U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN BOUNDS and DEPARTMENT OF THE NAVY, NAVAL DENTAL CENTER, Great Lakes, IL

Docket No. 01-891; Submitted on the Record;
Issued June 20, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective September 1, 1999; (2) whether appellant continued to suffer from residuals after September 1, 1999, causally related to her February 16, 1994 accepted employment injury; and (3) whether appellant was disabled for work on January 8 and 28, 1999, causally related to her accepted employment injury.

On February 21, 1994 appellant, then a 36-year-old dental assistant, filed a notice of traumatic injury, alleging that she injured her left hand and wrist on February 16, 1994 when she fell on some ice in a parking lot. Appellant's claim was accepted for left wrist strain, de Quervain's of left thumb, scapholate rotary subluxation and tear of radial scapholunate ligament. Appellant underwent several surgeries to the left extremity and returned to work in a light-duty position.

Appellant was referred to Dr. Bruce Irwin, a Board-certified anesthesiologist, for pain management in 1996. Appellant submitted several reports from Dr. Irwin dated from 1996 to 1999 indicating that she was receiving cervical facet injections. In a report dated September 22, 1998, he stated:

> "[Appellant] was referred to us by Dr. Thomas Becker, M.D., and we saw her for the first time on May 5, 1996. [Appellant] presented to the clinic with severe pain and numbness in her left wrist and arm post surgical repair of a hyperextension injury to the left wrist. On initial examination she was found to have myofascial pain syndrome with nerve entrapment involving the left radial nerve and probably ulnar nerve involvement as well. She was also found to have spasm of the pronator and suppinator muscles of the left forearm. She also showed cervical facet tenderness and generalized paracervical and left shoulder girdle muscle spasm, which is characteristic of a condition known as neck-shoulder-arm syndrome. Individuals who have sustained acceleration deceleration injuries of

the neck, which can be precipitated by a fall, often present with these physical complaints."

The Office referred appellant to Dr. Hilliard E. Slavick, a Board-certified psychiatrist and neurologist, for a second opinion examination. In a report dated December 2, 1998, Dr. Slavick stated:

> "It is my impression that [appellant] is status post fall and hyperextension injury of the left wrist on February 16, 1994. She suffered ligament damage, which was repaired in two subsequent surgeries. She has been treated extensively for a chronic pain syndrome, involving the left upper extremity. I do not find any evidence at the current time of this pain syndrome, despite the patient's complaints. No trigger points were palpable, which would be indicative of myofascial pain. There is no weakness, indicative of an entrapment neuropathy. Her prior cervical [magnetic resonance imaging] MRI [scan], which I reviewed from July 1, 1996, was completely normal. This rules out any disc herniation or degenerative osteoarthritis causing her discomfort. I find no evidence of neck dysfunction, based on adequate range of motion and shoulder girdle strength. Her initial fall did not involve the neck or left shoulder. She has subjective complaints but no objective findings related to her neck and shoulder girdle musculature at this time. In my opinion, surgery performed on two occasions was successful and has left her with a slight reduction in left wrist extension. Her pain is more likely on a depressive basis."

The Office determined that there was a conflict in medical opinion between Drs. Irwin and Slavik and referred appellant to Dr. Ronald P. Pawl, a Board-certified neurological surgeon, for an impartial medical examination. In a report dated June 14, 1999, Dr. Pawl stated:

> "Based upon my examination, the review of the medical records and the diagnostic studies, I cannot find a competent source for [appellant's] continuing subjective complaints of pain from an objective standpoint. With regard to the specific questions, she has no evidence for a myofascial pain syndrome. She describes her pain in a vague distribution that involves the left side of the spinal column from the neck to the low back area. These symptoms came on many months after her traumatic event and are in no way related to the episode of February 16, 1994. She does have the characteristic appearance of a person who is depressed and as Dr. Slavick pointed out, her pain syndrome may be on the basis of depression."

Dr. Pawl also stated that there was no evidence of a radial nerve entrapment at the wrist, no ulnar nerve abnormalities and no evidence of a cervical facet syndrome. He ordered x-rays of both hands and wrists which were normal.

Appellant submitted a second report from Dr. Iwrin dated June 23, 1999. He discussed the history of appellant's accident and stated that her arm was stiff when she fell, which caused the force of the impact to extend all the way to the shoulder and resulted in a whiplash-type injury on the left side of her neck.

By decision dated July 19, 1999, the Office issued a notice of proposed termination of benefits finding that the weight of the medical evidence established that the medical condition resulting from appellant's February 16, 1994 injury had ceased. By decision dated September 1, 1999, the termination was made final.

By decision dated April 11, 2000, the Office also denied appellant's claim for compensation for disability for work on January 8 and 28, 1999.

Appellant requested reconsideration on August 26, 2000. Appellant submitted new medical evidence and received a merit review. Appellant's request for modification of the previous decision was denied on November 21, 2000.

The Board finds that the Office properly terminated appellant's compensation benefits effective September 1, 1999.

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.[1] Once the Office properly terminates compensation for disability, appellant has the burden of proof to establish further disability for work.[2]

In this case, at the time of the September 1, 1999 termination, the record consisted of medical reports from Drs. Irwin, Slavick and Pawl. Dr. Irwin treated appellant for pain from 1996 to 1999 and diagnosed her with myofascial pain syndrome, facet syndrome and cervicogenic headache. He did not, however, relate any of these conditions to appellant's slip and fall accident on February 16, 1994. Dr. Irwin did state in his June 23, 1999 report that appellant's arm had been extended when she fell, causing the force of the impact to extend all the way to her shoulder and neck. The Board notes, however, that appellant's claim was only accepted for her wrist problem and did not include a neck or cervical condition, thus Dr. Irwin's statement is of little probative value in establishing causal relationship. Dr. Slavick stated that at the time of his examination there was no evidence of pain syndrome and that the July 1, 1996 MRI scan was normal. He also found that no evidence of any neck dysfunction based on adequate range of motion and shoulder girdle strength. Dr. Slavick opined that the two surgeries had been successful and that appellant's complaints of pain were most likely due to her depression. The Office found a conflict in the medical evidence between Drs. Irwin and Slavick and referred appellant to an impartial medical specialist.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving

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

[2] *Beverly J. Duffey*, 48 ECAB 569 (1997).

the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[3]

The Board finds that, at the time of termination, the weight of the medical evidence rested with the well-rationalized impartial medical opinion of Dr. Pawl. He opined that there was no objective evidence to support a continuing condition causally related to appellant's work incident on February 16, 1994. His opinion was based on a proper factual and medical history and he accurately summarized the relevant medical evidence, including the medical evidence from appellant's treating physician, Dr. Irwin. He discussed the diagnostic studies of record and noted that he could not find a competent source for appellant's continuing subjective complaints of pain. He also stated that there was no evidence of myofascial pain syndrome as diagnosed by Dr. Irwin. He further indicated that there was no relationship between the 1994 injury and the diagnosis of cervical facet syndrome, since those symptoms developed many months after the wrist injury. Since Dr. Pawl's report was well rationalized and based upon a proper factual and medical background, it carried the weight of the medical evidence at the time of termination.

The Board also finds that appellant did not suffer from residuals after September 1, 1999, causally related to the February 16, 1994 accepted employment injury.

After the date of termination, appellant submitted an undated report from Dr. Irwin received on August 29, 2000 and a May 16, 2000 report from Dr. David D. Soo, a Board-certified family practitioner. In his report, Dr. Irwin stated:

> "There was a slip and fall accident with injury to the left wrist resulting in multiple therapeutic and surgical efforts, additionally the injury involving the ulnar nerve. The patient states at the time of the slip and fall a lighting bolt-type feeling went straight up the arm into the left shoulder and the left side of the neck."

He further stated:

> "I have no doubt whatsoever that the injury sustained in the slip and fall accident with associated major trauma requiring surgical revision to the left wrist promulgated the rest of the complaints that [appellant] continues to suffer from."

The Board finds that Dr. Irwin's report is insufficient to establish that appellant had continuing residuals after September 1, 1999. First, Dr. Pawl attempted to expand appellant's injury to her right wrist to include the ulnar nerve. The Board notes again that appellant's claim was only accepted for a wrist condition from a slip and fall and did not include the ulnar nerve or any other type of chronic pain condition. Dr. Irwin stated that, at the time of the slip and fall, a lightning bolt-type of feeling went straight up appellant's arm into the left shoulder and the left side of the neck. The Board notes and Dr. Irwin acknowledges in his report, that this is information relayed from appellant to the physician, as Dr. Irwin did not start to treat appellant until 1996, over two years after the incident. Appellant also did not list any other conditions on

[3] *Rosie E. Garner*, 48 ECAB 220 (1996).

her CA-1 when she filed her claim, only noting the injury to her left wrist and hand.[4] He concluded in his report that the injury sustained in the slip and fall accident promulgated the rest of the complaints that appellant continues to suffer from. This statement is vague and conclusory and of little probative value since it is not supported by medical rationale. Dr. Irwin does not explain how appellant's current condition is medically related to the slip and fall and the original left wrist injury.

Appellant also submitted a May 16, 2000 report from Dr. Soo. He diagnosed appellant with myofascial pain syndrome, radial nerve entrapment, ulnar nerve abnormalities and cervical facet syndrome. Dr. Soo stated that appellant had undergone multiple treatments for pain syndrome and recommended that appellant be placed on full retirement. Dr. Soo's report is of no probative value since he does not provide any medical rationale for his statements. Dr. Soo does not discuss appellant's medical or factual history, nor does he mention the February 16, 1994 slip and fall incident. Dr. Soo lists several diagnoses but does not relate them to the accepted employment injury. Dr. Soo's report is insufficient to establish that appellant suffers from residuals after the date of termination, causally related to the accepted employment injury.

The Board further finds that appellant did not establish that she was disabled on January 8 and 28, 1999.

Section 8103(a) of the Federal Employees' Compensation Act, 5 U.S.C. § 8103(a), provides as follows:

> "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."

The Board has recognized that an employee is entitled to disability compensation for loss of wages incurred while receiving treatment and for loss of wages incidental to treatment for a work-related injury.[5]

Appellant requested that she receive compensation for two physician's visits on January 8 and 28, 1999. In support of her claim, appellant submitted a progress note dated January 8, 1999, indicating that she had been treated by Dr. Irwin on that day for pain. The note indicated that she had left-sided neck and head pain, some left shoulder pain and arm pain. He diagnosed her with facet syndrome, myofascial pain syndrome and cervicogenic headache. The Board notes that this note from Dr. Irwin is insufficient to establish that appellant was disabled on that day because appellant's condition was only accepted for a left wrist condition and did not include any of the diagnoses provided by Dr. Irwin in his note. Dr. Irwin did not mention the February 16, 1994 employment incident, nor did her relate any of the diagnoses or appellant's treatment on that day to the accepted employment injury. Appellant did not submit any evidence

[4] The CA-1 is not found in the record but the Board gathered this information from other evidence in the record.

[5] *Myrtle B. Carlson*, 17 ECAB 644 (1966).

indicating that she was disabled on January 28, 1999, or any medical evidence from a physician indicating that she was being treated on that day for her accepted condition. Since appellant did not establish that she was disabled on January 8 and 28, 1999, causally related to her accepted employment injury, the Office properly denied her compensation for those days.

The November 21 and April 11, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 20, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member