U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUTH L. BERG and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

Docket No. 99-561; Submitted on the Record;
Issued September 8, 2000

DECISION and ORDER

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

The issue is whether appellant has any continuing disability causally related to her accepted employment injuries.

The Board has duly reviewed the case on appeal and finds that appellant has no residual disability from her accepted employment injuries.

In this case, the Office of Workers' Compensation Programs accepted that appellant's work-related injury of October 15, 1995 resulted in a T12 compression fracture and subsequently expanded the claim to include the condition of inferior vena cava thrombosis. She filed a notice of recurrence of disability on April 8, 1996 alleging an April 5, 1996 recurrence of injury. In a decision dated August 8, 1996, the Office denied appellant's claim for recurrence of disability on April 5, 1996 finding that the weight of the medical evidence established that appellant recovered from the accepted medical conditions by March 10, 1996 and that she was no longer disabled from performing her date-of-injury position. Appellant requested reconsideration on July 31, 1997 and submitted additional medical evidence from Dr. Zachary Spigelman, a specialist in oncology and hematology, and Dr. Daniel B. Carr, a Board-certified anesthesiologist, which supported continued disability causally related to the October 15, 1995 work injury. The Office noted that the new evidence along with the reports from appellant's treating physician Dr. Adrienne Knopf, a Board-certified internist, supported continued disability while the panel of second opinion experts consisting of Board-certified orthopedic surgeon Hyman Glick, Board-certified neurologist Brian S. Mercer, and Board-certified internist Mark Friedman, concluded that appellant was physically capable of performing her date-of-injury job since March 10, 1996. Accordingly, the Office found a conflict in medical opinion and referred appellant for an impartial examination by a referee panel with a Board-certified neurologist, Dr. Robert Levine, Board-certified internist, Dr. Kenneth Krutt; and a Board-certified orthopedist, Dr. William Kermond. By decision dated August 12, 1998, the Office denied modification of its August 8, 1996 decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to 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 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, the Office referred appellant for a second-opinion panel evaluation with Board-certified orthopedic surgeon Hyman Glick, Board-certified neurologist Brian S. Mercer, and Board-certified internist Mark Friedman, who opined that appellant was physically capable of performing her date-of-injury job as of March 10, 1996. The Office found that the new evidence from Drs. Spigelman and Carr, which was supportive of appellant's continued disability due to her accepted work injury, was sufficient to create a conflict of medical opinion evidence between appellant's physicians and the second-opinion panel of experts and referred appellant to an impartial medical examination with Drs. Levine, Krutt and Kermond.

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."

In a report dated May 28, 1998, Dr. Levine noted appellant's history of injury, subjective complaints, reviewed the medical evidence of record in conjunction with the statement of accepted facts and performed a physical examination. He found no objective findings other than the vena cava thrombosis, which he found had resolved, and a T12 fracture, which had fully healed. Dr. Levine opined that there was no ongoing disability from a neurological perspective. Dr. Levine opined that appellant did not exhibit any verifiable residual symptomatology of her accepted October 10, 1995 T12 compression fracture. Regarding appellant's complaint of "bilateral intermittent numbness in both hands" since the work injury, Dr. Levine noted that appellant did not complain of any numbness or paresthesias on evaluation. Rather, her principal complaint was burning. Furthermore, Dr. Levine noted that appellant did not have any complaints consistent with the EMG finding of her mild right carpal tunnel syndrome as her complaints were all symmetric, she did not have the typical symptomatology of nocturnal paresthesias and Tinel's sign and Phalen's signs were not elicited. Accordingly, Dr. Levine opined that the T12 compression fracture does not inhibit appellant from performing any aspect of her regular duties as described in the statement of accepted facts.

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

[2] *Id.*

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

[4] *Id.*

[5] 5 U.S.C. §§ 8101-8193, 8123(a).

In a report dated June 3, 1998, Dr. Krutt noted appellant's history of injury, medical history and performed a physical examination. He found appellant's physical examination unremarkable for significant neurologic disease. Dr. Krutt found no findings supportive of her symptoms, with the exception of multiple tender points which raised the question of a fibromyalgia type syndrome which, in his opinion, was unrelated to her occupational accident. He further found no evidence on examination to suggest reflex sympathetic dystrophy as an underlying cause of her multiple symptoms. Dr. Krutt further indicated that the compression fracture had long since healed.

In a report dated June 3, 1998, Dr. Kermond noted appellant's history of injury, medical history, and performed a physical examination. He noted that the positive objective findings on examination were essentially a slightly restricted range of motion and decreased strength in her back and abdomen, plus color change in the upper and lower extremities. Dr. Kermond noted that appellant did not have any evidence of spinal cord compression due to the compression fracture, as evidenced by normal reflexes and downgoing response to Babinski reflex testing. Review of previous records indicates that the fracture has satisfactorily healed. He stated that appellant's inability to return to work is based on the complications which have occurred since appellant's fracture, rather than due to the fracture itself, which has obviously healed. Dr. Kermond noted that appellant has been left with a state of deconditioning, as evidenced by muscle weakness and, as indicated in physical therapy notes, she had never been able to overcome this since she developed the vena cava thrombosis and was hospitalized for insertion of the umbrella. He stated that he could not form an opinion as to the linkage of the complications of suggested reflex sympathetic dystrophy, slowing of the conduction of the median nerve and vena cava thrombosis to the fall. However, Dr. Kermond opined that appellant has developed a chronic pain syndrome which prevented her from functioning. He stated that appellant's postfracture course was highly unusual and, although he did not have an opinion regarding the direct relationship of the complications with the documented fracture, he believed that the T12 compression fracture had since healed.

By letter dated July 8, 1998, the Office sent Dr. Kermond copies of Drs. Krutt and Levine's reports in hope that they would aid him in formulating an opinion on the relationship of "the complications of suggested reflex sympathetic dystrophy, slowing of conduction of the median nerve, and vena cava thrombosis to the fall." In a report dated July 22, 1998, Dr. Kermond stated that he agreed with the findings of Drs. Krutt and Levine that there is no concrete linkage of the complications to suggest reflex sympathetic dystrophy, slowing of the conduction of the medial nerve and vena cava thrombosis to the fall which appellant sustained in October 1995 and, thus, there is no residual impairment.

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] As the reports from Drs. Levine, Krutt and Kermond are all based on a proper factual background and they have provided well-rationalized

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

opinions in support of their conclusion that appellant has no residual disability as a result of the October 10, 1995 work injury, their opinions are entitled to the weight of the medical evidence.

The August 12, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
September 8, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member