U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH M. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

Docket No. 97-814; Submitted on the Record;
Issued February 11, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on February 15, 1996.

In the present case, the Office has accepted that appellant, a letter sorting machine clerk, sustained an injury on December 19, 1984 while pushing carts and containers of mail, which caused left shoulder strain and cervical nerve root compression necessitating decompression of the C6 nerve root and hemilaminectomy of C4-6. On February 5, 1992 the Office reduced appellant's compensation benefits to reflect her actual earnings in a clerical position at the employing establishment since August 7, 1991. In January 1992 appellant stopped work and filed a notice of recurrence of disability. The Office accepted this recurrence of disability and commenced payment of temporary total disability benefits. The Office terminated appellant's compensation benefits by decision dated February 15, 1996. The Office found that the report of Dr. William E. Blair, an Office second opinion physician, constituted the weight of the medical evidence and established that appellant was no longer disabled due to injury-related conditions, but rather that her current symptoms were due to aging. The Office denied modification of the this decision on September 30, 1996, after merit review.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.[1]

Appellant's treating physician, Dr. William R. Bernell, a Board-certified neurosurgeon, indicated in a brief note dated December 22, 1993, that appellant continued under his care for neck and low back problems, which were related to her December 19, 1984 employment injury.

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

He concluded that appellant remained unable to return to gainful employment and would probably continue to be disabled for another year. Dr. Bernell did not state findings upon current examination or offer an opinion regarding appellant's current diagnosis.

On August 17, 1994 Dr. Gary D. Gottfried, Board-certified in physical medicine, reported that electrodiagnostic studies and nerve conduction studies of appellant had been performed. He stated that the electromyogram (EMG) abnormalities were consistent with mild to moderately severe nerve root irritation in the region of C5 and or C6 on the left. He also indicated that appellant had normal nerve conduction velocity studies and, therefore, he concluded that there was no evidence of a peripheral neuropathy or peripheral compression syndrome. In a report dated August 26, 1994, Dr. Steven M. Schultz, a Board-certified diagnostic radiologist, indicated that a magnetic resonance imaging (MRI) scan of appellant's cervical spine taken on that day showed some subcutaneous postsurgical changes in the midline and neck soft tissues consistent with appellant's previous surgeries. He stated that the intervertebral discs themselves were well maintained, without evidence of significant defective disc desiccation or degenerative spondylosis and no frank disc herniation or spinal canal stenosis. He concluded that the visualized cervical spinal cord was within normal limits.

The record indicates that appellant was seen by Dr. Kenneth Pearce, a Board-certified anesthesiologist, on August 30, 1995 for left hemispheric and suboccipital posterior cervical supraspinatus and low back pain. Dr. Pearce noted that appellant had an employment injury of December 19, 1984. Dr. Pearce also indicated that currently appellant had cervical radiculitis and myofascial disease; possible reflex sympathetic dystrophy of the left arm. He did not indicate whether the conditions for which he saw appellant on that day were causally related to appellant's accepted employment injury.

The Office thereafter referred appellant to Dr. William E. Blair, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation. In his report dated November 15, 1995, Dr. Blair thoroughly reviewed appellant's history of employment injury, medical treatment and previous diagnostic testing summaries. He thereafter concluded that at the present time, he did not detect any objective clinical findings, which were the result of the work incident and the subsequent surgical treatment of December 19, 1984. Dr. Blair stated that appellant did have numerous subjective complaints, however, they lacked objective correlation. Dr. Blair explained that during his physical examination, appellant showed some tenderness at the acromioclaviular joint of the left shoulder, however, range of motion of the joint was satisfactory and appellant had no evidence of shoulder instability or tenderness over the specific anatomic structures of the shoulder. He noted that regarding appellant's cervical condition, she had tenderness along the C7 dorsal spinous process, however, appellant did not have any significant neurosensory or neuromotor deficiencies of the upper extremities, other than complaints of numbness of the entire upper extremity, which did not follow any particular dermatomal pattern. Dr. Blair stated that appellant's current diagnosis was nonspecific neck and shoulder pain, possibly related to scarring from the previous surgery. He noted that there did not appear to be any significant change in appellant's overall symptomatic complaints over the last 10 years. Regarding appellant's low back condition, he stated that it was obvious from the medical records and recent studies that appellant did have some degenerative changes, which were present at the L4-5 and L5-S1 junction, which changes were consistent with appellant's chronological age. Dr. Blair

opined that appellant's current symptom complex was most likely associated with deconditioning and aging over the years, but nothing more. Dr. Blair concluded that appellant had made a total recovery as there was no evidence of long-standing or debilitating processes attributable to her 1984 injury. He reiterated that at the present time, he could find no objective clinical findings which were the result of the work injury or the resulting surgical treatment.

In evaluating the probative value of a medical report, the Board has held that in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality and that factors, which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[2] Dr. Blair did review appellant's medical record and he explained in detail why based upon that record he found that appellant had made a total recovery. As his report was complete and reliable, it is of substantial probative medical value.

Appellant submitted reports from her treating physicians, Drs. Pearce and Bernell, which appellant alleges created a conflict of medical opinion requiring referral to an impartial medical specialist pursuant to section 8123 of the Federal Employees' Compensation Act.[3] The Board finds, however, that appellant's treating physician's reports do not address the relevant question at hand, that is whether the accepted conditions continued to disable appellant after February 15, 1996, therefore, these reports are not sufficient to create a conflict with the opinion of Dr. Blair.

In a progress note dated January 4, 1996, Dr. Bernell indicated that appellant had related to him that her compensation benefits were going to be cut off because of Dr. Blair's evaluation. Dr. Bernell remarked that as he had not reviewed Dr. Blair's report, he did not know what to tell appellant about that. He also noted that appellant had recently undergone an EMG evaluation. Dr. Bernell stated that as he had not received the EMG report, he could not comment in this regard. In a second report dated February 5, 1996, Dr. Bernell critiqued Dr. Blair's report and opined Dr. Blair was inconsistent in his conclusions. Dr. Bernell did not, however, provide his own assessment of appellant's condition. He did not submit any report wherein he discussed appellant's current examination findings. Dr. Bernell did not provide a diagnosis of appellant's current condition, and did not explain whether the current condition remained causally related to the accepted injury and if so whether appellant remained disabled due to the accepted injury. In essence, Dr. Bernell did not provide any probative medical evidence that appellant did in fact continue to have residuals of the accepted injury, which caused appellant's continuing disability. The Board finds that the reports submitted by Dr. Bernell are of limited probative medical value.

In a report dated December 4, 1995, Dr. Gottfied stated the results of electrodiagnostic studies of appellant's cervical spine and left upper extremity performed on that day. He indicated that the EMG studies showed abnormalities in the cervical spine and left upper

[2] *See Gary R. Sieber*, 46 ECAB 215 (1994).

[3] 5 U.S.C. § 8123 (a) provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.

extremity consistent with nerve root irritation in the region of C7 or C8 on the left and ulnar neuritis at the elbow level. Dr. Gottfied offered no opinion regarding the cause of these conditions. The Board notes that appellant's accepted conditions include left shoulder strain and C4-6 nerve root injury. The Office has not accepted that appellant's degenerative disc disease or any condition affecting the C7-8 nerve roots, or any elbow condition were causally related to appellant's employment injury. Therefore, this EMG study indicating abnormal findings at C7-8 and appellant's left elbow, is not probative evidence that appellant continued to be disabled due to residuals of her employment injury.

In an April 8, 1996 report, Dr. Pearce also provided his opinion that Dr. Blair's report was internally inconsistent. Dr. Pearce concluded that apellant still could not make full use of her left arm in any sustained fashion "consistent with being rivaled in a working environment." While Dr. Pearce referenced the December 4, 1995 EMG study, again like Dr. Bernell, he did not describe his own findings and did not explain whether such findings were residuals of the accepted injury and if so whether they disabled appellant from employment. Lacking an opinion that appellant did have residuals of the accepted employment causing continued disability, Dr. Pearce's report is of limited probative medical value in establishing appellant's entitlement to continued benefits.

As Dr. Blair submitted the only substantial probative medical report of record addressing the issue of appellant's continuing disability, his report does constitute the weight of the medical evidence. The Office met its burden of proof to terminate appellant's compensation benefits.

Finally, the Board notes that the Office did evaluate whether appellant's low back condition, which she claimed contributed to her disability after 1993 was causally related to her accepted 1984 employment injury. On May 27, 1995 Dr. Don W. Vanderpool, an Office medical adviser, reviewed the case record to determine whether appellant's low back condition was causally related to the accepted injury. Dr. Vanderpool concluded that appellant had been examined by a number of physicians in 1983 through 1988, without any mention of low back symptoms until Dr. Pearce's report of December 9, 1988. Dr. Vanderpool concluded that appellant's low back condition was a separate condition, which was not related to her 1984 accepted work injury. Further, Dr. Blair concluded in his report that appellant's back condition was not causally related to her 1984 injury. The Office, therefore, properly denied appellant's claim for benefits due to her low back condition.

The decision of the Office of Workers' Compensation Programs dated September 30, 1996 is hereby affirmed.

Dated, Washington, D.C.
February 11, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member