

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY STEIN-VERBIT and DEPARTMENT OF COMMERCE,
PATENT & TRADEMARK OFFICE, Arlington, Va.

*Docket No. 96-1060; Oral Argument Held January 28, 1998;
Issued April 2, 1998*

Appearances: *Beverly Stein-Verbit, pro se; Miriam D. Ozur, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has any disability after May 24, 1991 causally related to her April 23, 1991 employment injury.

On April 23, 1991 appellant, then a 44-year-old computer specialist, was helping to move equipment, boxes of paper and furniture when she developed pain in her left leg from the foot to mid thigh. She stopped working on April 24 and returned to work on April 25, 1991.¹ A physician with an illegible signature indicated in an April 24, 1991 duty status report that appellant had acute leg pain. In a May 3, 1991 letter, the Office of Workers' Compensation Programs accepted appellant's claim for acute leg pain, low back strain and left thigh strain.

In an April 29, 1991 report, Dr. Ashok K. Sharma, a Board-certified radiologist, indicated that x-rays of the lumbosacral spine revealed evidence of mild scoliosis with convexity to the right at L2. He reported minimal hypertrophic degenerative changes at L4 and L5. Dr. Sharma found no evidence of fracture or significant discogenic pathology.

In a May 21, 1991 report, Dr. Peter J. Delenick, a Board-certified orthopedic surgeon, gave a history of the employment injury and indicated that, on examination, appellant had considerable pain in the left foot but x-rays of the foot were negative. He noted appellant had pain in her back with radiation into the left leg. Dr. Delenick reported that straight leg raising was positive at 60 degrees. He stated appellant had weakness in the dorsiflexion of the foot with decreased sensation in the foot. Dr. Delenick reported that x-rays showed degenerative changes. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the lumbar spine.

¹ The record is unclear on what time, if any, was lost from work after April 25, 1991.

In a May 23, 1991 report, Nicholas Patronas, a Board-certified radiologist, indicated that an MRI scan of the lumbar spine showed early disc degeneration at L4-5 and L5-S1 with a mild, non-focal disc bulge at L4-5. He noted that there were no signs of disc herniation.

In a May 24, 1991 report, Dr. Leo Goldhammer, a Board-certified neurologist, stated that on April 23, 1991 appellant was helping to move her office. He related when she was on the elevator to go home, she noticed shooting pain in the left foot extending up the left calf. By the next day the pain went up to mid-thigh. Dr. Goldhammer indicated that she went to an emergency room where x-rays of the foot were normal. He reported that appellant currently had pain shooting up the left side of her body from the buttock over the thoracic area, shoulder, neck and left side of the face in front of the temple. Dr. Goldhammer noted that appellant also complained of pain, numbness and weakness in the left leg. He indicated that appellant had a history of seizures after a congenital head injury due to forceps delivery in birth. Dr. Goldhammer related that appellant had several petit mal seizures a day characterized by stuttering, repetition of words and staring into space, lasting for a few seconds. He indicated that on neurological examination appellant had positive straight leg raising on the left, pressure pain along the sciatic nerve on the left side and spasm in the nuchal musculature. Dr. Goldhammer diagnosed history of natal head injury with forceps, myofascial pain dysfunction syndrome, acceleration-deceleration neck injury and left-sided sciatica and radiculopathy, the latter due to the April 23, 1991 employment injury.

In a June 4, 1991 report, Dr. Goldhammer indicated that appellant's last grand mal seizure was five years previously and her last syncopal attack occurred three years previously. He commented that appellant continued to have spells characterized by sudden onset of altered states of consciousness, rolling of eyes up and back and loss of train of thought. Dr. Goldhammer reported that she had migraine headaches characterized by left-sided, throbbing, hemicranias involving the left temple, eyeball and forehead. He stated that appellant had pain which would start in the left leg and go to the neck area, affecting the left arm and shoulder. Dr. Goldhammer commented that this spell may be part of a focal sensory seizure or somatoseizure accompaniment of migraine headache. He noted that appellant's neurological examination was within normal limits. An MRI scan of the head was unremarkable. In subsequent progress reports, Dr. Goldhammer noted that appellant continued to complain of pain related to migraine headaches. In notes of July 22, August 13 and October 21, 1991, Dr. Goldhammer again diagnosed left-sided sciatica and left-sided radiculopathy due to the employment injury. In a December 27, 1991 report, Dr. Goldhammer related that appellant indicated her pain had improved substantially but she was complaining of incoordination of the left arm and leg and occasional shooting pain in the left side of the head. He noted appellant was unable to walk distances without the aid of a scooter or a walking cane. Dr. Goldhammer stated that appellant was unable to type because of left-sided pain. He reported that appellant was being given a "hard time" and was exposed to emotional, physical and professional stress. Dr. Goldhammer related that appellant stated that "the bigotry and the harassment of the boss produced intolerable condition[s]."

In a September 2, 1992 letter, to Dr. Goldhammer, an Office claims examiner stated that it was unclear from his reports how any of the treatment of appellant was related to the one-time incident of April 23, 1991. He pointed out that the Office was only responsible for conditions

which could reasonably be shown through medical evidence to be related to work injuries. He commented that Dr. Goldhammer's reports indicated this relationship but did not explain the relationship or identify objective medical findings to support his opinions. The claims examiner noted that Dr. Goldhammer had diagnosed history of intranatal head injury, myofascial pain dysfunction syndrome, acceleration-deceleration neck injury, left-sided sciatica and left-sided radiculopathy due to the employment injury, as well as migraine headaches, occipital neuralgia, cervical strain, left-sided cervicocranial pain, left-sided brachialgia and pain sometimes moving up from the left foot and leg to the entire left side. The claims examiner stated that Dr. Goldhammer should explain, through detailed discussion, how the relationship between appellant's complaints and her April 23, 1991 employment injury, with identification of specific objective clinical findings which support her subjective complaints and support his finding of a causal relationship.

Dr. Goldhammer submitted copies of medical reports previously submitted as well as an August 12, 1991 report from Dr. Ayub K. Ommaya, a Board-certified neurosurgeon, who reviewed appellant's history of the April 23, 1991 employment injury and subsequent development of pain. He noted that appellant had a motor vehicle accident on August 13, 1989, from which she sustained an acceleration-deceleration strain to the neck. Dr. Ommaya stated that on examination he found a tense lady, with hyperflexia and a suggestion of a functional weakness in the left leg. He reported that he did not find any significant neurologic deficits to indicate any need for neurological intervention. Dr. Ommaya indicated that he did not recommend appellant for treatment with any other modalities and stated that she was not a candidate for any neurosurgery. In a December 29, 1991 report, Dr. Goldhammer reported that an electromyogram (EMG) and nerve conduction studies showed normal peripheral nerve function with a sign of cervical radiculopathy. In a September 15, 1992 report, Dr. Goldhammer stated:

"In essence, the injury-related manifestation [appellant] presented with in 1991 may have, or should have, reversed to normal by now, and therefore it is important to update the findings to see if the current manifestations are a consequence of the injury or the pre-existing perinatal physical disorder."

In a December 16, 1992 memorandum, Dr. Norman H. Horwitz, a Board-certified neurosurgeon, of professorial rank and an Office consultant, indicated that he had read appellant's medical record and noted that she sustained a minor local foot injury, as well as an apparent mild low back injury on April 23, 1991. He related that appellant had local pain and swelling of the left leg and evidence of L5 radiculopathy. Dr. Horwitz noted that an MRI scan revealed mild degenerative disc changes of the L4-5 level and an EMG was negative. He stated that the workup of appellant's cervical and cranial areas were not related to the injury but would be justified to manage her overall care particularly as it related to her preexisting neurological, nonwork-related ailment. He commented that appellant should have reached maximum improvement.

In a February 5, 1993 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate a causal relationship between the

claimed condition and treatment subsequent to May 24, 1991, as being related to the approved injury.

In a February 27, 1993 letter, appellant contended that the information cited as the rationale for the Office's decision was based on inaccurate and incomplete information of her medical history and medical records. She stated that medical records that were in her case record as of December 1991 were missing. Appellant also indicated that a September 1992 letter she had sent describing her case in detail was missing from the case record. She requested that the Office provide her with guidance on how to correct findings and errors in her case. Appellant subsequently requested a hearing before an Office hearing representative.

At the December 23, 1994 hearing, appellant described the work involved in her office move on April 23, 1991 and testified about the pain she began to develop after she stopped work which hampered her as she walked home that day. She indicated that the pain increased after that time and she began to receive medical treatment. Appellant noted that x-rays taken of her foot and MRI scans taken thereafter showed nothing wrong. She stated that she had been subjected to harassment at work since the employment injury, receiving reprimands and letters of intent. Appellant indicated that she currently had pain on the entire left side of her body, except at her waist in the L4-5 region and in the region of the neck. She claimed that the employing establishment was interfering and harassing her physicians to the point that none of them would treat her for her employment-related condition which prevented her from submitting medical evidence in support of her claim. Subsequent to the hearing appellant submitted medical evidence, that had been submitted previously and described actions by the employing establishment and the Office which she believed had adversely affected her claim.

In a February 21, 1995 decision, the Office hearing representative found that appellant had the burden of proof in establishing that her condition was causally related to the April 23, 1991. He concluded that appellant had failed to submit sufficient medical evidence to establish that her claimed conditions of left sciatica, left-sided migraine headaches, occipital neuralgia, cervical strain and sprain and myofascial pain dysfunction syndrome or per period of disability after May 24, 1991 was causally related to the employment injury. He therefore affirmed the Office's February 5, 1993 decision.

The Board finds that appellant's accepted employment-related conditions of acute left leg pain, low back strain and left thigh strain ceased by September 15, 1992.

Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his or her employment the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.² The fact that the Office accepts appellant's claim for a specified period of disability does not shift the

² *Edwin Lester*, 34 ECAB 1807 (1983).

burden of proof to appellant. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.³

In this case, the Office accepted appellant's claim for acute left leg pain, low back strain and thigh strain but found that appellant's employment-related conditions had ceased by May 24, 1991, the date of Dr. Goldhammer's first report. In that report, however, Dr. Goldhammer diagnosed sciatica and radiculopathy of the left leg and related these conditions to appellant's April 23, 1991 employment injury. Sciatica and radiculopathy are, by their nature, pain in the leg. By accepting appellant's claim for acute left leg pain, the Office in effect accepted appellant's claim for sciatica and radiculopathy of the left leg. The Office, therefore, has the burden to establish that the employment-related effects of appellant's left leg pain, described as sciatica and radiculopathy, had ceased or were no longer related to the employment injury. Dr. Goldhammer, in subsequent reports, continued to relate appellant's sciatica and radiculopathy to her employment injury. Dr. Ommaya stated in his report, that appellant's left leg pain apparently was functional. In the December 1991 report, on the electrodiagnostic testing, Dr. Goldhammer indicated that appellant had normal peripheral nerve function which would suggest that there was no objective basis for her complaints of left leg pain. Finally, in his September 15, 1992 report, Dr. Goldhammer stated that the residuals of appellant's employment injury should have ceased at some point in the past. This report was the first substantial, probative evidence that the accepted condition of acute leg pain, was no longer related to appellant's employment injury. It was at this point, and not at any prior point, that the Office had sufficient evidence to find that appellant's employment-related conditions had ceased and that her condition was no longer related to the employment injury. It was at this point that the Office could terminate compensation benefits.

The Board further finds that appellant has not met her burden of proof in establishing that she has any other condition that is causally related to her employment injury.

A person who claims benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that his medical condition was causally related to a specific employment incident or to specific conditions of employment.⁵ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁶ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁷ Such a relationship must be shown by rationalized medical evidence of causal

³ See *George J. Hoffman*, 41 ECAB 135 (1989); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁶ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁷ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁸

Appellant submitted reports which contained numerous diagnoses of conditions affecting her. None of these conditions, however, were related to her April 23, 1991 employment injury. Her epilepsy was related by Dr. Goldhammer to her head injury at birth. Dr. Ommaya noted that the acceleration-deceleration neck injury was caused by a 1989 auto accident. Other diagnoses, such as migraine headaches and myofascial pain syndrome, were made. However, none of the physicians of record stated that any of these conditions were causally related to appellant's employment injury.⁹ Appellant, therefore, has not met her burden of proof in establishing that she has any other condition causally related to the employment injury.

The decision of the Office of Workers' Compensation Programs, dated February 21, 1995, is hereby affirmed with the modification that appellant's accepted employment-related conditions ceased by September 15, 1992.

Dated, Washington, D.C.

April 2, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

⁹ Appellant has claimed that medical evidence and a letter she submitted in September 1992 were not contained in the case record submitted on appeal. However, appellant has not supplied copies of the evidence or letters which she alleged were missing and taken from the case record. There is no independent indication that medical records disappeared from the case record.