U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. HORTON and DEPARTMENT OF THE NAVY, NAVAL AIR SYSTEMS COMMAND, NAVAL AIR STATION, Patuxent River, MD

Docket No. 98-2354; Submitted on the Record;
Issued October 3, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof in establishing that his fibromyalgia and sleep disorder are causally related to his accepted employment injuries; (2) whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request to change authorized physicians; and (3) whether the Office abused its discretion by refusing to reopen appellant's claim for review of the merits on February 18 and July 9, 1998.

The Board finds the case is not in posture for decision on this issue of whether appellant developed fibromyalgia due to his employment injuries.

Appellant filed a claim alleging that on April 5, 1985 he sustained a cervical strain in the performance of duty. The Office accepted his claim for cervical strain, herniated disc C6-7. The Office accepted lateral epicondylitis as causally related to the April 5, 1985 employment injury on March 21, 1988. On April 19, 1988 the Office accepted the additional condition of aggravation of preexisting peptic ulcer disease with gastrointestinal bleeding. The Office determined that appellant's emotional condition was causally related to his accepted employment injuries, on June 29, 1994 and that he was entitled to medical treatment for this condition.

On November 15, 1995 appellant stated that, his treating physician, Dr. Laurie Lindblom, a Board-certified physiatrist, had diagnosed the additional condition of fibromyalgia and submitted medical evidence. In a letter dated June 19, 1997, appellant requested to change his treating physician to Dr. Robert Hansen, a Board-certified neurologist. In July 1997, the Office authorized a one-time evaluation and treatment by Dr. Hansen. By decision dated November 19, 1997, the Office stated, "[y]our request that we approve, Dr. Robert B. Hansen to treat you for fibromyalgia and a sleep disorder has been disallowed because the medical evidence of record is not sufficient to show that these conditions are related to your work injury." The Office noted the conditions accepted as employment related and stated, "[a]s fibromyalgia and a sleeping

disorder have not been found to be related to your accepted work injury, we are not able to fund treatment by Dr. Hansen for these problems."

Appellant requested reconsideration on November 24, 1997 and stated that Dr. Lindblom referred him to Dr. Hansen. By decision dated February 18, 1998, the Office declined to reopen appellant's claim for review of the merits. Appellant requested reconsideration on March 15, 1998 and stated that he wished treatment for pain from Dr. Hansen. By decision dated July 9, 1998, the Office stated, "[t]he November 19, 1997 decision states that, your fibromyalgia and sleep disorder are not related to the April 1985 work injury." The Office stated that appellant had not "presented any evidence establishing clear evidence of error of the November 19, 1997 decision."

An employee seeking benefits under the Federal Employee's Compensation Act[1] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[2]

In this case, the Office has accepted that appellant sustained an injury on April 5, 1985 including cervical strain; herniated disc C6-7; lateral epicondylitis; aggravation of preexisting peptic ulcer disease with gastrointestinal bleeding; and an emotional condition. Appellant alleged that he developed fibromyalgia and a sleep disorder as a result of his 1985 employment injuries.

In a report dated November 1, 1995, Dr. Laurie Lindblom, a Board-certified physiatrist of professorial rank, noted appellant's history of injury and symptoms of pain, depression, fatigue, generalized weakness and difficulty sleeping. She noted that appellant felt that he had fibromyalgia. Dr. Lindblom performed a physical examination, which revealed tenderness to palpation in locations consistent with fibromyalgia including the occupit, trapezius, cervical region, second rib, lateral epicondyle and gluteal regions. She found no specific muscle spasm and diagnosed fibromyalgia. On November 13, 1995 Dr. Lindblom stated that she had evaluated appellant for long-standing diffuse muscular pain and that his examination and history were consistent with a diagnosis of fibromyalgia. She stated, "It is my opinion that this disorder is a result of his work injury in April 1985. The neck pain that resulted from his injury became chronic and wide spread."

The Office requested additional information from Dr. Lindblom regarding the causal relationship between appellant's diagnosed condition and his employment injury on April 4, 1996. In a report dated April 23, 1996, Dr. Lindblom stated that she diagnosed fibromyalgia due to widespread pain and tenderness throughout the body; sleep disturbance and depression and anxiety. Dr. Lindblom stated:

> "I believe [appellant's] symptoms fit the criteria of fibromyalgia and as he has had exhaustive treatment and medications and physical therapies. I think chief

[1] 5 U.S.C. §§ 8101-8193.

[2] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

> treatment at this point will focus on the psychological aspects of the condition. He did not have these symptoms prior to his work accident in 1985 and I know of no event subsequent to his work accident that would have brought on his symptoms. It is on this basis that I am attributing his current symptoms to his work-related accident."

The Office referred appellant for a second opinion evaluation with Dr. Doris M. Rice, a Board-certified rheumatologist of professorial rank, on June 4, 1997. In a report dated September 17, 1997, Dr. Rice noted appellant's history of injury and performed a physical evaluation. She stated, "History of fibromyalgia -- conceivably he could have this based on the trigger point areas that are tender today." Dr. Rice recommended further testing to determine the diagnosis. On November 7, 1997 the Office authorized the additional testing. The Office denied appellant's claim on November 19, 1997.

Although the reports from Drs. Rice and Lindblom are not sufficient to meet appellant's burden of proof as Dr. Lindblom offered little medical rationale explaining the causal relationship between appellant's current condition and his employment injury, these reports contain a history of injury, diagnosis and an opinion that appellant's current condition was caused by the accepted employment injury. While these reports are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment injury and the diagnosis of fibromyalgia and are sufficient to require the Office to undertake further development of appellant's claim.[3]

The Board further finds that appellant has not met his burden of proof to establish that he developed a sleep disorder as a result of his employment injuries.

In a note dated August 22, 1996, Dr. Lindblom noted that appellant stated that his sleep had become worse. Appellant stated that he was constantly awakening. Dr. Lindblom performed a physical evaluation and diagnosed fibromyalgia and chronic fatigue. She stated that appellant had exhausted all treatment modalities and recommended a formal sleep study. Dr. Lindblom stated that appellant should consult other physicians.

In a report dated July 24, 1997, Dr. Robert B. Hansen, a Board-certified neurologist, noted appellant's history of injury and medical history. He performed a physical examination and stated, "[Appellant] has disseminated axial pain with multiple tender point areas involved, which I believe is consistent with a diagnosis of fibromyalgia. He may also have more degenerative problems involving the lower spine producing pain over the sacrum. All of this is aggravated by failure to obtain adequate sleep." Dr. Hansen recommended a sleep evaluation.

In a report dated August 27, 1997, Dr. Michael Slattery, a Board-certified neurologist, noted appellant's statement that he had difficulty sleeping for 10 years. He performed a physical examination and found that appellant's history was suggestive of restless leg syndrome and periodic leg movements of sleep. Dr. Slattery noted that appellant had a component of depression causing difficulty initiating and maintaining sleep. Dr. Slattery also stated that

[3] *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

appellant's "chronic pain syndrome" certainly could be one of the etiologies causing sleep fragmentation.

These reports are insufficient to meet appellant's burden of proof in establishing that his sleep disorder is causally related to his employment injuries. Dr. Lindblom did not provide any opinion on the causal relationship between appellant's sleep difficulties and his employment injuries. Dr. Hansen indicated that appellant's failure to sleep was aggravating other conditions rather than that the sleep disorder was the result of the employment injuries. Finally, Dr. Slattery did not offer a definitive opinion on the cause of appellant's sleep disturbances. He indicated that he believed the primary cause was restless leg syndrome unrelated to appellant's employment. Dr. Slattery also mentioned depression and chronic pain syndrome. The Office has not accepted chronic pain syndrome as a condition causally related to appellant's employment injury. Dr. Slattery did not provide a definite opinion that appellant's emotional condition caused or contributed to his sleep disorder and did not provide any medical reasoning to support his suggestion of a relationship between depression and sleep difficulties.

As appellant has failed to submit the necessary rationalized medical opinion evidence to establish causal relationship between his diagnosed condition and his accepted employment injuries, he has failed to meet his burden of proof and the Office properly denied his claim for sleep disorder.

The Board further finds that the Office abused its discretion by refusing to grant appellant's request to change authorized physicians.

The facts in this case indicate that Dr. Lindblom, appellant's treating physician of record, stated on August 22, 1996 that, appellant had exhausted all treatment modalities. She stated that her only suggestion for treatment was a sleep study and that appellant should "explore other areas of intervention and consult other physicians if he feels they may have additional suggestions."

In a statement dated June 19, 1997, appellant requested permission to change his treating physician to Dr. Robert Hansen, a Board-certified neurologist, as Dr. Lindblom had exhausted treatment modalities. Appellant stated that Dr. Hansen was a pain specialist and that he had agreed to treat him. On August 8, 1997 appellant submitted an additional request to change physicians. He noted that the Office had approved an evaluation by Dr. Hansen and asked that Dr. Hansen become his treating physician.

On September 2, 1997 the Office medical adviser reviewed the case and noted that appellant's claim was not accepted for fibromyalgia. He stated that funding for studies of sleep disorder were not approved.

Appellant submitted a note on October 23, 1997 from Dr. Lindblom. She referred appellant to Dr. Hansen for pain management.

By decision dated November 19, 1997, the Office denied appellant's request to change physicians finding that fibromyalgia and sleep disorder were not accepted as causally related to appellant's employment injury.

Under section 8103 of the Act,[4] an employee is permitted the initial choice of a physician. After this initial choice, which is not involved in the present case, the Office has the power to approve appropriate medical care and has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. The Office has broad administrative discretion in choosing means to achieve this goal. Office regulations at 20.C.F.R. § 10.401(b), provide in pertinent part: "An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown for the request."[5]

The Office's procedure manual states, "If the attending physician asks to be relieved of responsibility in a case, the request will be granted."[6] In this case, appellant's approved physician, Dr. Lindblom, stated that she had no further treatment to offer appellant and that he should seek further treatment from other physicians. These statements are such that the Office should have recognized the need for appellant to change physicians. The Office's November 19, 1997 decision did not address the central aspect of the requests of both appellant and Dr. Lindblom for a change in authorized physicians. The case will be remanded to the Office for a proper exercise of its discretion on the selection of an authorized physician to continue appellant's medical care for his accepted conditions.[7]

[4] 5 U.S.C. §§ 8101-8194, § 8103.

[5] *Yvonne R. McGinnis*, 50 ECAB ___ (Docket No. 96-2626, issued March 4, 1999).

[6] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.6 (April 1995).

[7] The Office found that the conditions of fibromyalgia and sleep disorder were not causally related to appellant's employment injury. The Office's determination that medical treatment for these conditions was, therefore, not approved was appropriate. The Office's obligation to pay for medical treatment extends only to treatment of employment-related conditions and appellant has the burden of establishing that the treatment is for the effects of an employment injury. *Dolores May Pearson*, 34 ECAB 995 (1983).

The November 19, 1997 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this decision.[8]

Dated, Washington, DC
October 3, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] Due to the disposition of this November 19, 1997 decision it is not necessary for the Board to address the July 9 and February 18, 1998 decision denying review of the merits of appellant's claim.