington, D.C.
August 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[10] The Board has long held that a mere checkmark without a supporting rationalized medical opinion is insufficient to establish appellant's claim. *Elizabeth S. Richardson*, 42 ECAB 346 (1991).