U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALDINE T. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Novato, CA

Docket No. 98-1170; Submitted on the Record;
Issued March 13, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant's employment-related cervical sprain resolved by December 12, 1993; (2) whether appellant's employment-related gastrointestinal condition resolved by April 2, 1995; and (3) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

Appellant filed timely claims for a pinched nerve in the right side of her neck sustained on May 1, 1989, for injuries to her neck, shoulders and back sustained on June 19 and 26, 1989 and for an occupational disease involving her neck, shoulders, back and headaches. All these claims implicated the handling of mail as the cause of her conditions.

On September 22, 1989 the Office advised appellant that it had accepted that she sustained a cervical spine strain in the performance of duty; the Office began payment of compensation for temporary total disability. By decision dated July 10, 1992, the Office terminated appellant's compensation on the basis that the weight of the medical evidence established that she no longer had any employment-related condition or disability. Following a hearing held at appellant's request, an Office hearing representative, by decision dated June 7, 1993, found that the Office did not meet its burden of proof to terminate appellant's compensation, as it did not consider the effect on appellant's gastrointestinal system of medications taken for the accepted condition.

After further development of the medical evidence, the Office, by decision dated November 29, 1993, terminated appellant's compensation effective December 12, 1993 on the basis that she no longer had any employment-related condition or disability. Appellant requested a hearing and an Office hearing representative, by decision dated October 12, 1994, found that the Office did not meet its burden of proof to terminate appellant's compensation for the reason that the report of the gastroenterologist on which the Office relied was not based on a complete history. After securing a supplemental report from this medical specialist, the Office, by decision dated March 10, 1995, terminated appellant's compensation effective April 2, 1995 on

the basis that the weight of the medical evidence established that appellant had recovered from her employment-related gastrointestinal condition.

Following a hearing held on September 12, 1995 at appellant's request, an Office hearing representative, by decision dated November 20, 1995, found that the medical evidence established that appellant's cervical strain and her medication-induced gastritis had resolved. By letter dated July 26, 1996, appellant requested reconsideration and submitted additional evidence. By decision dated September 24, 1996, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions. By letter dated December 28, 1996, appellant requested reconsideration and submitted additional evidence. By decision dated May 20, 1997, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

By letter dated October 3, 1997, appellant requested a hearing before an Office hearing representative. By decision dated November 25, 1997, the Office denied appellant's request for a hearing on the basis that she had previously requested reconsideration and that the issue in her case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered.

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]

The Board finds that the evidence establishes that appellant's employment-related cervical sprain resolved by December 12, 1993.

In a report dated October 24, 1991, Dr. Fred C. Webre, a Board-certified orthopedic surgeon performing a fitness-for-duty evaluation for the employing establishment, concluded that "any muscular strain should certainly be well after two and one half years whether it is treated or not" and that appellant had "no orthopedic impairment that would prevent her from returning to her normal employment." In a report dated March 25, 1992, Dr. Steven J. Snatic, a Board-certified neurologist to whom the Office referred appellant for a second opinion evaluation, noted "no abnormal findings upon the neurological examination" and concluded, "I personally suspect that the effects of the original injury substantially subsided within three months after the original injury. There could have been some lingering effects for up to one year." In a report dated August 26, 1993, Dr. Harold Hebert, Jr., a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation, stated that on examination there were "no objective findings of a current cervical sprain" and that he did "not have a probable explanation of why she continues with complaints of pain but my experience tells me that she is having symptoms related to four years of inactivity more than anything else." Dr. Hebert concluded, "I do not believe that there is a medical disability or measurable physical

[1] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

impairment related to that 1989 work injury. I believe that [appellant] could in fact return to work." In a report dated September 8, 1993, Dr. Robert L. Applebaum, a Board-certified neurosurgeon to whom the Office referred appellant for a second opinion evaluation, stated that she had "some minimal rigidity present in the cervical spine which could be consistent with a cervical strain," but that "by definition, a cervical strain is a soft tissue or muscular skeletal process which is self-limited." Noting that a sprain or strain should always resolve itself within six months, he concluded that "the diagnosis of a cervical strain or sprain is untenable" and that appellant's "[c]ontinuing symptoms cannot be explained on the basis of an injury over six months previously."[2] These reports are sufficient to show that appellant's employment-related cervical sprain resolved by December 12, 1993 and to meet the Office's burden of proof on this issue.

The only reports that indicate appellant still had the accepted condition of cervical sprain after December 12, 1993 are reports dated July 23 to November 11, 1996 from Dr. Gerald L. Nickerson, Jr., a Board-certified physiatrist. However, his earlier reports, which are dated from December 6, 1995 to April 1, 1996, do not include cervical sprain in the diagnoses and in his January 3, 1996 report Dr. Nickerson attributed appellant's neck pain to myofascial pain syndrome. He did not provide any explanation of how appellant could have an employment-related cervical sprain beginning July 1996 when she did not have one when examined from December 1995 to April 1996.

Like Dr. Nickerson, Dr. Timothy Himel, a Board-certified neurologist, diagnosed myofascial pain syndrome. Drs. Snatic and Applebaum also indicated this was a possible diagnosis. As the Office did not accept that this condition is causally related to appellant's employment, appellant retained the burden of proof to establish that it is.[3] She has not met this burden.[4] The only medical report that indicates that appellant's myofascial pain syndrome is related to her employment is a November 4, 1994 report from Dr. Himel, and his support of causal relationship is limited to checking a box on a form report. Without any explanation or rationale, this report has little probative value and is not sufficient to meet appellant's burden of proof.[5]

The Board finds that the Office has established that appellant's employment-related gastrointestinal condition resolved by April 2, 1995.

---

[2] A cervical myelogram and postmyelogram computerized tomography scan done in November 1990 were reported as "entirely normal." An electromyogram (EMG) done on November 8, 1989 was reported as normal with no cervical radiculopathy" and an EMG done on April 18, 1990 showed possible C7 or C8 nerve root irritation.

[3] *David W. Childs*, 32 ECAB 521 (1981).

[4] Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[5] *Lillian M. Jones*, 34 ECAB 379 (1982).

Dr. Ellen H. Golodner, the Board-certified gastroenterologist to whom the Office referred appellant for a second opinion evaluation, noted in an August 18, 1993 report: "At the time of this visit, [appellant] states that she has been off all nonsteroidal anti-inflammatory drugs except for the occasional use of Relafen. Despite being off all nonsteroidal anti-inflammatory drugs, she states that [appellant] still has the gastrointestinal complaints as mentioned above, specifically the epigastric burning, heartburn, bloating, belching, cramping and diarrhea." Dr. Golodner concluded:

> "It is well known that all nonsteroidal anti-inflammatory drugs, as well as aspirin, can cause gastrointestinal symptoms of bloating, dyspepsia and nausea. These symptoms occur during the time that the patient is on these medications and symptoms soon abate after the withdrawal of the medications. In addition, it is well known that nonsteroidal anti-inflammatory drugs can cause both erosive and nonerosive gastritis, as well as ulcers.… There is, however, no evidence in the literature to suggest that prior use of a nonsteroidal anti-inflammatory drug will cause a chronic gastritis while the patient is not taking the medication. Other etiologies for chronic gastritis must be sought in those patients in whom the offending agents have been stopped.
>
> "This was explained in great detail to [appellant]. Therefore, it is my opinion that [her] complaints of dyspepsia, pyrosis, belching and nausea at the time of her use of NSAIDs [nonsteroidal anti-inflammatory drugs] makes NSAID use a very likely etiology for those complaints. However, it is unlikely that [appellant's] continued complaints while off the [NSAIDs] are due to that class of drug."[6]

In a report dated March 25, 1996, Dr. Earl Washington, Jr., appellant's attending Board-certified gastroenterologist, stated that he had reviewed Dr. Golodner's reports and that he "agree[d] with most of her opinion." Dr. Washington then stated: "However, I feel that it is not only the nonsteroidal-induced gastritis that played a role in [appellant]'s case. I also feel that the stress of her disability case led to considerable morbidity in her case." In a report dated July 7, 1996[,] Dr. Washington also expressed his agreement with Dr. Golodner's opinion and added, "I feel that the nonsteroidals caused her gastrointestinal disease, however, subsequent to her stopping them, she continued to have gastric distress." These reports are consistent with Dr. Washington's November 11, 1993 report in which he stated, "At the present time we do not see erosive gastritis secondary to NSAIDs." None of his reports subsequent to his November 11, 1993 report state that appellant still has gastritis causally related to the medications she was taking for her employment-related condition. The medical evidence establishes that appellant's employment-related gastrointestinal condition resolved by April 2, 1995.

As noted above, Dr. Washington attributed appellant's continuing gastrointestinal problems to stress, including the stress of her workers' compensation case. As the Board has held that an emotional condition due to actions of the Office is not sustained in the performance

[6] Although Dr. Golodner stated in this report that there had been no documentation of any ulcers, she stated in a supplemental report that her opinion was unchanged after reviewing August 14, 1990 and October 21, 1991 esophagogastroduodenoscopies showing gastric or esophageal ulcers.

of duty,[7] appellant's reaction to the adjudication of her compensation case by the Office is not covered under the Federal Employees' Compensation Act.

The Board finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act,[8] concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."

As appellant's October 3, 1997 request for a hearing was made after reconsideration under section 8128(a) of the Act, appellant was not entitled to a hearing on this request. The Office also properly exercised its discretion by denying a discretionary hearing on the basis that the issue of continuing causal relation could equally well be addressed by requesting reconsideration by the Office and submitting evidence not previously considered.[9]

The decisions of the Office of Workers' Compensation Programs dated November 25 and May 20, 1997 are affirmed.

Dated, Washington, D.C.
March 13, 2000

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *Virgil Hilton*, 37 ECAB 806 (1988).

[8] 5 U.S.C. § 8124(b)(1).

[9] *See Shirley A. Jackson*, 39 ECAB 540 (1988).