United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
	)	**Docket No. 08-939**
and	)	**Issued: January 15, 2009**
DEPARTMENT OF THE AIR FORCE, WRIGHT PATTERSON AIR FORCE BASE, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 12, 2008 appellant, through counsel, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated July 5, 2007 and January 15, 2008, terminating her compensation for wage-loss and medical benefits effective July 5, 2007 and finding that she did not sustain an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective July 5, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries; (2) whether appellant had any continuing employment-related residuals or disability after July 5, 2007; and (3) whether appellant sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On June 12, 2003 appellant, then a 37-year-old part-time store worker, she broke her nose and two teeth and sustained multiple bruises after she fell down steps at work. She stopped work on the date of injury. The Office accepted the claim for cervical and thoracic subluxation, multiple contusions to the face, fractured teeth numbers 7, 8, 9 and 10, contusion to the right knee, aggravation of right knee chondromalacia and nasal fracture. On July 16, 2004 it authorized nasal surgery which was performed in June 2003 and July 2004.

By letters dated March 7 and 15, 2006, the Office advised appellant that her case file did not contain any current medical evidence to establish her continuing disability. It requested that she submit a report from her attending physician, which addressed her current diagnoses and a rationalized medical opinion regarding the causal relationship between her conditions and accepted employment-related injuries.

A June 28, 2004 medical report of Dr. Major John L. Dolan, an employing establishment neurologist, reviewed a history of appellant's June 12, 2003 employment injuries. Dr. Dolan noted findings on physical examination and opined that she sustained postconcussive syndrome. An October 19, 2004 report of Dr. Major Roland Jones, an employing establishment neurologist, stated that appellant suffered from chronic vertigo following the June 12, 2003 employment injury. In a June 9, 2005 report, Dr. Jones stated that appellant was being treated for postconcussive syndrome. He opined that she suffered from chronic intermittent headaches. Dr. Jones stated that appellant periodically experienced unpredictable exacerbations of her symptoms that may make her daily activities and responsibilities harder to perform.

In treatment notes dated March 30, 2004 to March 20, 2006, Dr. Captain Ethan A. Bean, an employing establishment psychiatrist, opined that appellant's conversion and mood disorders were caused by her accepted employment injuries. He advised that she was not malingering and that the diagnosed conditions caused significant functional impairments which limited her ability to care for herself and pursue gainful employment.

An October 22, 2004 report of Dr. Raymond L. Poole, an employing establishment clinical psychologist, stated that appellant sustained cognitive postconcussional disorder not otherwise specified based on her history, conversion disorder based on Dr. Bean's previous diagnostic impression, work-related problems and dissatisfaction with medical care. Dr. Poole reported a global assessment functioning (GAF) score of 40. He ruled out mood disorder not otherwise specified due to appellant's general medical condition and major depressive disorder.

In reports dated October 25, 2004 to March 18, 2005, Dr. Captain Oliver L. McPherson, an employing establishment psychiatrist, found that appellant suffered from mood disorder and seizures. He determined that she had a GAF score of 60.

In a May 8, 2006 letter, the Office advised appellant that she was being referred for two second opinion examinations to determine whether she had residuals of her June 12, 2003 employment-related orthopedic knee and back conditions and whether her neuropsychiatric problems were causally related to her accepted employment injuries.

By letter dated May 17, 2006, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Pietro Seni, a Board-certified orthopedic surgeon. In a May 31, 2006 report, Dr. Seni reviewed the history of appellant's June 12, 2003 employment injuries, medical treatment, family and social background. On physical examination, he reported essentially normal findings regarding her knees, with the exception of numerous old and recent lesions on the skin due to falling, minimal retropatellar crepitus and some tenderness of the patellar tendon on the right more than the left. Dr. Seni found no evidence of any subluxation of the cervical, lumbar and thoracic spines or radiculopathy based on diagnostic test results. He noted appellant's complaint of severe pain in her knees. Dr. Seni stated that magnetic resonance imaging (MRI) scans of the knees were within normal limits and there were no objective findings on physical examination. He opined that appellant's contusion of the right knee had resolved without sequelae and there was no evidence of thoracic or cervical subluxation. Dr. Seni stated that there was evidence of a mild degree of chondromalacia of the patella and retropatellar crepitus. He related that the former condition was very mild in nature and probably found in the majority of knees that were examined on a daily basis. Dr. Seni opined that appellant did not have any residuals of her accepted employment-related orthopedic conditions. He further opined that she could return to her full-time duties as a store worker without restrictions.

By letter dated July 25, 2006, the Office referred appellant to Dr. Gerald S. Steiman, a Board-certified neurologist. In an August 31, 2006 report, Dr. Steiman reviewed a history of appellant's June 12, 2003 employment injuries, medical treatment, family and social background. He noted her complaints of dizziness and seizures. On neurological examination, Dr. Steiman reported normal findings. He stated that appellant sustained a concussion, fractured nose, facial abrasions and contusions, and contusion of the left knee as a result of the June 12, 2003 employment incident. Dr. Steiman opined that she had fully and completely recovered from the employment-related conditions. He did not find any evidence to support a diagnosis of postconcussion syndrome. Dr. Steiman stated that appellant may have had this condition but by June 2004 any symptomatology related to her June 2003 concussion would have dissipated. He found no evidence to support a finding that she sustained chronic vertigo secondary to the fall. Dr. Steiman stated that her symptom complex was most consistent with her psychogenic/ psychological/psychiatric diagnoses. He opined that appellant could return to her prior work activity. Dr. Steiman recommended that she be referred to a psychiatrist/psychologist to determine whether her emotional condition was caused by the accepted employment injuries and whether she could return to work.

On September 18, 2006 the Office determined that a conflict in the medical opinion evidence arose between Dr. Jones and Dr. Steiman as to whether appellant sustained a neurological condition causally related to her June 12, 2003 employment injuries. By letter dated February 9, 2007, it referred appellant, together with a statement of accepted facts, the case record and a list of questions to Dr. Arthur L. Hughes, a Board-certified neurologist, for an impartial medical examination.

In a March 8, 2007 report, Dr. Hughes reviewed a history of appellant's June 12, 2003 employment injuries and medical treatment. On physical examination, he reported essentially normal findings with the exception of a severe unsteady standing position and gait. Dr. Hughes stated that appellant could stand on her toes and heels but she could not stand on a narrow base

even with her eyes open. He further stated that her seizures and gait disorder were not organic. Dr. Hughes was unable to find any organic neurological disorder. He related that appellant's behavior could be attributed to the conversion disorder diagnosed by Dr. Bean. Dr. Hughes stated that there was no neurological reason why she could not return to work without restrictions. Appellant also did not require any further neurological testing or treatment. Dr. Hughes opined that she did not sustain a concussion. He stated that there was no neurological explanation for appellant's subjective complaint of memory impairment. Dr. Hughes concluded that her ataxia was nonorganic and her seizures were pseudo seizures.

By letter dated May 2, 2007, the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the opinions of Dr. Hughes, the impartial medical specialist, and Dr. Seni, the second opinion medical physician. It noted that Dr. Hughes opined that appellant had no residuals or disability due to a neurological condition and Dr. Seni opined that she had no residuals or disability due to an orthopedic condition causally related to her accepted employment injuries. The Office allowed her 30 days to respond to this notice.

In reports dated May 24 and 31, 2007, Sue Creager, a physical therapist, stated that appellant received physical therapy treatment for her upper and lower extremities. In a May 31, 2007 disability certificate, Dr. James E. Lundeen, Sr., a Board-certified surgeon, excused appellant from work from that date until approximately November 30, 2007.[1]

By decision dated July 5, 2007, the Office terminated appellant's compensation for wage-loss and medical benefits with regard to her accepted June 12, 2003 employment-related injuries, effective that date. It found that she no longer had any residuals or disability causally related to her accepted employment injuries.

A January 16, 2007 MRI scan of Dr. Douglas W. Reader, a Board-certified radiologist, stated that there was no evidence of a meniscal tear or ligament injury regarding appellant's left lower extremity. Dr. Reader found minimal joint effusion, possible mild superficial intrapatellar bursitis which was new since a prior September 3, 2003 MRI scan and a Tiny Baker's cyst. In reports dated February 7 and March 23, 2007, Dr. Ian M. Thompson, a Board-certified orthopedic surgeon, reviewed x-rays and MRI scans of appellant's knees. He stated that on June 12, 2003 she sustained bilateral patella femoral syndrome with lateral facet overload and bilateral knee pain with likely medial meniscus tears. Dr. Thompson restricted appellant from engaging in physical activity that caused a lot of pounding on her legs such as, excessive use of stairs and running.

In an August 2, 2007 letter, appellant, through her attorney, requested a telephonic hearing before an Office hearing representative regarding the July 5, 2007 decision. In reports dated July 16 and October 5, 2007, Dr. Lundeen stated that appellant was unable to return to her date-of-injury position as a result of the June 12, 2003 employment injuries.

[1] The Board notes that Dr. Lundeen actually stated that appellant could return to work on November 31, 2007. However, it appears that he inadvertently made this statement as the month of November only has 30 days.

Following a November 14, 2007 telephonic hearing, appellant submitted Dr. Reader's March 13, 2007 MRI scan of her right knee. Dr. Reader reiterated his prior findings of no evidence of a meniscal tear or ligament injury and evidence of minimal joint effusion and possible mild superficial intrapatellar bursitis. He found mild focal Grade 1 chondromalacia of the medial patellar facet cartilage. In a December 26, 2007 report, Dr. Lundeen stated that appellant sustained cervical disc displacement, labyrinthine dysfunction not otherwise specified and a brain injury not otherwise classified. He stated that MRI and computerized tomography (CT) scans did not demonstrate the etiology of her brain impairments related to speech, balance, coordination, memory and concentration. Dr. Lundeen recommended a positron-emission tomography (PET) scan.

By decision dated January 25, 2008, an Office hearing representative affirmed the July 5, 2007 decision. She found that the evidence submitted by appellant was insufficient to outweigh Dr. Seni's May 31, 2006 report and Dr. Hughes' March 8, 2007 report. The hearing representative also found the evidence of record insufficient to establish that appellant sustained an emotional condition causally related to her June 12, 2003 employment injuries.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[2] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3]

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist 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.[4]

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits. The Office referred appellant to Dr. Seni for a second opinion medical examination regarding whether appellant had any continuing employment-related residuals or disability from an orthopedic standpoint causally related to her accepted June 12, 2003 employment injuries. In a May 31, 2006 report, Dr. Seni reviewed a history of her accepted employment injuries and medical treatment. On physical examination, he reported essentially normal findings regarding appellant's knees. Dr. Seni found no evidence of radiculopathy in the cervical and thoracic spines. He stated that, despite appellant's complaint of severe pain in her

[2] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[3] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

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

knees, MRI scans of the knees were within normal limits and there were no objective findings on physical examination. Dr. Seni opined that her contusion of the right knee had resolved without sequelae and that there was no evidence of thoracic or cervical subluxation. He stated that there was evidence of a mild degree of chondromalacia of the patella and retropatellar crepitus. Dr. Seni explained that the chondromalacia of the patella was very mild in nature and probably found in the majority of knees that were examined on a daily basis. He opined that appellant did not have any orthopedic residuals causally related to her accepted June 12, 2003 employment-related conditions and that she could return to her full-time duties as a store worker without restrictions.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[5] Dr. Seni fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any continuing orthopedic residuals or disability causally related to her employment-related conditions. The Board, therefore, finds that Dr. Seni's opinion is detailed, well rationalized and based upon a complete and accurate history.

The May 24 and 31, 2007 reports of Ms. Creager, a physical therapist, do not constitute probative medical evidence. A physical therapist is not a "physician" as defined under the Federal Employees' Compensation Act.[6]

Dr. Lundeen's May 31, 2007 disability certificate stated that appellant was totally disabled from that date until approximately November 30, 2007. However, this evidence does not address whether she had any continuing orthopedic residuals or disability due to her accepted employment-related conditions. The Board finds that Dr. Lundeen's disability certificate is insufficient to overcome the weight accorded to Dr. Seni's medical opinion.

Regarding whether appellant suffered from continuing neurological residuals or disability due to her June 12, 2003 employment injuries, the Board finds that the Office properly determined that a conflict in the medical opinion evidence arose between Dr. Jones, an attending physician, and Dr. Steiman, an Office referral physician. Dr. Jones opined that appellant suffered from chronic vertigo and postconcussive syndrome following the June 12, 2003 employment injury. Dr. Steiman opined that appellant did not sustain postconcussive syndrome or chronic vertigo due to her accepted employment-related injuries.

The Office referred appellant to Dr. Hughes, as the impartial medical specialist. In a March 8, 2007 report, Dr. Hughes reviewed a history of appellant's employment-related injuries and medical background. On physical examination, he reported his essentially normal findings with the exception of a severe unsteady standing position and gait. Dr. Hughes stated that appellant could stand on her toes and heels but she could not stand on a narrow base even with

[5] *See Ann C. Leanza*, 48 ECAB 115 (1996).

[6] 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

her eyes open. He also stated that her seizures and gait disorder were not organic, and noted that he was unable to find any organic neurological disorder. Dr. Hughes concluded that her ataxia was nonorganic and seizures were pseudo seizures. He related that appellant's behavior could be attributed to the conversion disorder diagnosed by Dr. Bean. Dr. Hughes stated that there was no neurological reason why she could not return to work without restrictions. Appellant also did not require any further neurological testing or treatment. Dr. Hughes opined that she did not sustain a concussion and found no neurological explanation for her subjective complaint of memory impairment.

The Board finds that Dr. Hughes' March 8 2007 opinion is based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record and essentially normal findings on physical examination, Dr. Hughes found that appellant did not sustain any neurological residuals or disability causally related to her employment-related injuries. For this reason, his report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.[7] 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.[8] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[9] 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.[10]

ANALYSIS -- ISSUE 2

The Board finds that appellant did not establish that she had any continuing employment-related residuals or disability after July 5, 2007. The relevant medical evidence includes Dr. Reader's January 17 and March 13, 2007 MRI scans of appellant's left and right lower extremities which demonstrated no evidence of a meniscal tear or ligament injury. Dr. Reader found minimal joint effusion, possible mild superficial intrapatellar bursitis, a Tiny Baker's cyst and mild focal Grade 1 chondromalacia of the medial patellar facet cartilage. Dr. Thompson's

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

[8] *Id.*

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

[10] *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

February 7 and March 23, 2007 reports stated that appellant sustained bilateral patella femoral syndrome with lateral facet overload and bilateral knee pain with likely medial meniscus tears based on his review of diagnostic test results. Dr. Reader's and Dr. Thompson's reports predate the termination of appellant's compensation and do not address the issue of whether she had any continuing employment-related residuals or disability after July 5, 2007.

Dr. Lundeen's July 16 and October 5, 2007 reports stated that appellant was unable to return to her date-of-injury position as a result of her June 12, 2003 employment injuries. However, hefailed to provide any medical rationale explaining how or why appellant's disability was caused by the June 12, 2003 employment injuries.[11] Further, Dr. Lundeen did not identify any period of total disability due to appellant's accepted employment-related injuries.

Dr. Lundeen's December 26, 2007 report stated that appellant sustained cervical disc displacement, labyrinthine dysfunction not otherwise specified and a brain injury not else classified. He recommended a PET scan because MRI and CT scans did not demonstrate the etiology of her brain impairments related to speech, balance, coordination, memory and concentration. Dr. Lundeen did not specifically opine that appellant's conditions were causally related to her June 12, 2003 employment injuries. He stated that the etiology of the diagnosed conditions could not be determined without further testing.

The Board finds that appellant did not submit sufficient rationalized medical evidence to substantiate that the claimed continuing residuals and disability on or after July 5, 2007 were causally related to her accepted employment-related injuries.

LEGAL PRECEDENT -- ISSUE 3

Under the Act,[12] a claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition or disability for which she claims compensation was caused or adversely affected by employment factors.[13] This burden includes the submission of a detailed description of the employment factors or conditions which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed.[14] The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury, is covered under the Act.[15]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are

[11] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[12] 5 U.S.C. §§ 8101-8193.

[13] *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

[14] *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

[15] *Clara T. Norga*, 46 ECAB 473 (1995).

deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[16] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[17]

ANALYSIS -- ISSUE 3

The Office accepted that appellant sustained cervical and thoracic subluxation, multiple contusions to the face, fractured teeth numbers 7, 8, 9 and 10, contusion to the right knee, aggravation of right knee chondromalacia and nasal fracture. Appellant claimed that she sustained an emotional condition due to residuals of her accepted conditions.

As noted, the Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury, is covered under the Act. Appellant has identified a compensable factor, her accepted employment-related conditions. However, to establish her claim she must submit rationalized medical evidence relating her claimed emotional condition to chronic pain and limitations from her accepted orthopedic conditions.[18] The Board finds that appellant did not submit sufficient medical evidence to establish her claim for an employment-related emotional condition.

Dr. Bean's March 20, 2006 report stated that appellant's conversion and mood disorders were caused by her accepted employment injuries. He further stated that these conditions caused significant functional impairments which limited her ability to care for herself and pursue gainful employment. However, Dr. Bean did not provide any medical rationale explaining how or why the physical limitations of appellant's accepted employment-related injuries caused her emotional conditions. He did not support his opinion with sufficient medical reasoning to demonstrate that his stated conclusion was sound, logical and rational.[19] The Board finds that Dr. Bean's report is insufficient to establish the critical element of causal relationship.[20]

Dr. Poole's October 22, 2004 report stated that appellant sustained cognitive postconcussional disorder not otherwise specified based on her history, conversion disorder based on Dr. Bean's previous diagnostic impression, work-related problems, dissatisfaction with medical care, and a GAF score of 40. He ruled out mood disorder not otherwise specified due to her general medical condition and major depressive disorder. Dr. McPherson's reports stated that appellant suffered from mood disorder and seizures and she had a GAF score of 60. Neither

[16] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[17] *Id.*

[18] *Charles D. Gregory*, 57 ECAB 322 (2006).

[19] *See John W. Montoya*, 54 ECAB 306 (2003).

[20] *See Beverly R. Jones*, 55 ECAB 411 (2004).

Dr. Poole nor Dr. McPherson opined that appellant's emotional conditions were caused by the accepted employment injuries. The Board finds that their reports are insufficient to establish appellant's claim for an emotional condition.

The Board finds that appellant has not submitted sufficiently rationalized medical evidence establishing that her claimed emotional condition is causally related to the accepted compensable employment factor. Appellant has not met her burden of proof.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective July 5, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries. The Board also finds that she did not establish continuing employment-related residuals or disability after July 5, 2007. The Board further finds that appellant failed to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2008 and July 5, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 15, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board