

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY ANN BELL and DEPARTMENT OF THE AIR FORCE,  
ANDREWS AIR FORCE BASE, Md.

*Docket No. 95-1701; Submitted on the Record;  
Issued February 18, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant was totally disabled for work on and after February 5, 1994 due to factors of her federal employment.

The Office of Workers' Compensation Programs accepted that on July 17, 1990, appellant, then a 51-year-old office automation secretary, sustained a low back strain while moving furniture.<sup>1</sup> She stopped work on August 8, 1990, returned to work four hours per day on December 3, 1990, and to full-time work on March 1, 1991. Appellant received appropriate compensation benefits. Pursuant to a claim for recurrence of disability, appellant again stopped work on February 11, 1993. She submitted form reports from Dr. George Mathews, an attending neurosurgeon, diagnosing disc herniations at C3-4 and C4-5, with a prognosis of long-term total disability. Appellant received compensation for total temporary disability from February 11, 1993 to February 5, 1994. She did not file additional claims for compensation (Form CA-8) for periods beyond February 11, 1994, but by August 29, 1994 letter, requested to be reinstated on the compensation rolls.

In a June 7, 1993 report, Dr. Dennis Carlini, an orthopedic surgeon and second opinion physician, provided a history of injury and treatment, examined appellant and diagnosed “[c]hronic cervical and lumbosacral strain. Rule out cervical and lumbar radiculopathy.” He recommended further diagnostic testing, noting that “in the meantime she can maintain a work status as light sedentary work. In an attached work restriction evaluation, Dr. Carlini noted that

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<sup>1</sup> Appellant had a prior history of neck and back problems resulting from nonoccupational automobile accidents in 1974 and 1987. Appellant missed six and three months of work, respectively, as a result of these accidents.

appellant could work 8 hours per day, stand 4 hours, walk 2 hours, and lift up to 10 pounds for 1 hour.<sup>2</sup>

In an August 20, 1993 report, Dr. Mathews stated that an MRI (magnetic resonance imaging) scan showed a cervical disc herniation, and that appellant's "long-term pain syndrome and disability had further added a significant anxiety/depression picture and difficulty with coping." Dr. Mathews opined that appellant's physical and emotional problems warranted a "permanent total disability" retirement, noting that she would require "extensive psychiatric support" to remain even partly functional.<sup>3</sup>

The Office found that there was a conflict in medical opinion between Dr. Mathews, for appellant, and Dr. Carlini, for the government. The Office then referred appellant, the medical record and statement of accepted facts to Dr. Rajindar Sidhu, a neurosurgeon and impartial medical examiner, to resolve the conflict in medical opinion.

In a January 14, 1994 report, Dr. Sidhu provided a history of injury and treatment and reviewed the medical record. On examination, he found mild midline tenderness at C5-6 with limited range of motion, tenderness in midline from L3-5, and non-anatomic decreased sensation in both feet and hands. Dr. Sidhu diagnosed "vague, myofascial pain both in the neck and lower back with very vague neurological involvement, if any." Dr. Sidhu opined that appellant "should be encouraged to get back into normal activities and treated symptomatically. In a July 27, 1994 work restriction evaluation, Dr. Sidhu indicated that appellant could perform "normal activities" for 8 hours per day, with lifting limited to 20 pounds. He indicated that appellant would not require vocational rehabilitation.

Dr. Mathews submitted periodic reports from March 2 to December 21, 1994, noting appellant's continuing headaches, hypertension, neck and low back pain. These reports note that appellant was not working during this period, but do not directly address employment factors or state that appellant was totally disabled for work.<sup>4</sup>

By decision dated February 14, 1995, the Office denied appellant's claim for compensation benefits after February 5, 1994 on the grounds that the medical evidence showed that she was not totally disabled for her light duty job after February 5, 1994. The Office found that the weight of the medical evidence rested with Dr. Sidhu, the impartial medical examiner, who opined that appellant was capable of full-time work with lifting limited to 20 pounds. The Office noted that although Dr. Mathews opined that appellant should retire on "total disability," he did not state appellant was unable to perform light duty, and attributed her disability to conditions not accepted by the Office.

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<sup>2</sup> In an August 26, 1993 letter, the employing establishment advised appellant that based on Dr. Carlini's reports, including the June 7, 1993 work restriction evaluation, it was determined that she was "medically qualified for light duty ... [and] directed to report for duty" by August 31, 1993 or be considered AWOL (absent without leave).

<sup>3</sup> Dr. Mathews and his associate, Dr. Shoba Mathews, a neurologist, submitted form reports dated from June to November 1993 recommending that appellant retire on disability.

<sup>4</sup> February 1994 EEG (electroencephalograph) studies and an August 16, 1994 CT (computed tomography) scan of appellant's brain showed no significant abnormalities.

The Board finds that appellant has not established that she was totally disabled for work on and after February 5, 1994 due to factors of her federal employment.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>5</sup> An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.<sup>6</sup>

In this case, appellant has the burden of proof in establishing that she was totally disabled for work on and after February 5, 1994 due to sequelae of her accepted July 17, 1990 low back strain or other factors of her federal employment.

Dr. Mathews, an attending neurologist, submitted form reports from March 2 to December 21, 1994 noting appellant's continuing headaches, hypertension, neck and low back pain. Without medical rationale explaining the pathophysiologic link between these diagnoses and the accepted low back strain or other accepted factors of appellant's federal employment, Dr. Mathews' opinion is of little probative value in establishing causal relationship.<sup>7</sup> The Board notes that the Office did not accept headaches, hypertension or neck pain related to the July 17, 1990 injury or other factors of appellant's federal employment.

The Board finds that the weight of the medical evidence rests with Dr. Sidhu, a neurologist and impartial medical examiner, appointed by the Office to resolve a conflict of medical opinion between Dr. Mathews, for appellant, and Dr. Carlini, for the government. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>8</sup> In this case, Dr. Sidhu's opinion is sufficiently rationalized and based on a complete and accurate medical and factual history, and is therefore entitled to represent the weight of the medical evidence in this case.

In a January 14, 1994 report, Dr. Sidhu reviewed the medical record, provided a history of injury and treatment, and found a normal neurologic examination except for a nonanatomic decrease in sensation in both hands and feet. He characterized appellant's neck and low back tenderness as "vague, myofascial pain." In a July 27, 1994 work restriction evaluation,

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<sup>5</sup> See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>6</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>7</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

<sup>8</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

Dr. Sidhu stated that appellant was capable of working eight hours per day performing “normal activities.” The only restriction noted was a lifting limit of 20 pounds.

Thus, appellant has submitted insufficient rationalized medical evidence to establish that her medical condition on and after February 4, 1994 was causally related to the July 17, 1990 low back strain, or other factors of her federal employment.

The decision of the Office of Workers’ Compensation Programs dated February 14, 1995 is hereby affirmed.

Dated, Washington, D.C.  
February 18, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member