U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIM M. WISEMAN and DEPARTMENT OF THE ARMY, A.L.M.S.A., St. Louis, MO,

Docket No. 99-2545; Submitted on the Record;
Issued October 12, 2001

DECISION and ORDER

Before DAVID S. GERSON, 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 benefits effective November 8, 1998.

The Board has duly reviewed the case record and concludes that the Office met its burden of proof to terminate appellant's compensation benefits.

On December 16, 1980 appellant, then a 40-year-old computer specialist, filed a claim for a traumatic injury alleging that on December 12, 1980, while in the performance of duty, he fell from a chair striking his buttocks, right elbow and right shoulder on the floor. Appellant did not feel that he had been hurt and did not seek treatment immediately. On December 14, 1980, however, appellant experienced difficulty walking and on December 16, 1980 he developed numbness in his right arm, prompting him to seek initial medical treatment at the U.S. Public Health Service outpatient clinic on December 17, 1980. On December 18, 1980 appellant reported that his back and elbow were feeling better and that normal sensation was returning to his hand.

Appellant returned to the health clinic on December 22, 1980, when he reported feeling very good until the previous Friday evening, when he went bowling and thereafter developed marked mid-thoracic discomfort. Appellant returned the following day and reported discomfort with sitting for long periods of time, but indicated that he felt better than the day before, with some decrease in his mid-thoracic discomfort. Appellant returned to the clinic on December 29, 1980, when he reported "feeling much better" and indicated that he no longer felt he needed further treatment.

Appellant next returned for medical treatment on January 13, 1981 when he reported loss of power in his upper extremities, tingling in his hands and trembling in his right thigh muscles upon standing. Appellant was then scheduled for a neurological evaluation. On January 20, 1981 appellant returned to the clinic and reported that over the weekend he was unable to bowl

due to pain and weakness and was unable to handle playing cards at an evening card party. Appellant was noted to have an abnormal gait pattern and, possibly, asymmetry of pupil dilation.

On January 23, 1981 appellant was diagnosed with a lesion of the upper spinal cord, which was subsequently determined to be a spinal cord tumor. On February 3, 1981 appellant underwent surgical removal of the spinal cord tumor as well as a cervical laminectomy. As a result of the surgery, appellant was left with a spastic quadreparesis.

Appellant stopped work on January 23, 1981, moved to a nursing and rehabilitation center and did not return to work. After a lengthy period of medical and factual development, on June 27, 1985 the Office accepted appellant's claim for acceleration of intramedullary spinal cord tumor and cervical laminectomy with midline dorsal myelotomy and began paying all appropriate compensation benefits.[1]

On May 6, 1988 the Office medical adviser reviewed the evidence of record and opined that the causal relationship between the employment injury and appellant's spinal cord tumor condition originally accepted by the Office continued to be valid. On September 26, 1988 the Office forwarded the medical evidence of record, together with a statement of accepted facts and a list of questions to be resolved, to Dr. Gustave Eisemann, a Board-certified internist, for review.

In a report dated October 20, 1988, Dr. Eisemann opined that appellant's December 12, 1980 employment injury did not precipitate or accelerate appellant's tumor. He explained that if appellant's injury had resulted in a severe flexion or extension, he should have experienced within a short period of time, meaning hours or a day, severe neurological complications. However, such severe flexion or extension could not have occurred, because appellant was able to bowl on the evening of December 19, 1980 and did not start having progressive neurological symptomology again until January 13, 1981.

Due to the complex nature of appellant's condition, on November 16, 1988 the Office forwarded the medical evidence of record, a statement of accepted facts and a list of questions to be resolved to Dr. Mark C. Myron, a Board-certified internist, for review and comment. In his report dated December 16, 1988, Dr. Myron agreed with Dr. Eisemann that appellant's December 12, 1980 fall did not accelerate or precipitate his spinal cord tumor.

[1] In a decision dated June 12, 1981, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to establish a causal relationship between appellant's employment injury and his spinal cord condition. By decision dated July 27, 1981, the Office denied modification of the prior decision. Subsequent to an oral hearing, held at appellant's request, in a decision dated August 24, 1982, an Office hearing representative affirmed the prior decision. Appellant requested an appeal to the Employees Compensation Appeals Board, but prior to the Board's review, the Director of the Office found that a conflict in medical opinion existed in the record and referred appellant for examination by Dr. William F. Hoffman, a Board-certified neurological surgeon and impartial medical examiner. Dr. Hoffman opined that there was no doubt that appellant's spinal cord tumor was aggravated and accelerated by the minor trauma of his fall at work. After several attempts to obtain additional necessary explanation and rationale from him, the Office referred appellant for another impartial medical examination by Dr. Edwin E. MacGee, a Board-certified neurosurgeon. In a report dated March 18, 1985, Dr. MacGee agreed with Dr. Hoffman's prior conclusion that appellant's minor fall at work had aggravated his spinal cord tumor.

By letter dated December 29, 1988, the Office notified appellant that it proposed to terminate his compensation benefits. In response, appellant submitted a January 16, 1989 report from Dr. Hoffman, who reiterated his earlier opinion that appellant's employment injury had accelerated the development of his spinal cord tumor. On October 11, 1989 the Office forwarded the medical evidence of record, a statement of accepted facts and list of questions to be resolved to Dr. Stephen L. Reintjes, a Board-certified neurological surgeon.[2]

In a report dated October 9, 1989, Dr. Reintjes opined that the December 12, 1980 employment incident did aggravate appellant's preexisting spinal cord tumor, but the aggravation was temporary and had resolved by December 19, 1980; appellant's current disability was due to the natural history of the tumor and the treatment received and not to the employment injury.

In a decision dated January 22, 1990, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence of record, represented by the well-reasoned reports of Drs. Eisemann, Myron and Reintjes, established that appellant's spinal cord condition was unrelated to his December 12, 1980 employment injury.

On February 15, 1990 appellant requested an oral hearing and submitted a September 19, 1990 report from treating physician Dr. I. Joshua Speigel, a neurologist, who opined that appellant's current health was the direct result of the December 12, 1980 aggravation of his preexisting spinal cord tumor. In a decision dated March 11, 1991, the Office hearing representative vacated the Office's January 22, 1990 decision, on the grounds that a conflict in medical opinion between Drs. Speigel and Reintjes required further medical development of the claim.

To resolve the conflict in medical opinion evidence between Drs. Speigel and Reintjes, the Office forwarded the medical evidence of record along with a statement of accepted facts, to an impartial medical specialist, Dr. Harvey H. Ammerman. In his report dated March 20, 1992, Dr. Ammerman stated that appellant's medical history is one of a progressive spinal cord ependymoma, that the employment incident of December 12, 1980 aggravated this condition, but that the aggravation had ceased by December 19, 1980. He further stated that while the etiology of ependymomas is unknown, there is no evidence whatsoever that trauma plays a part in the formation, development or growth of the tumors. In addition, while trauma can cause a silent or relatively silent tumor of the central nervous system to become symptomatic, this will not affect the rate of growth or the eventual outcome.

In a decision dated April 9, 1992, the Office found that the weight of the medical evidence of record, represented by the opinion of Dr. Ammerman, the independent medical examiner, established that appellant had no continuing employment-related disability.

On May 7, 1992 appellant requested an oral hearing before an Office representative. In a decision dated September 2, 1992, the hearing representative set aside the Office's prior decision on the grounds that Dr. Ammerman was not properly selected as an impartial medical specialist and, therefore, an unresolved conflict in medical opinion remained, requiring further

[2] Prior to consulting Dr. Reintjes, the Office unsuccessfully attempted to obtain opinions from Dr. Arnold Schoolman and Dr. Lyal Leibrock.

development of the claim. The Office hearing representative instructed the Office to refer appellant and the entire case record to a Board-certified neurosurgeon and to provide the physician with the Office definitions of acceleration and aggravation.

The Office referred appellant to an impartial medical specialist, Dr. Francis S. Walker, a Board-certified neurological surgeon. In his report dated July 8, 1993, Dr. Walker opined that the growth of appellant's spinal cord tumor was unrelated to appellant's December 12, 1980 fall, that appellant's condition "with absolute certainty would have evolved with or without the fall," and that the fall did not cause "any permanent aggravation to an already impending catastrophic neurologic deficit."

By letter dated November 9, 1993, the Office requested that Dr. Walker further explain his opinion. However, Dr. Walker declined to provide a supplemental report. Therefore, on May 4, 1995, the Office referred appellant for a new impartial medical examination with Dr. Donald H. Pearson, a Board-certified neurological surgeon.[3]

In his report dated June 10, 1995, Dr. Pearson stated that he understood the essential issue in the claim to be whether appellant's December 13, 1980 injury was contributory to his eventual physical disability.[4] Dr. Pearson reviewed in detail the medical and factual evidence of record, noting that while it was undisputed that appellant's tumor was not caused by the December 12, 1980 trauma, some of the physicians of record had opined that the trauma contused, or bruised, an already compromised spinal cord, setting off a chain of pathological changes characterized by swelling, edema, alteration of cerebrospinal fluid flow dynamics, compromise of blood flow to the nervous tissue and loss of function. Dr. Pearson stated:

> "The facts, as presented, offer an unusual set of circumstances. I have no close parallel to this case in my own practice of neurosurgery, nor do I know of one described in the medical literature that would shed light on the situation as presented. In the material sent to me for review, none of the other reviewing physicians have quoted similar cases.

[3] Where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion and the opinion requires further clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report. However, when the impartial medical specialist's statement of clarification or elaboration is not forthcoming to the Office, or if the physician is unable to clarify or elaborate on the original report, or if the physician's report is vague, speculative or lacks rationale, the Office must refer the employee to another impartial medical specialist for a rationalized medical opinion on the issue in question. *Harry T. Mosier*, 49 ECAB 688 (1988); *Margaret M. Gilmore*, 47 ECAB 718 (1996); *Talmadge Miller*, 47 ECAB 673 (1996).

[4] It does not appear from Dr. Pearson's report or from a review of the file, that Dr. Pearson received, from the Office, either a list of questions to be answered or the Office definitions of aggravation and acceleration. In addition, it appears that he was not sent the most recent statement of accepted facts, as he specifically notes in his report that the statement of accepted facts he has reviewed is dated March 26, 1991, not June 18, 1993. This is harmless error, however, as Dr. Pearson clearly and unequivocally stated his opinion that appellant's current condition is causally unrelated to his December 12, 1980 injury and, did not assess appellant's condition in terms of either acceleration or aggravation. In addition, the statement of accepted facts supplied to Dr. Pearson was correct in all essential elements and it is clear from Dr. Pearson's report that he based his opinion on a thorough and accurate factual history of appellant's employment injuries and medical treatment. *See Lan Thi Do*, 46 ECAB 366 (1994).

"The closest useful analogy that comes to mind occurs in the condition known as cervical spondylosis and stenosis. In this condition, commonly seen in the elderly, hypertrophic changes occur in the bones of the spine surrounding the spinal cord, narrowing the passage through which the nervous tissue passes. These changes consist of osteophytes (bone spurs), thickened ligaments, protruding degenerated disc tissue and arthritic swellings of contiguous small cervical joints. These conspire to narrow the spinal canal so that there is no room for movement of nerve tissue. If a person with this condition suffers a traumatic event, it may lead to the production of spastic quadreparesis similar in kind if not always in degree to that suffered by appellant.

"The primary mechanism responsible for damage is similar in both the situation of a spinal cord tumor and in stenotic cervical spondylosis; namely a mass occupying most or all of the spinal canal not occupied by the nervous tissue itself. Thus in a traumatic situation when the spinal cord is shocked or flexed vigorously, it will be bruised by such a mass, leading to the chain of events detailed above. For this reason I believe the analogy holds.

"However, in all cases of spondylotic myelopathy (as it is called) the injury to the cord occurs at the time of the event, that is, the trauma. The patient develops the weakness, paralysis and alteration of sensation immediately or within minutes. It may worsen over the next few hours or even day or two, as the chain of pathological changes cascades. I have never seen a delay of several days or weeks between the trauma and the development of neurological symptoms in any of my cases, nor am I aware of any such cases either anecdotally or by report.

"Therefore, it is my opinion that the trauma suffered by appellant described was roughly contiguous in time with his neurological deterioration only by coincidence, not by causation. The reason, of course, is the time span of several days between the resolution of his symptoms after his trauma and the occurrence of new symptoms which ultimately progressed to his present severely disabled state. According to his medical records, for at least part of the time between December 12, 1980 and January 13, 1981; he was relatively symptom-free."

In a decision dated October 14, 1998, after issuing proper notice and reviewing appellant's response to such notice, the Office found that the weight of the medical evidence of record, represented by the opinion of Dr. Pearson, the independent medical examiner, established that appellant has no continuing employment-related disability. Accordingly, the Office terminated appellant's compensation benefits effective November 8, 1998.

By letter dated November 4, 1998, appellant requested an oral hearing and submitted additional medical evidence in support of his claim. In a decision dated June 9, 1999, an Office hearing representative affirmed the termination of benefits.

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 disabling condition has ceased or that it is no longer related to the employment.[5]

In terminating wage-loss benefits, the Office relied on the opinion of Dr. Pearson, as the independent medical examiner, that appellant's current condition is not causally related to accepted factors of his employment. In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an independent medical examiner 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.[6]

The Board finds that Dr. Pearson's opinion is complete and well rationalized in establishing that appellant's current condition and related disability are not causally related to his December 12, 1980 employment injury. Dr. Pearson reviewed appellant's medical history at length, considered all the relevant diagnostic tests, performed a physical examination and concluded that the delay in appellant's development of severe neurological symptoms after the December 12, 1980 injury, as indicated by the apparent resolution of symptoms between December 19, 1980 and January 13, 1981, indicated that the December 12, 1980 fall was not the cause of appellant's current condition. As the independent medical examiner, Dr. Pearson's opinion constitutes the weight of the medical evidence.

At the hearing, appellant submitted a report from Dr. Robert P. Margolis, who disagreed with Dr. Pearson, stating:

> "It is my opinion that the trauma of December 12, 1980 significantly accelerated alterations in the patient's physiology leading to the discovery of the surgical ependymoma requiring surgery…. Dr. Pearson creates an analogy between stenotic cervical spondylosis and a spinal cord tumor. I do not agree with this analogy as there is a significant difference between an intrinsic mass lesion and the effect on the spinal cord such as that which occurs with a tumor versus an external compressive lesion such as that which may occur with cervical spondylosis. In my own practice I have seen at least one other patient where a minor trauma (*e.g.*, whiplash injury) created a progression of symptoms felt to be in excess for the injury itself subsequent to which an intrinsic spinal cord tumor was found.
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> "Therefore, it is without question that I strongly support the opinion of the physicians who feel that a minor trauma such as that suffered by appellant accelerated his deterioration because of the presence of the tumor leading to his current clinical state. With the same strong feelings, I dispute the opinions of Dr. Pearson."

While Dr. Margolis clearly disagreed with Dr. Pearson and stated that the analogy drawn by Dr. Pearson was invalid, he did not explain the fault in Dr. Pearson's reasoning other than to

[5] *Patricia A. Keller*, 45 ECAB 278 (1993).

[6] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

say that a spinal cord tumor is a different type of disease process from spinal stenosis. In addition, Dr. Margolis did not attempt to address appellant's apparent resolution of symptoms from December 19, 1980 until January 13, 1981.

Finally, while Dr. Margolis stated that he had at least one other patient with a spinal cord tumor who suffered progressive deterioration following a minor injury, he did not state whether this deterioration was continuous from the date of the injury, or whether this other patient also experienced a temporary resolution of symptoms prior to the onset of severe symptoms. Therefore, the Board finds that Dr. Margolis' opinion is insufficiently rationalized to create a conflict with the opinion of Dr. Pearson.[7] The Office, therefore, properly relied on Dr. Pearson's opinion in terminating compensation benefits.

The June 9, 1999 and October 14, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed

Dated, Washington, DC
October 12, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[7] *Elizabeth Stanislav*, 49 ECAB 540 (1998).