United States Department of Labor
Employees' Compensation Appeals Board

JEANNINE K. MALLICK, Appellant	)	
and	)	**Docket No. 03-1153**
	)	**Issued: February 27, 2004**
DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Anaheim, CA, Employer	)	

Appearances:
Thomas Martin, Esq. for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 2, 2003 appellant, through her attorney, filed a timely appeal from the January 22, 2003 decision of the Office of Workers' Compensation Programs. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective January 26, 2003 on the grounds that she no longer had any residuals or disability causally related to her May 2, 1995, November 23, 1996 and June 9, 1999 employment injuries; and (2) whether appellant sustained a consequential injury of fibromyalgia and an emotional condition causally related to her accepted employment injuries.

FACTUAL HISTORY

On May 2, 1995 appellant, then a 53-year-old asylum officer, filed a traumatic injury claim alleging that on that date she slipped and fell at work. The Office accepted her claim for a meniscal tear of the left knee and contusions of the right foot, ankle, hand and wrist, and left

knee. Appellant underwent surgery to repair the left meniscus tear, which was performed on July 31, 1995. Subsequently, the Office expanded the acceptance of her claim to include moderate to severe degenerative joint disease of the left knee by permanent material aggravation.

On November 23, 1996 appellant filed an occupational disease claim alleging that she fell down on her left knee. The Office accepted her claim for a contusion of the left knee.[1] Arthroscopic surgery on the left knee was performed on December 30, 1997.

On June 10, 1999 appellant filed another traumatic injury claim, alleging that on June 9, 1999 she hurt her left knee while bending over to pick up files from the floor. The Office accepted her claim for a left knee strain. Appellant underwent arthroscopic surgery on her left knee on July 20, 2001. She stopped work on April 4, 2001 and has not returned.

The Office referred appellant to Dr. Mark Borigini, a Board-certified internist, for a second opinion medical examination. In his January 21, 2002 report, Dr. Borigini provided a history of appellant's injuries, including the May 2, 1995 employment injury and the condition of fibromyalgia. He reviewed appellant's medical records and provided his findings on physical and neurological examination. Dr. Borigini diagnosed a left upper extremity thoracic outlet syndrome and left shoulder impingement syndrome with acromioclavicular joint degenerative disease. He stated that left upper extremity radiculopathy was likely. Dr. Borigini opined that appellant's conditions were not caused by factors of her employment. He also opined that factors of appellant's employment would have temporarily aggravated her cervical condition and thoracic outlet syndrome. This aggravation would have ceased after appellant discontinued the activities. Dr. Borigini stated that appellant had no continuing residuals and that, after one month off from work, her total disability due to a work-related condition should have ceased. He opined that appellant was not totally disabled but that her continued partial disability was due to a nonindustrial condition. Dr. Borigini noted appellant's physical limitations and stated that she was not able to continue her work activities, but that she was employable in some other capacity. In a work capacity evaluation of the same date, Dr. Borigini indicated that appellant was able to work eight hours a day with certain physical restrictions.

The Office received a February 27, 2002 report from Dr. David B. Thordarson, an orthopedic surgeon and appellant's treating physician, finding that appellant had degenerative arthritis of the right mid-foot, status post fracture of the right second through fourth metatarsals with right ankle pain and probable tendinitis following her left knee injury. He opined that appellant was temporarily totally disabled for work. In reports dated June 24 and July 24, 2002, Dr. Thordarson diagnosed right ankle synovitis and mid-foot degenerative arthritis with diffuse pain. He reiterated his finding that appellant was totally disabled for work.

In a March 7, 2002 report, Dr. Kelly G. Vince, an orthopedic surgeon and appellant's treating physician, diagnosed depression, multiple somatic complaints including fibromyalgia, osteoarthritis of the left knee, mid-foot fractures on the right side which were treated by Dr. Thordarson, pain in the left upper extremity and an adverse reaction to temporomandibular

[1] The Board notes that the record does not contain appellant's November 23, 1996 occupational disease claim form or the Office's letter accepting appellant's claim for a contusion of the left knee.

joint implant that was diagnosed as an allergy to implant material. Dr. Vince opined that appellant was temporarily totally disabled. In March 7 and August 15, 2002 reports and an undated report, he stated that appellant remained totally disabled. In a June 4, 2002 report, Dr. Vince stated that appellant's condition remained unchanged and that appellant informed him that she had fibromyalgia which she attributed to her employment injury.

On April 10, 2002 the Office referred appellant to Dr. Lawrence Meltzer, a Board-certified orthopedic surgeon, for a second opinion medical examination. He submitted a May 8, 2002 report finding that appellant had degenerative arthritis of the left knee with instability, fibromyalgia, multiple sclerosis, a healed metatarsal fracture with degenerative arthritis and radiculopathy of the left upper extremity by history. Dr. Meltzer opined that appellant's left knee condition was caused by her employment. He further opined that appellant had some employment-related disability due to her left knee condition, but that she did not have any preexisting disability of the knee. He stated that appellant's fibromyalgia was not employment related. Regarding appellant's right foot condition, Dr. Meltzer stated that this condition was related to her employment-related left knee injury, but that it had healed and was not a problem at that time. He further stated that appellant was totally disabled only for the period of her left knee arthroscopies which lasted six weeks. Dr. Meltzer concluded that appellant was not totally disabled and based on a review of her job description she could perform the duties of an asylum officer on a full-time basis with certain physical restrictions. His accompanying work capacity evaluation dated May 1, 2002 provided that appellant could work eight hours a day within specified physical restrictions.

The Office received a July 12, 2002 report from Dr. Allen I. Sallick, a rheumatologist and appellant's treating physician, who diagnosed fibromyalgia, multiple sclerosis by history, status post left knee surgery three times, a history of a right foot fracture and a psychiatric condition. He opined that appellant was limited to semi-sedentary work by her fibromyalgia and that, in combination with her other problems, she was totally disabled and unemployable at that time. Dr. Sallick stated that the chronic pain disorder from the left knee problems caused appellant's fibromyalgia.

On September 9, 2002 the Office determined that a conflict existed in the medical opinion evidence between appellant's treating physicians, Drs. Thordarson, Vince and Sallick, and the Office referral physician, Dr. Meltzer, as to whether appellant was totally disabled due to her accepted employment injuries. To resolve the conflict, the Office referred appellant to Dr. Jayaraja Yogaratnam, a Board-certified orthopedic surgeon, for an impartial medical examination by letter dated September 16, 2002. The Office also referred appellant to Dr. Jillian Daly, a licensed clinical psychologist, and Dr. Reynaldo Abejuela, a Board-certified psychiatrist, for a second opinion medical examination.

Dr. Daly's October 16, 2002 report revealed her findings on psychological testing. She reported that, on a Minnesota Multiphasic Personality Inventory (MMPI), appellant's performance appeared to be valid. Appellant made an attempt to follow instructions and read items carefully. She responded to questions in a consistent manner. There was no indication of any significant overreporting or underreporting of psychopathology. The results appeared to be realistically truthful and were likely reflective of appellant's current status. Dr. Daly described

individuals that had a similar MMPI-2 profile as appellant and their use of defense mechanisms. She stated that appellant's defense mechanisms were not effectively working at that time. Appellant reported a significant degree of depression and her score on the depression scale fell almost three standard deviations above the cut-off for clinical significance. Dr. Daly noted that appellant may be depressed, worried, indecisive and pessimistic. She also noted withdrawal, feelings of lack of worth, apathy and psychomotor retardation was present. Dr. Daly noted appellant's statements of uselessness and hopelessness. She described appellant as resentful and suspicious of others and that she had difficulty with her attention, concentration, memory, judgment and decreased ability to make decisions. Dr. Daly concluded that the most frequent diagnoses for individuals with a similar MMPI-2 performance included mood disorder (including major depressive disorder and/or dysthmic disorder), somatoform disorder and/or conversion disorder. She further concluded that the presence of a personality disorder was also suggested, personality traits and characteristics which may include histrionic, borderline and/or paranoid.

Dr. Abejuela submitted an October 11, 2002 report providing a review of appellant's medical records. He noted appellant's allegation of job stress and a hostile work environment at the employing establishment which made her depressed and caused post-traumatic stress disorder. Dr. Abejuela further noted appellant's depressive symptoms and treatment. He provided a history of appellant's personal, social and family background. Dr. Abejuela also provided his findings on mental examination which included a depressed and anxious mood with post-traumatic stress disorder symptoms, decreased cognitive functioning, concentration and memory and fair insight and judgment. He diagnosed post-traumatic stress disorder with depression on Axis I, a knee problem on Axis III, work problems and history of alleged abuse from a supervisor on Axis IV and a global assessment of function of 54 on Axis V. Dr. Abejuela deferred a diagnosis on Axis II. In response to the Office's questions, Dr. Abejuela stated that appellant's emotional condition was related to her work based on the history provided, statement of accepted facts and mental status. He further stated that appellant's work factors caused her emotional condition because she had a problem with the work situation and supervisors. Dr. Abejuela responded that appellant continued to suffer residuals of her emotional condition and that she was unable to perform her usual and customary work duties. In an accompanying work capacity evaluation of the same date, Dr. Abejuela reiterated that appellant was unable to work.

Dr. Yogaratnam submitted an October 14, 2002 report addressing appellant's complaints of left knee and right foot pain and swelling and a history of appellant's May 2, 1995 employment injury, medical treatment and disability. He provided a description of appellant's position of asylum officer and a history of appellant's family background and noted a review of appellant's medical records. Dr. Yogaratnam diagnosed status post carpal tunnel surgery of the left wrist/hand with no clinical evidence of carpal tunnel syndrome, osteoarthritis of the right and left knees, status post fracture of the second through fourth metatarsals of the right foot. A diagnosis of a ankle sprain was questionable. Dr. Yogaratnam noted that his examination was confined to the musculoskeletal area and that appellant mentioned that she had fibromyalgia. He stated that he would defer this evaluation to an internist. Dr. Yogaratnam discussed his findings on physical examination. Regarding appellant's knees, Dr. Yogaratnam stated that she had a range of motion of 0 to 90 degrees which was restricted by flexion, diffuse tenderness over the bony structures constituting the knee joint. He further stated that there was no laxity in either

knee and appellant had degenerative arthritis in both knees which was probably more symptomatic in the left knee than in the right knee. Dr. Yogaratnam noted that the giving out and falling was due to this condition and was not unusual. He explained that the giving out of the knee was due to poor quadriceps tone which control the stability of the knee joint.

Regarding appellant's right foot, Dr. Yogaratnam indicated that appellant stated that it was painful and swollen following a fall on October 14, 2001. X-rays revealed second, third and fourth metatarsal bones that had healed with some degree of angulation, but this was not reflected in the shape of the foot which was similar to that of the uninjured side.

Dr. Yogaratnam found no clinical evidence of carpal tunnel syndrome especially in the absence of Tinel's and Phalen's signs and a median nerve compression test. He noted that appellant presented an electrodiagnostic study that was performed on July 9, 2002 which demonstrated mild bilateral median neuropathy of the wrist consistent with carpal tunnel syndrome. Dr. Yogaratnam stated that the numbers provided in the study were not convincing evidence of carpal tunnel syndrome. He further stated that another study would be worthwhile because there were some corrections made in the ink that he was not prepared to accept.

Dr. Yogaratnam stated that the arthritis in appellant's left knee was not related to any work activities, but to a degenerative process which was more likely due to either genetic factors or being overweight. There was no specific injury to the knee. He believed that appellant's arthroscopic surgeries were due to the progression of the degenerative arthritis in her knee which could have been aggravated by appellant's work activities. According to appellant, this condition could not have resulted in the development of any condition in her knee. Dr. Yogaratnam concluded that appellant's degenerative arthritis in her left and right knees was not work related. Regarding appellant's lower extremities, Dr. Yogaratnam stated that he did not see any difficulty in appellant being able to work even though she may have to use a cane because of the degenerative arthritis. He noted that appellant's job was primarily sedentary. Dr. Yogaratnam concluded that appellant did not have any limitations due to a work-related disability and that she could be gainfully employed as an asylum officer.

By letter dated December 9, 2002, the Office issued a proposed notice to terminate appellant's compensation on the basis that she no longer had any residuals or continuing disability due to her May 2, 1995, November 23, 1996 and June 9, 1999 employment injuries based on Dr. Yogaratnam's report. The Office also found the medical evidence of record insufficient to establish that appellant's fibromyalgia was caused by her accepted employment injuries based on the report of Dr. Borigini. Further, the Office found the medical evidence of record insufficient to establish that appellant's emotional condition was caused by her employment injuries based on Dr. Abejuela's report.[2] Appellant was given 30 days to submit additional evidence or argument.

In response to the proposed termination, appellant submitted Dr. Thordarson's

[2] The Office noted that appellant filed a claim for her emotional condition which was denied by decision dated March 18, 2002 on the grounds that she failed to establish any incidents of abuse or harassment in the performance of duty. The Board notes that appellant is not currently appealing the Office's March 18, 2002 decision.

December 4, 2002 attending physician's report listing a date of injury as May 2, 1995 and a diagnosis of osteoarthritis of the left knee and right foot. Dr. Thordarson indicated that appellant's condition was caused by the employment injury by placing a checkmark in the box marked "yes." He also indicated that appellant was totally disabled. In a narrative report of the same date, Dr. Thordarson stated that appellant had right mid-foot degenerative arthritis with fibromyalgia and that she was temporarily totally disabled. Dr. Vince's December 5, 2002 attending physician's report indicated a date of injury as May 2, 1995 and a diagnosis of osteoarthritis of the left knee. He indicated that appellant's condition was caused by the employment injury by placing a checkmark in the box marked "yes." Dr. Vince stated that appellant was totally disabled.

Appellant submitted medical treatment notes indicating that she was treated in a hospital emergency room on November 21, 2002 and she was diagnosed with chronic knee pain and degenerative joint disease of the left knee.

In a January 22, 2003 letter, appellant's attorney contended that appellant's emotional condition and fibromyalgia should be accepted as work-related conditions. He also argued that Dr. Yogaratnam's report contained errors. He requested that the Office's notice of proposed termination be withdrawn because appellant's emotional condition, fibromyalgia and degenerative knees conditions were work related and disabling.

In a January 22, 2003 decision, the Office finalized the termination of benefits effective January 26, 2003 on the basis that appellant no longer had any residuals or disability causally related to her May 2, 1995, November 23, 1996 and June 9, 1999 employment injuries.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying 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] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5] However the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.[6] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[7]

[3] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[4] *Lynda J. Olson*, 52 ECAB 435 (2001).

[5] *Manuel Gill*, 52 ECAB 282 (2001).

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

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001).

Section 8123 of the Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician to resolve the conflict.[8] When a case is referred to an impartial medical specialist for the purpose of resolving a conflict of medical evidence, the opinion of such specialist, if sufficiently well rationalized and based on a proper medical background, must be given special weight.[9]

ANALYSIS -- ISSUE 1

In this case, the Office correctly determined that a conflict existed in the record between appellant's treating physicians, Drs. Thordarson, Vince and Sallick and the Office referral physician, Dr. Meltzer, as to whether appellant had any residuals or disability due to her May 2, 1995, November 23, 1996 and June 9, 1999 employment injuries. In light of this conflict, appellant underwent an impartial medical examination.

The impartial medical examiner in this case was Dr. Yogaratnam who opined that appellant's conditions of status post tunnel surgery of the left wrist/hand which did not demonstrate any clinical evidence of carpal tunnel syndrome, osteoarthritis of the right and left knees and status post fracture of the second through fourth metatarsals of the right foot were not work related. Dr. Yogaratnam offered medical reasoning to support his conclusion that appellant did not have any residuals and resultant disability due to her accepted employment injuries and the medical record, together with the statement of accepted facts, provided him a proper factual foundation to evaluate appellant. His report provided a sufficient basis for the Office's decision to terminate appellant's compensation. Thus, the Office met its burden of proof in terminating compensation benefits.

In support of continuing disability, appellant submitted Dr. Thordarson's December 4, 2002 attending physician's report indicating that her osteoarthritis of the left knee and right foot were caused by the employment injury by placing a checkmark in the box marked "yes." He also indicated that appellant was totally disabled. Similarly, Dr. Vince's December 5, 2002 attending physician's report indicated that appellant's osteoarthritis of the left knee was caused by the employment injury by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[10] As neither Dr. Thordarson nor Dr. Vince provided any rationale to support their conclusion regarding the cause of appellant's conditions, their reports are insufficient to establish continuing employment-related disability.

[8] 5 U.S.C. § 8123; *see Robert D. Reynolds*, 49 ECAB 561 (1998).

[9] *See Sherry Hunt*, 49 ECAB 467 (1998); *Wiley Richey*, 49 ECAB 166 (1997).

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

LEGAL PRECEDENT -- ISSUE 2

The general rule respecting consequential injuries is that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury similarly arises out of the employment unless it is the result of an independent intervening cause. An employee who asserts that a nonemployment-related injury was a consequence of a prior employment-related injury has the burden of proof to establish that such was the fact.[11]

ANALYSIS -- ISSUE 2

In this case, the record contains insufficient medical evidence to establish a consequential causal relationship between appellant's claimed fibromyalgia and emotional condition and the accepted work injuries. Dr. Sallick's July 12, 2002 report finding that appellant's work-related left knee condition gave rise to fibromyalgia did not provide any medical rationale explaining how or why appellant's accepted left knee condition caused fibromyalgia. Dr. Abejuela's October 11, 2002 report revealed that appellant's emotional condition was due to her problems with and abuse by supervisors at the employing establishment. As Dr. Abejuela did not attribute appellant's emotional condition to her accepted employment injuries, his report is insufficient to establish a consequential injury. The Board, therefore, finds that the evidence of record is insufficient to discharge appellant's burden of establishing that her fibromyalgia and emotional condition were consequential injuries of the accepted right and left knees and right foot, ankle, hand and wrist conditions.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective January 26, 2003 on the grounds that she no longer had any residuals or disability causally related to her May 2, 1995, November 23, 1996 and June 9, 1999 employment injuries.

The Board further finds that appellant has failed to establish that she sustained a consequential injury of fibromyalgia and an emotional condition causally related to her accepted employment injuries.

[11] *See William F. Gay*, 50 ECAB 276 (1999).

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member