

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VALERI HENDERSON and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Bensalem, PA

*Docket No. 02-1620; Submitted on the Record;  
Issued April 21, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that she had any disability after December 6, 1995 causally related to her December 3, 1991 employment injury.

This case has been before the Board previously. By decision dated December 10, 1998, the Board credited the opinion of Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, who had performed an impartial medical evaluation for the Office of Workers' Compensation Programs and found that the Office properly terminated appellant's compensation benefits, effective April 20, 1994. The Board further found that appellant failed to establish that she had any disability after April 20, 1994 causally related to her employment injury.<sup>1</sup> On December 15, 1998 appellant through counsel, filed a petition for reconsideration with the Board. By order dated November 16, 1999, the Board denied the petition. The law and the facts as set forth in the previous Board decision and orders are incorporated herein by reference.

Subsequent to the Board's November 16, 1999 order, on December 8, 1999 appellant requested reconsideration and submitted additional medical evidence. In a decision dated September 10, 2001, the Office denied modification of the prior decision. On December 7, 2001 appellant again requested reconsideration and submitted additional medical evidence. By decision dated March 20, 2002, the Office again denied modification of the prior decision. The instant appeal follows.<sup>2</sup>

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<sup>1</sup> Docket No. 96-2610.

<sup>2</sup> On May 28, 2002 appellant filed her appeal with the Board, advising that she was appealing a December 10, 1999 Office decision. By order dated August 13, 2002, the Board dismissed the appeal on the grounds that the Board could not take jurisdiction over the appeal as more than one year had elapsed between the appeal and the issuance of the December 10, 1999 Office decision. By letter dated August 23, 2002, appellant requested reconsideration with the Board. By order dated January 10, 2003, the Board granted appellant's petition for reconsideration and reinstated the appeal. The record does not contain an Office decision dated December 10, 1999.

The Board finds that appellant failed to establish that she had any disability after December 6, 1995 causally related to her December 3, 1991 employment injury.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had disability causally related to her accepted injury.<sup>3</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup> Causal relationship is a medical issue<sup>5</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

The relevant medical evidence includes<sup>7</sup> a February 3, 1997 report, in which Dr. Kenneth L. Izzo, appellant's treating Board-certified psychiatrist, attached a December 4, 1996 functional capacity evaluation, which advised that discomfort was reported at the lower back, left shoulder, left leg and left ankle. Her physical capacity was measured at the impaired level and he reported that she continued to demonstrate significant difficulty with all prolonged functions. Dr. Izzo further advised that appellant was unable to kneel, crouch, bend, reach horizontally or vertically on the left, perform foot pedal motions and was limited in her ability to lift, carry, push and pull. In a form report dated May 21, 1997, he provided range of motion measurements. By report dated May 28, 1997, the physician noted findings on examination of decreased cervical range of motion with pain on all cervical movements and decreased active range of motion with pain on examination of the back with straight leg raising test positive on the left at 50 degrees. Examination of the left shoulder revealed decreased active range of motion with diffuse tenderness to palpation over the left shoulder girdle musculature with swelling and trigger points present in the left upper trapezium muscle. His diagnoses included unresolved severe chronic intractable cervical, dorsal and lumbosacral strain and sprain, bulging cervical discs and possible cervical disc herniation, post-traumatic myofasciitis of the left upper

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<sup>3</sup> See *George Servetas*, 43 ECAB 424 (1992).

<sup>4</sup> See 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>6</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> The record also includes a number of duplicate medical reports, that are irrelevant to the issue in the instant case, reports that are illegible or unsigned and reports from an occupational therapist that do not constitute medical reports from a physician under the Federal Employees' Compensation Act. She also submitted an October 29, 2001 report from Dr. Daniel S. Carradorini, a chiropractor. The Board notes that, in assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician under the Act. A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2); see *Thomas R. Horsfall*, 48 ECAB 180 (1996). Such is not the case here.

trapezium muscle, left shoulder girdle strain and sprain with possible development of adhesive capsulitis, status post right knee contusion and traumatic effusion, status post left ankle internal derangement and fracture and status post corrective surgery,<sup>8</sup> ambulation dysfunction, severe depression with psychotic features and post-traumatic fibromyalgia syndrome.

A December 12, 1997 electromyography (EMG) with nerve conduction studies demonstrated abnormal left L5-S1 radiculopathy. A magnetic resonance imaging (MRI) scan of the left shoulder on October 23, 1998 revealed a small amount of fluid and no rotator cuff tear. A lumbar spine MRI scan that same day was unremarkable with no herniation present.

Dr. Jeffrey Woloshin, who is Board-certified in psychiatry and neurology, provided a March 31, 1998 report, in which he diagnosed major depressive disorder, recurrent, with psychoses and disc disease.

In a form report dated December 16, 1998, Dr. Daphne G. Golding, a Board-certified physiatrist, provided range of motion findings. In a report dated December 30, 1998, Dr. Golding noted appellant's history of neck pain radiating to the left upper extremity and back pain radiating to the left lower extremity and findings of decreased range of motion with pain and tenderness of the cervical spine, left shoulder, trapezium area and lumbar spine with straight leg raising test positive at 50 degrees. The physician diagnosed chronic cervical, thoracic and lumbosacral sprain and strain, adhesive capsulitis of the shoulder, status post shoulder sprain and strain, cervical disc disease, lumbar radiculopathy and depression with psychotic features.

A cervical EMG dated April 7, 1999 demonstrated left C7 radiculopathy. A September 16, 1999 MRI scan of the lumbar spine revealed L4-5 and L5-S1 disc herniations with disc bulging found at L3-4.

Dr. Golding provided a December 10, 1999 report, in which she advised that appellant had received pain management treatment for approximately six years for chronic neck and back injuries, post-traumatic fibromyalgia and chronic left shoulder sprain and chronic left ankle sprain related to the December 3, 1991 employment injury. She noted appellant's continued symptoms of neck and back pain radiating into the extremities and decreased range of motion of the left shoulder. The physician opined that, "within a reasonable degree of medical certainty, it is my opinion that [appellant's] symptoms are a direct result of the fall that she sustained on December 3, 1991."

In an August 2, 2001 report, Dr. Izzo noted findings of pain and decreased range of motion of the neck, left shoulder and back with straight leg raising test positive at 50 degrees. He diagnosed chronic neck and low back pain, cervical disc herniations at C3-4 and C4-5, lumbar degenerative disc disease, left posterior tibial talar ligament (left ankle), adhesive capsulitis of the left shoulder, chronic left L5-S1 radiculopathy and C7 cervical radiculopathy. Somato-sensory evoked potential study performed on September 27, 2001 was normal. Nerve conduction study of the lower extremities that same day demonstrated L5 radiculopathy on the left. In a September 27, 2001 report, Dr. Izzo repeated his findings and diagnoses. He noted that

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<sup>8</sup> The record indicates that appellant sustained a fracture to her ankle in 1993. This was not an employment-related injury.

appellant was injured at work in December 1991 and advised that “all her subsequent conditions are related to the work injury.”

In a December 6, 2001 report, Dr. Golding advised that she had been involved in appellant’s care for the past two years. She reported a history of injury that appellant was injured when she slipped and fell on an icy ramp and landed on her buttocks. The physician continued:

“It appears, from talking with [appellant], that there is question as to whether her chronic pain and loss of function is a result of the injuries sustained in December of 1991. This letter is to state that it is my opinion that her current conditions are a result of her injury [10] years ago. Review of her records reveals that her initial MRI [scan] evaluations of the lumbar spine were negative for disc pathology; however, more recent studies have revealed evidence of bulging discs. It is possible that her initial injury may have caused undetected tears in the annulus fibrosis of the disc that continued to degenerate as she progressed resulting in the positive findings on MRI [scan] in more recent years.

“The fact remains that this [appellant] has continuously had pain, limitations in range of motion resulting in loss of function, loss of vocation and loss of avocation. Her diagnoses include cervical and lumbar disc disease, cervical and lumbar radiculopathy, left shoulder adhesive capsulitis, post[-]traumatic fibromyalgia, chronic pain syndrome with somatic dysfunction. In addition, the patient had sustained an ankle injury that required surgical intervention. It is my opinion that her condition is secondary to failure of recovery from her initial injuries.”

Appellant continued to submit additional medical evidence after the Office decision dated December 6, 1995. While an MRI scan of the lumbar spine dated September 16, 1999 demonstrated disc herniations, MRI scans of the lumbar spine dated March 27, 1992 and April 28, 1993 were negative. Furthermore, the September 16, 1999 MRI scan report does not contain an opinion regarding the cause of appellant’s condition. Drs. Golding and Izzo opined that appellant was totally disabled due to multiple diagnoses. The Board notes, however, that the accepted conditions in the instant case are cervical, back and left shoulder strains and contusion of the left knee and neither physician provided a rationalized explanation regarding how her current condition was caused by the 1991 employment injury. Dr. Woloshin did not provide an opinion regarding the cause of appellant’s depression. The Board, therefore, finds that these reports are insufficient to meet her burden of proof. Appellant thus failed to present sufficient rationalized medical evidence to establish that her current condition or disability is causally related to her employment injuries and, therefore, failed to meet her burden of proof to establish that she continued to be disabled after December 6, 1995 due to the December 3, 1991 employment injury.

The March 20, 2002 and September 10, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
April 21, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member