United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 07-2162**
	)	**Issued: June 11, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Lexington, KY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 21, 2007 appellant filed a timely appeal from the July 25, 2007 decision of the Office of Workers' Compensation Programs terminating her medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's medical benefits effective July 26, 2007 on the grounds that she had no residuals from her accepted employment injuries.

FACTUAL HISTORY

On August 19, 1997 appellant, then a 49-year-old housekeeper, injured herself when she fell on some liquid on the floor. She returned to full duty on August 25, 1997. At that time, appellant's claim was accepted administratively, but not adjudicated. She began working in a light-duty position in March 2002. On May 15, 2002 Dr. William Greenman, a Board-certified

internist, stated that appellant's ongoing back and leg problems had persisted from the time of her fall, which had aggravated the degenerative arthritic changes in her spine.

On May 21, 2002 appellant filed a notice alleging recurrence of a medical condition in November 1997. She stated that, after she returned to work, her leg hurt climbing steps and her back hurt when folding gowns and being on her feet all day. By decision dated October 23, 2002, the Office accepted appellant's claim for lumbar and left knee sprain/strain. On July 28, 2003 it explained that appellant's case was still open for medical treatment. From November 6, 2003 to February 23, 2006 the Office authorized treatment of a spinal lesion, several spinal injections and one series of physical therapy. It denied a request from appellant's treating physicians for a spinal fusion surgery because degenerative disc disease was not an accepted employment-related condition. On March 3, 2005 the Office denied appellant's February 18, 2004 request for a schedule award on the grounds that the medical evidence did not establish that she had reached maximum medical improvement.

On August 15, 2005 Dr. Donald Douglas, an anesthesiologist, stated that he began treating appellant in July 2003 for left leg spasms and numbness and lower back pain. He was treating her with intermittent caudal epidural injections. Dr. Douglas noted that appellant's treating physician did not think that her current condition was related to her employment injury. He stated that he was unable to determine whether her diagnosed degenerative disc disease was initiated or exacerbated by the accepted employment injury. However, based on his previous treatment notes, Dr. Douglas opined that her lower extremity radiculopathy was directly related to this fall. On March 13, 2006 he diagnosed lumbar degenerative disc disease and degenerative joint disease, left lower extremity pain with possible radiculopathy and sacroiliac neuritis.

On September 11, 2006 appellant underwent a medical evaluation by Dr. Gregory Snider, a Board-certified family physician,[1] who reviewed her medical history and noted reports of degenerative changes along the lumbar spine, especially at L4-5. Dr. Snider stated that appellant was referred for pain management in July 2003 after a series of diagnostic studies were unsuccessful at explaining her left leg symptoms. An April 13, 2004 x-ray of the left knee showed minor medial joint space narrowing and a June 7, 2004 x-ray of the lumbar spine showed degenerative changes, but no evidence of instability. On July 6, 2004 a magnetic resonance imaging (MRI) scan revealed mild left neuroforaminal narrowing at L2-3. On physical examination, Dr. Snider noted that appellant had ongoing complaints of left knee and low back pain. He found leftward thoracic curvature and compensatory rightward lumbar curvature, with no specific tenderness or spasms. Appellant had full range of motion in the hips, knees, ankles and spine. Dr. Snider diagnosed lumbar strain superimposed on degenerative changes and left knee contusion superimposed on degenerative changes. He stated that he did not have sufficient medical records to make a determination on the issue of causation.

On February 12, 2007 the Office referred appellant for a second opinion examination to determine the cause of her current back condition and whether she had any permanent impairment to her lower extremity related to her accepted injury. On March 26, 2007 Dr. Richard Sheridan, a Board-certified orthopedic surgeon, examined appellant and reviewed

[1] The Board notes that the Dr. Snider's report indicates that the evaluation was requested by the Office. However, the Office stated that it did not request this examination.

her medical record. He noted complaints of intermittent pain in the left knee and low back and intermittent paresthesias in the left lower extremity. On physical examination Dr. Sheridan found normal gait, station and spinal curvature. He found pain on superficial palpitation of the lumbosacral junction, but no muscle spasms, scoliosis, kyphosis, pelvic obliquity or iliac crest asymmetry. Appellant's lumbar spine had flexion to 70 degrees, extension to 30 degrees, and bilateral rotation and lateral flexion to 30 degrees. Dr. Sheridan found nondermatomal hypesthesia in the left lower extremity, but full range of motion and motor power at the hip and knee. He also reviewed and evaluated appellant's diagnostic tests. On the basis that appellant had no positive objective findings on examination, Dr. Sheridan opined that appellant's acute lumbar sprain had resolved. He stated that, under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001), she had no permanent impairment in the lower extremity as a result of her low back condition. In response to the Office's request for clarification, Dr. Sheridan stated that appellant's diagnosed lumbar degenerative disc disease was not related to the accepted employment injury, but rather was related to the natural aging process.

By notice dated June 19, 2007, the Office proposed termination of appellant's medical benefits on the grounds that her accepted condition of lumbar strain had resolved and her current condition was unrelated to the accepted August 19, 1997 employment injury. The Office indicated that the opinion of Dr. Sheridan carried the weight of the medical opinion evidence. Appellant submitted no additional medical information related to her claim in the time allotted for response to the proposed termination.

By decision dated July 25, 2007, the Office terminated appellant's medical benefits effective July 26, 2007.

LEGAL PRECEDENT

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[2]

ANALYSIS

The Office accepted appellant's claim for sprain/strain of the lumbar spine and left knee. The issue to be determined is whether the Office has met its burden of proof to establish that appellant has no remaining disability or residuals related to her accepted injuries.

On August 15, 2005 Dr. Douglas, an anesthesiologist, stated that he was unsure whether appellant's August 19, 1997 fall had exacerbated the degenerative disc disease in her lumbar spine, but that, based on previous treatment notes, her lower extremity radiculopathy was directly related to the accepted event. On September 11, 2006 Dr. Snider, a Board-certified family physician, diagnosed lumbar strain and left knee contusion superimposed on degenerative changes but did not have sufficient medical records to provide an opinion on the cause of these

[2] *James F. Weikel*, 54 ECAB 690 (2003).

conditions. The Board finds that the reports of Dr. Douglas and Dr. Snider are of little probative value because they do not address the issue of causation of appellant's lumbar spine condition and have no rationale on the issue of appellant's lower extremity condition.

The Office referred appellant for a second opinion examination on the cause of her current back condition and whether she had any permanent impairment to her lower extremity related to her accepted injuries. On March 26, 2007 Dr. Sheridan, a Board-certified orthopedic surgeon, examined appellant and conducted a review of her diagnostic tests. Appellant reported intermittent pain in the left knee and low back and intermittent paresthesias in the left lower extremity. On physical examination Dr. Sheridan found pain on superficial palpitation of the lumbosacral junction. However appellant had no muscle spasms and her gait, station and spinal curvature were normal. Dr. Sheridan noted nondermatomal hypesthesia in the left lower extremity, but found full range of motion and motor power at the knee and hip. Dr. Sheridan opined that appellant's acute lumbar sprain had resolved because she had no positive objective findings on examination. He also stated that, under the A.M.A, *Guides*, she had no permanent impairment in her legs as a result of her low back condition. Dr. Sheridan stated that appellant's diagnosed lumbar degenerative disc disease was not related to the accepted employment injury, but rather was related to the natural aging process. Because it is well rationalized and based on an accurate medical history, the opinion of Dr. Sheridan carries the weight of the medical opinion evidence on the issue of appellant's accepted lumbar injury. The Board therefore finds that the Office properly relied on Dr. Sheridan's opinion to terminate appellant's medical benefits for her lower back injury.

However, the Board notes that, while Dr. Sheridan discussed lower extremity conditions associated with appellant's spine, he gave no opinion on her accepted condition of strained left knee. Additionally, the Office made no findings regarding her accepted knee injury, its June 19, 2007 notice of proposed termination or its July 26, 2007 termination decision. As the Office did not determine whether appellant had any residuals related to her accepted left knee strain, the Board finds that it did not meet its burden of proof to terminate her medical benefits for this condition.

CONCLUSION

The Board finds that the Office properly terminated appellant's medical benefits for treatment of her lumbar sprain, effective July 26, 2007, on the grounds that she had no residuals from this accepted employment injury. However, the Office improperly terminated medical benefits for her employment-related left knee strain.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 25, 2007 is affirmed in part and reversed in part.

Issued: June 11, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board