U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JONELL CHRISTMAS and DEPARTMENT OF THE ARMY, CRANE ARMY AMMUNITITION ACTIVITY, Crane, IN

Docket No. 99-1649; Submitted on the Record;
Issued August 29, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on November 14, 1997.

On December 7, 1972 appellant, then a 45-year-old munitions handler, sustained multiple injuries in a motor vehicle accident. The Office accepted the claim for a left thigh contusion and chest contusion. The condition of post-traumatic stress syndrome was subsequently accepted. The Office paid appropriate benefits for all periods of disability.

In a September 1, 1982 medical report, Dr. Jerry Like, an osteopath and appellant's attending physician, opined that appellant was totally disabled with a diagnosis of traumatic degenerative arthritis of the left hip and the fourth and fifth lumbar vertebrae and cervical spine, also post-cerebral concussion with anxiety neurosis resulting from her medical problems.

In a March 29, 1983 report, Dr. James H. Booze, a Board-certified orthopedic specialist and Office referral physician, was provided with a statement of accepted facts, the entire medical record and performed his own examination. He opined that, from an orthopedic standpoint, there was nothing he could definitely attribute to appellant's injury of 1972 and found that there was no residual disability remaining. Dr. Booze stated that appellant has degenerative arthritic problems which were compatible with her age and that the pain in her right foot may be due to degenerative joint disease in the first metatarsal phalangeal joint. However, for the remainder of appellant's symptoms, he could find no logical explanation. Dr. Booze further opined that appellant had serious emotional problems which he did not attribute to her accident, but would defer to a psychiatric consultant.

In a June 20, 1983 report, Dr. George C. Weinland, a psychiatrist and Office referral physician, noted appellant's history of injury, her medical history and performed an examination. He noted that appellant's symptomology appeared to be disproportionate to objective physical findings, noting considerable emotional overlay to the symptomology and certain of her

symptoms to suggest the possibility of conversion phenomenon and, accordingly, diagnosed post-traumatic stress disorder. The Office subsequently accepted this diagnosis as an accepted condition.

The Office found there was a conflict of medical opinion evidence between Drs. Like and Booze and referred appellant for an impartial medical examination by Dr. F.R. Brueckmann, a Board-certified orthopedic surgeon. In a report dated May 15, 1985, he noted appellant's history of injury, reviewed her medical history including x-rays of the lumbar spine and performed a physical examination. Dr. Brueckmann stated that he could find no causal relationship between her continuing physical complaints and the injury of 1972. He stated that he could find no continuing work relationship and it was his opinion that there had never been any findings to support an injury that she had at work causing her to be off for the past 13 years. Dr. Brueckmann diagnosed hallux rigidus of both large toes or osteoarthritis of the large toe joints on both sides, but did not causally relate these conditions to the work injury. He found no pathology significant in her cervical, thoracic or lumbar spines or hips and found a normal range of motion in all of these joints.

By letter dated September 27, 1985, the Office requested Dr. Like to summarize his treatment of appellant's post-traumatic stress disorder over the period April 23, 1984 to the present. In an October 29, 1985 report, he stated that he had not seen appellant since April 16, 1984 at which time she was given medicine for her "nerves." Dr. Like stated that it was his opinion that appellant was doing better or had changed physicians.

In a report dated November 16, 1997, Dr. Franklin D. Walker, a psychiatrist and Office referral physician, stated that appellant had a lifetime of problems due to a hysterical and possibly mixed personality disorder. He stated that appellant has found a way of not putting herself in stressful and insecure positions, such as working, by being on medical leave and support from her previous employment. Dr. Walker stated that the condition with which appellant suffered is one that has been with her for a lifetime and did not arise out of her job. He stated that the employment injury provided appellant with a convenient focus for all the anguish that she had in her life and the means of not putting herself in a position to endure more. Dr. Walker opined that appellant would find it stressful to return to any kind of work and would probably not be able to maintain a steady employment. No opinion was rendered whether appellant had any continuing work-related psychological problems.

In a report dated August 29, 1993, Dr. Charles Y. Kim, a Board-certified psychiatrist and Office referral physician, noted appellant's history of injury and medical history. He stated that appellant had ongoing psychiatric symtomatology preceding to her accident in 1972 with certain traits or themes of "neurotic trends or movements" and obligatory repetitious patterns of neurotic behaviors seen throughout her life. Dr. Kim explained that to say that 'because of the accident' would be interpreted by appellant as an externalization and projection and indicated that appellant's somatization represented her own defenses of a subconscious process. He opined that appellant's ongoing psychiatric symptoms were only minimally consequential to her work-related vehicle accident on December 7, 1972.

By letter dated December 9, 1993, the Office enclosed a copy of Dr. Kim's August 29, 1993 report to Dr. Like for comment.

By letter dated June 14, 1996, the Office advised appellant that an undated medical report from her primary care physician was required in order to make a determination regarding the continuation of compensation benefits.[1]

In a report dated August 5, 1996, Dr. Leonard A. Lado, a Board-certified geriatric psychiatrist and an Office referral physician, noted appellant's history of injury, psychosocial history and performed a mental status examination. He stated that appellant did not continue to suffer from a work-related post-traumatic stress disorder. Dr. Lado stated that throughout the medical record, there was no clear cut indication that appellant had ever suffered from post-traumatic stress disorder, as her symptoms were not fairly well defined in the chart. He stated that appellant had suffered from a work-related psychiatric condition which had lasted for approximately five years. Dr. Lado stated that the documentation provided by Dr. Like did not reveal any concrete symptoms of post-traumatic stress. The definition of post-traumatic stress was well defined early in the 1980's when the first diagnostic and statistical manual was organized. Prior to that, it could have been labled as anxiety neurosis. Dr. Lado opined that he was unable to determine whether appellant's symptoms were real symptoms then. He stated that appellant's headaches were the only primary concern and clinical symptom he could see. With regard to her psychiatric problems, he recommended that appellant would benefit from some individual therapy, but for the purposes of only dealing with her own long-term anxiety not related to the injury. Overall, Dr. Lado stated that appellant has a good prognosis and that he believed she was able to carry on activities that did not contain a stressful environment.

By letter dated September 17, 1997, appellant was advised of the proposed termination of compensation and was provided with 30 days to submit additional evidence. She submitted a personal letter which the Office received on October 14, 1997. In her letter, appellant explained that she was 70 years old and that her physical condition prevented her from working.

By decision dated November 14, 1997, the Office terminated appellant's compensation benefits finding that the weight of the medical evidence established that the employment-related conditions had resolved.[2] She requested a hearing and, by decision dated February 3, 1999, the Office affirmed its prior decision.[3]

The Board has reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation on November 14, 1997.

Once the Office accepts a claim it has the burden of proving that the employee's disability has ceased or lessened before it may terminate or modify compensation benefits.[4]

[1] The record reflects that the Office had periodically advised appellant to provide updated medical evidence, but none was received.

[2] The Office had originally terminated benefits in a decision of November 6, 1997, but reissued the termination decision on November 14, 1997 as a copy of appellant's appeal rights were not attached. Appellant received a supplemental compensation check for the period November 9 through November 14, 1997.

[3] The Office noted that it was affirming the November 6, 1997 decision; however, the Board notes that the correct decision date was November 14, 1997.

[4] *Karen L. Mayewski*, 45 ECAB 219, 221 (1993); *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*,

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.[5] To discharge its burden of proof, it is not sufficient for the Office to simply produce a physician's opinion negating causal relationship. As with the case where the burden of proof is upon a claimant, the Office must support its position on causal relationship with a physician's opinion which is based upon a proper factual and medical background and which is supported by medical rationale explaining why there no longer is or never was, a causal relationship.[6]

In the present case, the Office accepted the diagnosis of left thigh contusion, chest contusion and post-traumatic stress syndrome causally related to a vehicular accident of December 7, 1972. The Office terminated appellant's entitlement to receive compensation benefits on November 14, 1997 on the grounds that the weight of the medical evidence established that appellant's employment-related conditions had resolved. Regarding the orthopedic conditions, the Office accorded the weight of the medical evidence to Dr. Brueckmann, who determined that appellant had no orthopedic residuals as of 1985. Regarding the psychiatric condition, the Office accorded the weight of the medical evidence to Dr. Lado who opined that the injury-related condition had ceased.

Regarding the orthopedic condition, the Office found that there was a conflict of medical opinion evidence between appellant's treating physician, Dr. Like and the Office referral phyisician, Dr. Booze and properly referred appellant to Dr. Brueckmann, a Board-certified orthopedic surgeon, for an impartial medical examination.[7]

In situations when there exists 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 upon a proper factual background, must be given special weight.[8]

The Board finds that the weight of the medical evidence rests with the May 15, 1985 report of Dr. Brueckmann, who determined, after reviewing appellant's medical record and conducting an examination, that appellant had no orthopedic residuals stemming from the December 7, 1972 work injury and it was his opinion that there had never been any findings to support that appellant was disabled to support her inability to work these past 13 years. The only evidence of record after Dr. Brueckmann's report is a work restriction form report from Dr. Like

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36 ECAB 238, 241 (1984).

[5] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[6] *Frank J. Mela*, 41 ECAB 115, 125 (1989).

[7] Section 8123 of the Federal Employees' Compensation Act provides, "If there is disagreement between the physician making the examination for the United Sates and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. §§ 8101-8193, 8123(a).

[8] 5 U.S.C. § 8123(a); *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

dated May 15, 1989 in which he opines that appellant is able to work two hours per day, but is devoid of any rationale or medical explanation as to how or why this is causally related to her work injury. As Dr. Brueckmann's report was based on a proper factual background and provided findings in support of his conclusion that appellant was no longer disabled and had no continuing residuals and the subsequent medical evidence does not refute this fining, his report is entitled to the weight of the medical evidence.

With respect to the Office's decision to terminate appellant's compensation for her emotional injury, Dr. Lado, the Office referral physician upon whom the Office relied in terminating appellant's benefits, provided a detailed report based upon his own examination of appellant, relied on the statement of accepted facts, as well as appellant's personal history and medical records and concluded that appellant did not suffer any continued emotional condition causally related to her employment injury. Although his report along with the other Office referall physicians support that appellant suffers from an underlying emotional disorder, the report does not establish that her underlying emotional disorder continues to be aggravated by the 1972 work injury. In his August 29, 1993 medical report, Dr. Kim explained how appellant would interpert the affects of the 1972 accident and reasoned that her ongoing psychiatric symptoms were only minimally consequential to her work-related injury. Inasmuch as Dr. Kim did not render a fully-rationalized opinion as to whether appellant had any continuing work-related psychiatric disability, his opinion is of diminished probative value. Accordingly, the Office properly determined that Dr. Lado's August 5, 1996 report constituted the weight of the medical evidence under the circumstances in this case. The Board has held that in assessing medical opinion evidence, the weight to be accorded such medical evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of 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 are factors which enter into this evaluation.[9]

The Office therefore met its burden of proof to terminate appellant's compensation benefits on November 14, 1997 on the grounds that the reports of Drs. Brueckmann and Lado constituted the weight of the medical evidence.

[9] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The decision of the Office of Workers' Compensation Programs dated February 3, 1999 is hereby affirmed.

Dated, Washington, D.C.
August 29, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member