U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

Docket No. 96-2610; Submitted on the Record;
Issued December 10, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective April 20, 1994; and (2) whether appellant established that she had any disability after April 20, 1994 causally related to her employment injury.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

On December 3, 1991 appellant, then a 36-year-old clerk, sustained employment-related cervical back and left shoulder strains and contusion of the left knee for which she received appropriate continuation of pay and compensation. Appellant returned to limited duty, four hours per day, on June 29, 1992 stopped work on July 27, 1992 returned to work on August 17, 1992 and stopped again on October 7, 1992. She has not worked since that time. Following further development, on April 29, 1993 the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Drs. Noubar A. Didizian, a Board-certified orthopedic surgeon, and Gladys Fenichel, a Board-certified psychiatrist and neurologist, for second-opinion evaluations. Following a review by an Office medical adviser, the Office then referred appellant to Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, to resolve the conflict between the opinions of Drs. Didizian and Fenichel, and appellant's treating physician, Dr. Gregory Nelson, an internist.

Based on Dr. Mattei's reports, by letter dated March 21, 1994, the Office proposed to terminate appellant's compensation benefits. Appellant submitted nothing in response to the proposed termination, and by decision dated April 21, 1994, the Office terminated her medical and compensation benefits, effective that day. Appellant, through counsel, requested a hearing and submitted additional medical evidence. At the hearing, held on March 20, 1995, appellant testified regarding her medical condition. By decision dated June 16, 1995, an Office hearing representative affirmed the prior decision. Appellant requested reconsideration and, in a merit

decision dated August 25, 1995, the Office denied modification of the prior decision. Appellant again requested reconsideration, and submitted medical evidence. By decision dated December 6, 1995, the Office denied modification of the prior decision. The instant appeal follows.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has 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 that it was no longer related to the employment.[1]

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 a specialist, if sufficiently well rationalized and based on proper factual background, must be given special weight.[2] Here the Office determined that a conflict of medical opinion existed between appellant's treating physician and those who provided second opinions for the Office. The Office then referred appellant, along with the medical record, a statement of accepted facts with a job description and a list of questions, to Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, to resolve the conflict.

In a report dated December 1, 1993, Dr. Mattei who noted her history of injury and subjective complaints and, after examination and review of the medical record, advised that he could find no basis to substantiate her subjective complaints with objective findings and opined that she could return to full employment as a clerk. In an attached work restriction evaluation, Dr. Mattei advised, that appellant could work eight hours a day. The only restriction placed on her physical activity was that she not lift greater than 50 pounds. As Dr. Mattei's reports are well rationalized and are, therefore, deserving of special weight,[3] the Board finds appellant had no employment-related disability on or after April 21, 1994 and the Office met is burden of proof to terminate appellant's compensation benefits on that date.

The Board further finds that appellant failed to establish that she had any continuing disability causally related to her accepted employment injury.

As the Office met is 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 injuries.[4] 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.[5]

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[1] *See Patricia A. Keller*, 45 ECAB 278 (1993).

[2] *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

[3] *Id.*

[4] *See George Servetas*, 43 ECAB 424 (1992).

[5] *See* 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, *supra* note 2.

With her reconsideration request dated September 11, 1995 appellant submitted additional medical evidence including reports of a lower spinal evoked potentials studies dated October 18 and November 1, 1994 which were suggestive of L5-S1 radiculopathy. A January 25, 1995 paravertebral ultrasound was interpreted as abnormal, particularly in the lumbar distribution with paraspinal inflammatory process evident throughout the entire region. There was also evidence of trapezius fasciitis on the left. In office notes from June and July 1995, Dr. William A. Chollak, a Board-certified orthopedic surgeon, noted her complaints of ankle pain and instability and electromyographic findings of L5 and S1 radiculopathy. While he advised that her leg symptoms were "to a large extent" related to her nerve damage, he did not provide an explanation relating her condition to the December 3, 1991 employment injury. A July 26, 1995 magnetic resonance imaging (MRI) of the lumbar spine revealed a mild concentric disc protrusion at the L4-5 level. In September 15, 1995 reports, Dr. Kenneth L. Izzo, a Board-certified physiatrist, noted that appellant had been under his care since November 15, 1993 and diagnosed unresolved severe chronic intractable cervical, dorsal and lumbosacral strain and sprain; bulging cervical discs with possible cervical disc herniation; post-traumatic myofasciitis of the left trapezius muscle; left shoulder girdle strain and sprain; status post right knee contusion and traumatic effusion; status post left ankle internal derangement and fracture and status post left ankle surgery; severe depression with psychotic features; bilateral lumbar radiculopathy involving the S1 nerve roots; left L5 lumbar radiculopathy; concentric disc protrusion at the L4-5 level; and secondary concomitant fibromyalgia syndrome. He advised that appellant was totally disabled and opined that the diagnosis of chronic pain syndrome was due to secondary concomitant fibromyalgia syndrome.

While Dr. Izzo opined that appellant was totally disabled due to multiple diagnoses, the Board notes that appellant's lumbar disc disease has not been accepted as employment related. In fact, the record contains MRI's of the lumbar spine dated March 27, 1992 and April 28, 1993 which were negative. Furthermore, Dr. Izzo does not explain why appellant cannot perform her limited duty position. The Board, therefore, finds that these reports are not sufficient 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.[6]

[6] The Board notes that appellant submitted medical evidence subsequent to the December 6, 1995 decision. The Board cannot consider this evidence, however, as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated December 6 and August 25, 1995 are hereby affirmed.

Dated, Washington, D.C.
December 10, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member