U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TONI J. STEPHENS and U.S. POSTAL SERVICE,
POST OFFICE, Englewood, CO

Docket No. 01-717; Submitted on the Record;
Issued April 19, 2002

DECISION and ORDER

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

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

Appellant, a 50-year-old clerk stenographer, filed a notice of occupational disease on March 31, 1994 alleging that she developed a condition of her left hand due to factors of her federal employment. The Office accepted left lateral epicondylitis. Appellant filed an additional claim on January 28, 1995 alleging that she developed compression at the right wrist and elbow due to repetitive motion. The Office accepted this claim for carpal tunnel syndrome and right elbow ulnar neuropathy. Appellant filed a claim on June 5, 1995 and alleged that she developed fibromyalgia due to factors of her federal employment. The Office accepted this claim.

In a letter dated December 2, 1999, the Office proposed to terminate appellant's compensation benefits. The Office terminated appellant's compensation benefits on February 14, 2000. Appellant, through her attorney requested an oral hearing on February 17, 2000. By decision dated October 5, 2000, the hearing representative affirmed the Office's decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

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.[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

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

[2] *Id.*

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, appellant has not disagreed with the findings that she has no disability or medical residuals from her accepted upper extremity conditions. Appellant alleges that she continues to have disability and requires treatment for fibromyalgia. The Office referred appellant for a second opinion evaluation with Dr. Peter G. Hanson, an orthopedic surgeon, in 1996. He diagnosed chronic fibromyalgia and stated that there was a clear cause and effect between this condition and appellant's work activities. Dr. Hanson became appellant's treating physician and provided her with over 125 acupuncture treatments for her fibromyalgia.

On June 3, 1999 the Office referred appellant for a second opinion evaluation with Dr. Jeffery M. Hrutkay, a Board-certified orthopedic surgeon. In a report dated June 11, 1999, Dr. Hrutkay noted appellant's history of injury and performed a physical examination. He found that appellant had no current objective findings of her accepted conditions. Dr. Hrutkay stated that he could not specifically relate appellant's fibromyalgia to work and that appellant's work history was not specifically implicated in the onset of fibromyalgia.

The Office referred appellant, a statement of accepted facts and list of specific questions for an impartial medical examination by Dr. Jeffery J. Sabin, a Board-certified orthopedic surgeon.[5] In a report dated October 25, 1999, Dr. Sabin noted appellant's history of injury and performed a physical examination. He only diagnosed fibromyalgia and stated, "I cannot state that fibromyalgia is in any likelihood related to work. I am not familiar with fibromyalgia being caused by any specific type of work or any type of repetitive motion disorder."

In a report dated December 21, 1999, Dr. Hanson diagnosed fibromyalgia and stated, "It should be noted that all of her symptoms came about from repeat motion injuries at work and were initially work related and caused." He suggested that appellant should be seen by a rheumatologist.

Appellant submitted a report dated December 30, 1999 from Dr. Roger E. Bowles, a Board-certified internist, who diagnosed fibromyalgia and stated that appellant's condition was not preexisting. Dr. Bowles asserted that there was some evidence that multiple injuries could lead to fibromyalgia. He specifically mentioned automobile accidents as a contributing cause

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

[4] *Id.*

[5] Appellant's attorney requested to participate in the selection of any physician who would examine appellant on December 17, 1999. This request was made after the examination and did not contain any reason why appellant's attorney wished to participate in the selection. The procedural opportunity of a claimant to participate in the selection process is not an unqualified right as the Office has imposed the requirement that the employee provide a valid reason for any participation request for any objection proffered against a designated impartial medical examiner. Therefore, the Office properly denied the request in this case. *Irene M. Williams*, 47 ECAB 619, 623 (1996).

and suggested that appellant's condition should be reviewed by a rheumatologist or pain specialist.

On January 12, 2000 the Office requested a supplemental report from Dr. Sabin asking him to explain his findings as well as provide an opinion on disability and medical treatment. In a report dated January 19, 2000, Dr. Sabin stated that appellant had trigger points for fibromyalgia but that she had no symptoms specific to her accepted condition of carpal tunnel syndrome or right ulnar groove. He stated that he had treated patients for fibromyalgia mostly related to significant injuries such as motor vehicle accidents or lifting injuries. Dr. Sabin stated, "I must also state that I have seen fibromyalgia for no reasons whatsoever. All I can state is that I have never had a patient before come to me stating that a repetitive motion disorder then caused fibromyalgia." He stated that he did not know of any specific etiology of fibromyalgia as it was not known and that he did not believe that it was work related in this case.

Section 8123(a) of the Federal Employees' Compensation Act,[6] provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary of Labor shall appoint a third physician who shall make an examination." In this case, the Office properly referred appellant to Dr. Sabin[7] to resolve the conflict of medical opinion between Drs. Hrutkay and Hanson. Dr. Hanson supported that appellant's fibromyalgia was related to her employment. Dr. Hrutkay found that appellant's fibromyalgia was not work related.

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.[8] In this case, Dr. Sabin based his report on a proper factual background and provided his reasons for concluding that appellant's fibromyalgia was not related to her work duties. Dr. Sabin stated that there was no known cause for fibromyalgia, that in his experience repetitive motion injuries did not result in fibromyalgia and that appellant's work duties did not cause this condition.

The Board finds that Dr. Sabin's reports are sufficiently well rationalized to constitute the weight of the medical opinion evidence and establish that appellant has no continuing disability or medical residuals as a result of her federal employment.

Following Dr. Sabin's report, appellant submitted an additional report from Dr. Hanson dated July 14, 2000. In this report he stated, "it is extremely well known in clinical practice that fibromyalgia can indeed be exacerbated by work and frequent triggers of the condition by work-related stresses, either physical or mental are indeed very common. Fibromyalgia can indeed be precipitated, accelerated and aggravated by the result of both acute and chronic conditions such

[6] 5 U.S.C. §§ 8101-8193, 8123(a).

[7] Appellant's attorney objected to the selection of Dr. Sabin, a Board-certified orthopedic surgeon, to resolve the conflict on the issue of fibromyalgia. The Board has held that an orthopedic surgeon is trained the treatment of musculoskeletal disease and conditions. *Debbie Gorton*, Docket No. 94-2086 (issued July 18, 1996).

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

as repetitive motion injuries." Although Dr. Sabin provides his opinion that fibromyalgia could be caused by repetitive motion injuries, this report does not offer any new rationale not contained in his prior reports. Dr. Hanson has consistently asserted that appellant's condition was related to her federal employment. However, he has not provided any supportive literature or other medical reasoning to support his positions. Furthermore as Dr. Hanson was on one side of the conflict that Dr. Sabin resolved, the additional report from Dr. Hanson is insufficient to overcome the weight accorded Dr. Sabin's report as the impartial medical specialist or to create a new conflict with it.[9]

The October 5, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 19, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[9] *Dorothy Sidwell,* 41 ECAB 857, 874 (1990).