U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALETHEA D. VAN BUREN and DEPARTMENT OF THE ARMY, RECRUITING COMMAND, Fort Sheridan, Ill.

Docket No. 97-2419; Submitted on the Record;
Issued June 23, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's temporary total disability compensation effective March 2, 1996.

On June 6, 1991 appellant, then a 30-year-old secretary, fell down a flight of steps at the employing establishment. She stopped working the date of the injury and did not return to work thereafter. Appellant received continuation of pay from June 7 through July 21, 1996. The Office accepted appellant's claim for lumbosacral strain and right ankle strain and began payment of temporary total disability compensation effective July 22, 1991.

In a February 15, 1996 decision, the Office terminated appellant's compensation effective March 2, 1996 finding that she no longer had residual disability from her right ankle strain and lumbosacral strain. In an April 11, 1997 decision, an Office hearing representative found that the weight of the medical evidence established that appellant's disability due to the employment injury had ceased. She therefore affirmed the Office's February 15, 1996 decision.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.[1]

In a June 25, 1991 report, Dr. Subbana Jayaprakash, a Board-certified physiatrist, indicated that since the employment injury, appellant had severe stiffness of the lower part of the neck, lumbar spine, back and right foot. He related that appellant reported a transient loss of

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

consciousness at the time of the injury. Dr. Jayaprakash noted that appellant had trigger points in the neck, shoulders and in the back. He diagnosed minor cranial cerebral trauma, resolving whiplash syndrome, lumbar myofascial pain syndrome and right ankle pain. In a September 10, 1991 report, Dr. Denis C. Nathan, a Board-certified neurologist, stated that appellant's neurological examination was entirely normal and indicated that he could find no clear-cut, unequivocal evidence of neurologic dysfunction. He concluded that appellant had a chronic pain syndrome likely due to soft tissue injury. In a November 26, 1991 report, Dr. Steven Gnatz, a Board-certified physiatrist, indicated that appellant continued to have a pain syndrome diffusely with multiple tender points but reported that all laboratory tests were negative.

In a March 11, 1992 report, Dr. S. Vasudevan, a Board-certified physiatrist, indicated that an attempt at examining appellant revealed significant and very dramatic, inappropriate and inconsistent pain behaviors. He reported that appellant had full passive joint ranges of motion of the wrist, elbow, forearm and shoulder bilaterally. Dr. Vasudevan noted that appellant revealed multiple sites of tenderness throughout her body especially in the cervical area, lower scapular area and lumbar area without any specific trigger points. He diagnosed history of cervical and scapular strain, fibromyalgia and psychological factors affecting pain. Dr. Vasudevan commented that appellant had significant psychological overlay and poor motivation with excessive focus on disability. He stated that, from a physical point of view, appellant should be able to return to a sedentary level of work or even a light duty level of work. Dr. Vasudevan reported that there was no focal neurological compromise or musculoskeletal alterations that could be determined.

In a March 30, 1992 report, Dr. N.M. Reddy, a Board-certified physiatrist, diagnosed chronic myofascial pain syndrome affecting multiple parts of the body with predominant symptoms from the neck and the back, severe psychophysiologic pain syndrome with features of somatoform disorder, adjustment to disability issues and possible hysterical neurosis, conversion type.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. James Milgram, a Board-certified orthopedic surgeon, for an examination and a second opinion. In a November 2, 1992 report, he stated that appellant had no objective disease whatsoever and purely had complaints without any foundation. Dr. Milgram concluded that appellant was a malingerer and had no real disease. He indicated that the tests of the cervical and lumbar regions of the spine were normal and showed no soft tissue abnormality. Dr. Milgram stated that his findings in examining appellant were totally unanatomical and were typical of a patient who had complaints but no real disease. He commented that there was no reason appellant needed a wheelchair or cane and could not perform her regular work.

In an April 20, 1994 report, Dr. Alberta Spreitzer, a physiatrist, diagnosed chronic myofascial pain. In subsequent reports she diagnosed chronic pain syndrome. Dr. Spreitzer noted in her reports that appellant had limitations in the motion of her shoulders and arm and complained of pain and limited ability to walk any distance.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Norman W. Hoover, a Board-certified orthopedic surgeon, for an examination and

second opinion. In a September 21, 1995 report, Dr. Hoover stated that an examination showed no evidence of residual from the June 6, 1991 employment injury or impairment arising from that injury. Dr. Hoover indicated that the findings of physical incapacity reflected prolonged and profound disuse phenomena exhibited at apparent weakness and perhaps, in regard to the right shoulder and right ankle, fibrosis from prolonged immobilization and disuse. He concluded that appellant sustained a minor injury which was found on objective testing in the early period to show no measurable abnormality. Dr. Hoover commented that any injury to the musculoskeletal systems or supporting neural systems would have been the type which could be predicted to have recovery within a short period of less than 12 weeks. He stated that any dysfunction which remained was related to early failure of rehabilitation and progressive disuse phenomena. Dr. Hoover indicated that there was no evidence of residual mechanical or physical dysfunction of the back, including the cervical, thoracic or lumbar regions of the spine, or of the right ankle, except as a result of prolonged disuse resulting in loss of strength and loss of range of motion. He commented that appellant's current condition was not related to the June 6, 1991 employment injury. Dr. Hoover noted that appellant had no preexisting condition to qualify for acceleration or aggravation. He indicated that appellant's current condition of physical incapacity and inanition were not of organic cause. Dr. Hoover reported that nothing on imaging studies or tests examinations revealed any current or preexisting physical condition. He stated that there was no evidence of more than a minimal injury of the neck, back and right ankle, each of which would have been expected to recover completely within a period of three months or by September 6, 1991. Dr. Hoover indicated that appellant had no evidence of permanent impairment due to the employment injury. He reported that all physical evidence of impairment represented by limitations of the range of motion were the result of prolonged disuse and could not be attributed to the employment injury. Dr. Hoover concluded that, from the standpoint of the physical injury resulting in pain or dysfunction of organic cause, there would have been no disability from gainful employment as a result of the employment injury.

In a February 1, 1996 report, Dr. Jayaprakash indicated that appellant had primarily findings of trigger points activity over numerous muscles of the arms and legs which were of no significant consequence apart from the fibromyalgia syndrome. He commented that appellant's ranges of motion were limited by herself. Dr. Jayaprakash noted that the neurologic examination was for the most part normal as had been the previous neuroradiological investigations. He concluded that, given appellant's presentation, numerous presentations in her case were primarily self-inflicted and for the most part due to pain behavior. Dr. Jayprakash declared that he did not support any decision of any permanent partial disability in appellant's case, stating that most of her behavior was due to secondary gain. He concluded that appellant did not need any further treatment.

The reports of Dr. Milgram, Dr. Hoover and the most recent report of Dr. Jayaprakash show that appellant has no physical condition remaining that is causally related to the employment injury. These physicians stated that appellant had no objective findings to support her claims of pain. Dr. Hoover attributed appellant's limitations of motion to disuse of her arms and legs and not the employment injury. He reported no x-ray evidence of existing or preexisting conditions in appellant's back. These reports, taken together, show that appellant had no disability remaining do to the accepted condition of right ankle strain and lumbosacral strain. None of the other medical evidence of record shows any disability remaining due to these

accepted conditions. The reports of Drs. Milgram, Hoover and Jayapraskash are sufficient to support the Office's decision to terminate appellant's compensation.

Drs. Spreitzer, Gnatz, Reddy and Vasudevan, among other physicians of record, diagnosed fibromyalgia or chronic pain syndrome. In a January 20, 1997 report, Dr. Spreitzer stated that appellant would be unable to work due to this condition. The Office, however, did not accept fibromyalgia or chronic pain syndrome as causally related to appellant's employment injury. Appellant, therefore, has the burden of establishing by reliable, probative and substantial evidence that these medical conditions were causally related to the June 6, 1991 employment injury.[2] As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.[3] The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.[4] Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.[5] While several physicians diagnosed fibromyalgia, they did not provide in any of their reports a rationalized explanation on how the employment injury caused the fibromyalgia they diagnosed. These reports therefore have little probative value.

Appellant submitted several reports from Dr. Patricia Gaffney, a chiropractor, who diagnosed fibromyalgia and related the condition to appellant's employment injury. However, section 8101(2) of the Federal Employees' Compensation Act recognizes a chiropractor as a physician "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist...."[6] In diagnosing fibromyalgia, Dr. Gaffney did not diagnose a subluxation of the spine. Her reports therefore cannot be considered medical evidence because she did not diagnose a spinal subluxation.

Appellant also submitted copies of reports from medical periodicals discussing fibromyalgia. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[7] These medical journal reports, therefore, are insufficient to advance appellant's claim that she has fibromyalgia causally related to the employment injury.

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[2] *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

[3] *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[4] *Juanita Rogers*, 34 ECAB 544, 546 (1983).

[5] *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

[6] 5 U.S.C. § 8101(2); *see Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

[7] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

Appellant's attorney has argued that appellant's disability is a psychological or psychiatric condition arising from the employment injury. However, similar to the discussion of the fibromyalgia claim, the Office has not accepted that appellant has a psychiatric condition causally related to the employment injury. Appellant therefore has the burden of establishing, through probative, substantial, reliable medical evidence, that any psychiatric condition is causally related to her employment injury.

In a November 20, 1991 report, Dr. Darrell L. Hischke, a psychologist, diagnosed psychological factors affecting adjustment to disability. He indicated that appellant indicated that the employment injury resulted in pain and loss of functioning. Dr. Hischke reported that testing suggested that appellant presented herself in an improbable favorable light, denied psychological problems and focused on somatic complaints. He concluded that appellant responded to her physical injury by becoming dependent on her caregiver, a friend. Dr. Hischke commented that this result may have been due to appellant's inability to deal with stress.

The Office referred appellant to Dr. Robert I. Yufit, a psychologist, for an examination. In a November 9, 1992 report, he stated that appellant was depressed, attributed mainly to her physical condition, particularly her pain and physical immobility. Dr. Yufit stated that he inferred appellant's current psychological condition was a direct consequence of her employment injury although he had no objective data on her personality prior to the injury. He suggested that appellant might have a tendency to amplify her discomfort for the purpose of secondary gain but, from his observation, he doubted such amplification would be present. Dr. Yufit indicated that appellant could not perform any physical work. He diagnosed either a dysthymic personality disorder, atypical depression disorder with frustration and latent anger, somatization disorder or even a conversion disorder.

The Office referred appellant to Dr. Donald M. Jacobson, a Board-certified psychiatrist, for an examination. In a June 13, 1993 report, he stated that the only psychological condition that appeared to be present was a rather marked slowing of appellant's cognition. Dr. Jacobson indicated that he did not see any current evidence for a conversion disorder. He stated that the condition, by history, was apparently caused by the employment injury. Dr. Jacobson commented that there appeared to be a correlation between the onset of the injury and the onset of her cognitive difficulties. He indicated that the cognitive difficulties could be psycogenic as well as organic. Dr. Jacobson recommended more testing.

In a March 15, 1994 report, Dr. Sara J. Swanson, a neuropsychologist, stated that, in the absence of significant medical findings, appellant appeared to meet the diagnostic criteria for somatization disorder. She commented that malingering was also included in the diagnostic differential since appellant apparently had incentives for poor performance as she was undergoing a disability determination for possible disability benefits.

A review of these medical reports show no consistency in the diagnosis of appellant's psychiatric condition. However, the reports are similar in that none of the physicians gave a reasoned explanation on how any of the diagnosed psychiatric conditions were caused or contributed to by the employment injury. Only Dr. Yufit stated that the psychiatric condition was related to the employment injury by history. However, he did not give any other

explanation on how the employment injury would cause appellant's condition. These reports therefore fail to show that appellant has a psychiatric condition.

The decision of the Office of Workers' Compensation Programs, dated April 11, 1997, is hereby affirmed.

Dated, Washington, D.C.
June 23, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member