

claim.¹ The Board found that appellant had submitted new and relevant evidence. In a decision dated January 31, 2005, the Board set aside an Office decision dated June 30, 2004, finding that the Office had improperly applied the clear evidence of error standard to a timely reconsideration request.² The Board's prior decisions are incorporated herein by reference.

In the present case, the Office accepted that appellant, a clerk, sustained a scalp contusion and concussion when she was hit in the head by a falling bag of mail while in the performance of duty on November 20, 1980.³ By decision dated November 22, 1982, the Office determined that appellant was entitled to compensation for wage loss based on working four hours per day. Appellant began receiving compensation for partial disability.

The Office referred appellant, with medical records and a statement of accepted facts, to Dr. Frederick Weisbrot, a Board-certified neurologist. In a report dated April 14, 1999, Dr. Weisbrot provided a history, including a review of medical records and results on examination. He stated:

“[Appellant] appears to have suffered a scalp injury in November 1980 after a bag of mail fell on her head. According to the records, this also resulted in a cervical and lumbar sprain with chronic residual complaints of pain in these areas. Multiple neurologic examinations by multiple examiners over the years did not reveal any neurologic deficits. The patient has been noted by prior examiners to have psychiatric difficulties, as well as functional overlay. I do not see any relationship between the purported history of seizures, as well as the history of psychiatric illness to the incident in question. These appear to be separate issues. There is no current evidence of persistent scalp, cervical or lumbar pathology and there is no current evidence of neurologic pathology. The patient, therefore, is free to return to work without restriction. No further neurologic treatment is indicated for this work-related injury. No permanency is expected.”

In an undated work restriction evaluation (Form OWCP-5) received by the Office on September 24, 1999, Dr. Alan Clark, a Board-certified neurologist, indicated that appellant could work part-time with restrictions. He indicated that appellant was restricted to 10 pounds lifting and 3 hours intermittent sitting.

By letter dated March 21, 2000, the Office notified appellant that it proposed to terminate her compensation benefits. The Office found that the weight of the medical evidence was represented by Dr. Weisbrot. In a decision dated April 24, 2000, the Office terminated compensation for wage loss and medical benefits.

Appellant requested reconsideration and submitted an October 18, 2000 report from Dr. Clark. He noted that appellant had an employment injury in 1980 when a bag of mail

¹ Docket No. 01-2127 (issued June 12, 2002).

² Docket No. 04-1991 (issued January 31, 2005).

³ There is a memorandum dated October 29, 1986 stating that the Form CA-800 (nonfatal summary) was being updated to include “cervical sprain-chronic.”

dropped on her head. He indicated that he had treated appellant since July 8, 1997 and noted that she had several diagnostic studies that were negative. Dr. Clark stated that appellant had complaints of headaches, back pain and seizures, but there had not been “any objective evidence of progressive neurological disease. Therefore, it is my conclusion that this patient unfortunately suffers from headaches, seizures (presumably grand mal seizures), neck and lower back pain as a chronic residual of the injury she suffered in 1997 [sic].” Dr. Clark indicated that it was doubtful that appellant could work full time, “although the lack of objective evidence of disease or injury tends to negate [appellant’s] insistence that she cannot work.” He further stated that it was “difficult and impossible to deny that her symptoms are not [sic] real” despite the lack of objective evidence. Dr. Clark concluded that if appellant was not physically disabled, she was certainly psychologically disabled as she had convinced herself that she was unable to work.

As noted, the Office improperly refused to reopen the case for merit review in a May 11, 2001 decision. On remand, the Office denied modification of the termination of benefits in a decision dated October 3, 2002. The Office found that Dr. Clark’s report was of diminished probative value and not sufficient to overcome the weight of Dr. Weisbrot’s report or create a conflict.

Appellant requested reconsideration by letter dated November 6, 2002 and submitted an October 31, 2002 report from Dr. Gita Parikh, a psychiatrist, who diagnosed major depression and indicated that appellant was unable to work.

By decision dated January 7, 2003, the Office reviewed the case on its merits and denied modification. Appellant again requested reconsideration and submitted a November 26, 2002 decision from the Social Security Administration regarding a claim for disability. In a report dated September 5, 2003, Dr. Clark reviewed appellant’s office visits and stated that appellant “had suffered a head injury in 1980 and had suffered complaints consistent with a concussion and cervical sprain at that time.” Dr. Clark noted that over the past 20 years the complaints had gradually disappeared and there were no objective findings consistent with continual injury to the nervous system. According to Dr. Clark appellant had complained of seizures but there had been no objective evidence of seizures. He stated that because of her complaints appellant was prescribed an anticonvulsive medication, which would also help her depression. Dr. Clark concluded that “because of [appellant’s] belief that she is neurologically disabled and has certainly developed other medical conditions such as diabetes mellitus, hypertension and a depressive illness, this patient is disabled and unable to maintain gainful employment. There does not appear to be, at this time, however, any present or progressive neurological disease.”

Following the Board’s remand, the Office issued a June 10, 2005 merit decision. The Office denied modification on the grounds that the weight of the evidence was represented by Dr. Weisbrot.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without

⁴ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

establishing that disability ceased or that it was no longer related to the employment.⁵ The right to medical benefits is not limited to the period of entitlement to disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁶

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.⁷

ANALYSIS

Appellant sustained an injury on November 20, 1980 when a bag of mail fell on her head. The claim was accepted for a scalp contusion and a concussion and apparently a chronic cervical sprain. Dr. Weisbrot, the second opinion referral physician, provided a reasoned medical opinion in his April 14, 1999 report that appellant no longer had residuals of an employment injury. He reported a normal examination and noted that prior examiners had not found a neurologic deficit. Dr. Weisbrot found that appellant did not have a current scalp, cervical or lumbar pathology and that she could return to work without further treatment for an employment injury. He provided probative evidence in support of the Office's determination that employment-related residuals had ceased.

On the other hand, appellant did not submit probative medical evidence of a continuing employment-related condition as of April 24, 2000. Dr. Clark stated in his October 18, 2000 report that appellant had headaches, seizures, neck and back pain "as a result" of the employment injury⁸ without a clear explanation. He did not provide a complete factual and medical background that acknowledged, for example, that appellant had been involved in motor vehicle accidents since 1980. Dr. Clark stated that there was no objective evidence to support appellant's complaints and he did not provide any medical rationale for a continuing medical condition causally related to the November 20, 1980 employment injury.

The Board notes that a decision regarding a Social Security Administration disability claim does not constitute probative medical evidence.⁹ It is also noted that Dr. Parikh, the psychiatrist, did not provide a reasoned medical opinion on the relevant issues. The Office has not accepted an emotional condition as a consequence of the employment injury and Dr. Parikh

⁵ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

⁶ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁷ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁸ Although he referred to a 1997 injury, presumably he meant the 1980 injury.

⁹ *See Daniel Deparini*, 44 ECAB 657 (1993) (findings of the Social Security Administration are not determinative of disability under the Federal Employees' Compensation Act).

did not provide a reasoned opinion with respect to an employment-related condition or period of disability.

In a September 5, 2003 report, Dr. Clark reiterated that there was no objective evidence of a neurological condition. He stated that appellant was disabled, but this appeared to be based on appellant's belief that she was disabled and conditions such as diabetes mellitus, hypertension and depression, which are not accepted employment-related conditions. To the extent that Dr. Clark was providing an opinion as to appellant's current disability, he did not provide a reasoned medical opinion with respect to an employment-related disability.

The Board finds that Dr. Weisbrot represents the weight of the medical evidence regarding appellant's continuing employment-related condition as of April 24, 2000. Dr. Clark did not provide a reasoned medical opinion on the issue. The Board accordingly finds that the Office met its burden of proof to terminate compensation for wage loss and medical benefits effective April 24, 2000. As noted above, once the Office has properly terminated benefits, the burden of proof shifts to appellant to establish entitlement to compensation. The evidence of record on disability after April 24, 2000 after is of little probative value. Dr. Clark's opinion regarding disability in his September 5, 2003 report is not of sufficient probative value to establish an employment-related condition or disability.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate compensation benefits as of April 24, 2000.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2005 is affirmed.

Issued: March 14, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board