U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNETTA STEELE and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA

Docket No. 00-1769; Submitted on the Record;
Issued April 25, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT, PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective September 4, 1996 and February 11, 1998 for her work injuries of May 31, 1996 and November 12, 1997, respectively.

The Office accepted that appellant, then a 51-year-old application clerk, suffered from thoracic and lumbar subluxations at T6, T7, L2, L5 and S1 from her May 31, 1996 work-related injury. She sustained another work-related injury on November 12, 1997 which the Office accepted for the condition of lumbosacral strain.

In a decision dated May 16, 1997, the Office terminated appellant's entitlement to continuing disability compensation and medical benefits effective September 4, 1996 on the grounds that the weight of the medical evidence, represented by the well-reasoned report of Dr. Stuart Baumgard, the Office second opinion physician, established that the May 31, 1996 work-related conditions had resolved at the time of the September 4, 1996 second opinion evaluation.[1] In a decision dated May 6, 1998, the Office terminated appellant's entitlement to continuing disability compensation and medical benefits effective February 11, 1998 on the grounds that the weight of the medical evidence, represented by the well-reasoned report of Dr. Fredrick J. Lieb, the Office second opinion physician, established that there was no connection between appellant's current condition and the accepted employment-related conditions of November 12, 1997.[2]

By decision dated May 13, 1998, the Office denied modification of its earlier decision. In a February 2, 1999 decision, finalized on February 3, 1999, an Office hearing representative affirmed the termination decision of May 6, 1998.

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[1] On April 14, 1997 the Office issued a notice of proposed termination.

[2] On March 2, 1998 the Office issued a notice of proposed termination.

In a March 21, 2000 decision, the Office denied modification of its earlier decision. Although the evidence and argument appellant submitted were cumulative and repetitious on the issue of residual disability related to the injuries on May 31, 1996 and November 12, 1997, the Office issued a merit decision so that appellant could retain all her appeal rights.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective September 4, 1996 and February 11, 1998.

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.[3] 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.[4] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[5] To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[6]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.[7]

In this case, the Office accepted that appellant sustained thoracic and lumbar subluxations from her May 31, 1996 work-related injury. The Office subsequently referred appellant to Dr. Baumgard, a Board-certified orthopedist, for a second opinion evaluation.

Dr. Baumgard, based upon a review of the records, statement of accepted facts and a physical examination on September 3, 1996, concluded in a September 10, 1996 report that appellant may have suffered a simple soft tissue injury on May 31, 1996, *i.e.*, lumbar and left knee sprains, but these conditions have since resolved. He stated that the left knee strain completely resolved within two to three weeks. With regard to the lumbar strain, Dr. Baumgard stated that the lumbar strain had also resolved as there were no clinical objective findings at the present time. He stated that September 1996 x-rays established that the T6 and T7 subluxations, as well as subluxations at L2, L3 and L5 and S1, did not exist. Dr. Baumgard noted that, although he did not review the May x-rays, the subluxations were chiropractic diagnoses, which,

[3] *Lawrence D. Price*, 47 ECAB 120 (1995); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[4] *Id*; *see Patricia A. Keller*, 45 ECAB 278 (1993).

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

[6] *Id.*

[7] *See Connie Johns*, 44 ECAB 560 (1993).

characteristically, were virtually never confirmed by orthopedic surgeons. He added that appellant needs no orthopedic care and none is anticipated in the future.

Dr. Baumgard stated that, although appellant was kept off her regular job from June 3 through August 18, 1996, only five to seven days off work were needed and she could have returned to her usual occupation without restrictions. He concluded that, although appellant continued to suffer with subjective residuals of the May 31, 1996 injury, there were no clinical objective findings to support her complaints. Appellant could touch her ankles with her fingertips with normal rounding and reversal of the lumbar lordotic curve, there was a distinct absence of paraspinalis and paraspinal muscle spasm, there was a negative straight leg raising test at 90 degrees bilaterally and there was no sign of nerve root irritability in the lower extremities.

Dr. Baumgard submitted a thorough medical opinion, based upon a full and accurate factual and medical history, a complete examination and review of the record. He opined that appellant had no disability from her accepted employment injury, was capable of performing her usual employment without restrictions and did not require further medical treatment.

Dr. James R. Nolan, a chiropractor, released appellant to return to work without restrictions, effective August 19, 1996, but recommended continued chiropractic treatment twice a week. However, he did not explain why appellant required further chiropractic treatment due to her accepted employment injury.

Furthermore, despite the Office's request for copies of x-ray reports to support his diagnoses of subluxation, no x-ray reports were received. Section 8101(2) of the Federal Employees' Compensation Act[8] provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. As Dr. Nolan failed to supply copies of the x-ray reports on which he based his subluxation diagnoses, he is not a physician for the purposes of the Act and his determination that appellant needs continued chiropractic treatment lacks probative value.

The Board therefore finds that Dr. Baumgard's report established that appellant ceased to have any disability or condition causally related to her May 31, 1996 employment injuries, thereby justifying the Office's termination of benefits effective September 4, 1996.[9]

The Board additionally finds that at the time the Office terminated benefits for the work injury of November 12, 1997, the weight of the medical evidence rested with the opinion of Dr. Lieb, a Board-certified orthopedist, that appellant's lumbosacral strain had resolved.

In a February 13, 1998 report and in supplemental reports of April 12 and April 29, 1998, Dr. Lieb concluded that, after reviewing a magnetic resonance imaging (MRI) scan performed on February 17, 1998, there were no quantifiable, objective clinical or laboratory findings consistent

[8] 5 U.S.C. §§ 8101-8193, 8101(2).

[9] *See Joe Bowers*, 44 ECAB 423 (1993).

with appellant's complaints. He added that appellant demonstrated several nonorganic findings highly suggestive of symptom magnification. Dr. Lieb opined that the accepted strain did not continue to be medically connected to the work incident as described in the statement of accepted facts and no ongoing or future medical, surgical, physical therapy or chiropractic modalities were required. He opined that appellant was totally disabled for a maximum of three weeks due to her work-related condition and was currently employable in her usual and customary job on a full-time basis without restrictions.

Appellant's nonindustrial or preexisting conditions included degenerative disc disease and degenerative arthritis of her lumbosacral spine. Dr. Lieb concluded that those preexisting conditions were not influenced through aggravation, precipitation or acceleration by the November 12, 1997 work-related incident or the prior injury on May 31, 1996. He stated that the degenerative disc disease and degenerative arthritis were most likely present at the time of appellant's date of hire, February 20, 1996. He further noted that those findings on x-ray did not, in and of themselves, constitute a disease or pathology. Dr. Lieb stated that they occur as a result of the natural aging process and were consistent with appellant's age of 52.

In his supplemental report of April 12, 1998, Dr. Lieb stated that the February 17, 1998 MRI scan of the lumbosacral spine indicated advanced degenerative disc disease at the L3-4 level; a 3 millimeters to 4 millimeters posterior protrusion of disc or osteophyte ridge at L3-4, causing mild impression on the ventral dural sac; a left lateral disc protrusion, L3-4, into the L3 nerve root foramen with a recommendation for clinical correlation for evidence of left L3 radiculopathy; spinal canal, lower limits of normal at L3-4 and L4-5, due to facet and ligamentum flavum hypertrophy; and, moderate to advanced facet arthropathy, L3 through S1 levels.

Dr. Lieb stated that on his examination appellant did not complain of or demonstrate any clinical evidence of L3 radiculopathy. He added that, although the degenerative disc disease and degenerative arthritis at L3-4 was likely more advanced than what was seen on the initial x-ray and the left lateral disc protrusion at L3-4 could constitute a small disc herniation, appellant did not demonstrate findings consistent with left L3 radiculopathy. Dr. Lieb stated that with this advanced degree of degenerative disc disease from L3-4 to L5-S1, associated with degenerative arthritis, appellant would have restrictions on lifting, bending and stooping, but was still physically capable of performing her date-of-injury job on a full-time basis.

In his supplemental report of April 29, 1998, Dr. Lieb reiterated that the February 17, 1998 MRI scan indicated a left lateral disc protrusion at L3-4 into the L3 nerve root foramen. This protrusion/bulging was associated with osteophytic ridge formation. He opined that this protrusion was secondary to degenerative disc disease and was a preexisting condition not related to the November 12, 1997 work incident. Dr. Lieb based his opinion on the fact that osteophytes require one to two years to show up on an MRI scan and the lack of findings which supported nerve root radiculopathy. He stated that appellant appeared to be magnifying her symptoms significantly and concluded that the protrusion/bulging was related to degenerative disc disease and not to the November 12, 1997 injury.

The Board finds that Dr. Lieb's opinion negating any disability due to the November 12, 1997 employment injury and any residuals from that employment injury and that appellant's

preexisting conditions were not influenced by virtue of aggravation, precipitation or acceleration by either the November 12, 1997 work-related injury or the prior injury of May 31, 1996 is sufficiently probative, rationalized and based upon a proper factual background.

Appellant's treating physician, Dr. Cuthbert Pyne, a general practitioner, opined that appellant was totally disabled from November 13, 1997 through March 2, 1998. He, however, failed to provide a narrative report since his initial evaluation explaining the complications of the injury or any objective physical findings to establish current or ongoing disability due to the accepted condition. Merely checking a box on a form report indicating that he believes appellant's condition is related to her November 12, 1997 work injury without providing any medical rationale is of little probative value.[10]

Dr. Pyne released appellant to work five hours a day beginning March 3, 1998 with restrictions on lifting. Although he indicated that the MRI scan of the lumbar spine showed L3-4 disc protrusion and that it would take appellant approximately four months to achieve an eight-hour workday, he did not explain why appellant continued to be partially disabled due to her accepted employment injury or provide any explanation regarding the relationship of the L3-4 disc protrusion to appellant's employment injury. Additionally, the report by a specialist in the appropriate field of medicine, Dr. Lieb, a Board-certified orthopedist, is entitled to the weight of the evidence.[11]

[10] *See Ruth S. Johnson*, 46 ECAB 237 (1994).

[11] *Mildred L. Cook*, 31 ECAB 1655 (1980).

The March 21, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 25, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member