U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TAMMI L. PROVO and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, Tex.

Docket No. 97-2629; Submitted on the Record;
Issued June 17, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the record evidence and finds that the Office met its burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,[1] the Office has the burden of justifying modification or termination of compensation once a claim is accepted and compensation paid.[2] Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[3]

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.[4] The Office's burden

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[1] 5 U.S.C § 8101 *et seq.* (1974).

[2] *William Kandel*, 43 ECAB 1011, 1020 (1992).

[3] *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

[4] *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[6]

In this case, appellant's notice of occupational disease, filed on March 19, 1996, was accepted for right wrist tendinitis after her arm and hand started swelling as she was assembling "add-a-vial" intravenous fluid packages. Appellant, a pharmacy technician, sought treatment from Dr. George Anagnostis, Board-certified in family practice, who diagnosed acute tenosynovitis[7] and referred her to physical therapy and to a specialist, Dr. Anthony Brentlinger, a Board-certified orthopedic surgeon.

Appellant was released to work three days a week on May 28, 1996 on modified duty. On September 26, 1996 the Office referred appellant for a second opinion evaluation to Dr. Rajendra Gandhi, a Board-certified neurologist. He stated in his October 18, 1996 report that appellant's history was consistent with reflex sympathetic dystrophy,[8] that she did not have tendinitis, that she complained bitterly of pain and would not permit the manual examination of her right arm, and that while appellant's complaints could not be related to the work injury, she was unable to return to work because of reflex sympathetic dystrophy.

Subsequently, appellant was referred to Dr. Jerry Sobel, Board-certified in physical medicine and rehabilitation, who found that appellant had a chronic pain syndrome in her right shoulder, severe deconditioning due to disuse, and "a severe level of somatization."[9] On February 19, 1997 Dr. Sobel prescribed a comprehensive and intensive three-level chronic pain management program and ordered a functional evaluation from PRIDE. On March 11, 1997 he informed Dr. Brentlinger, who had been treating appellant since the initial injury, that appellant did not show up for an appointment that day to discuss the treatment program.

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[5] *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

[6] *Connie Johns*, 44 ECAB 560, 570 (1993).

[7] Tenosynovitis is defined as the inflammation of a tendon sheath. *DORLAND'S ILLUSTRATED Medical Dictionary* (27th ed. 1988).

[8] Reflex sympathy dystrophy is defined as a disturbance of the craniosacral portion of the autonomic nervous system marked by pallor or rubor (redness), pain, sweating, edema, or skin atrophy following a sprain, fracture, or injury to the nerves or blood vessels. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

[9] Somatization disorder is characterized by the multiplicity and persistence of complaints of pain without evidence of physical disease. *The Merck Manual*, 1590-91 (16th ed. 1992).

A March 27, 1997 memorandum to the file indicated that appellant was not complying with the requirements of the program, that she had "one excuse after another," that she left early or did not show up, and that she told everyone she was about to deliver a baby. The nurse assistant to whom the Office had referred appellant confirmed in a report that she was not cooperating with the physical therapy program.

In an April 2, 1997 letter, Dr. Sobel related that appellant was not pregnant and had agreed to set up her therapy schedule. He added that he had warned appellant that if she did not attend the scheduled sessions without reasonable written excuses, he would discontinue the treatment, declare that she had reached maximum medical improvement and return her to work.

On April 14, 1997 Dr. Sobel stated that appellant had missed three appointments, that she had improved physically as much as possible without the treatment program, and that medically she could return to full-time, full-duty work. He completed a disability form on April 15, 1997 indicating that appellant could work eight hours a day without restrictions.

On May 15, 1997 the Office issued a notice of proposed termination of compensation on the grounds that the medical evidence established that appellant had no continuing disability resulting from the accepted work injury. Appellant responded on May 20, 1997, stating that she was unable to make scheduled appointments on April 14 to 16, 1997 because she was in jail for probation violation, that the treatment program was too far away for her to drive, that PRIDE had "messed with her mind in a bad way," that migraine headaches prevented her from attending scheduled treatments on April 10 to 11, 1997 and that she really wanted and needed a treatment program but PRIDE was "a waste of money" for her.

On June 18, 1997 the Office terminated appellant's compensation on the grounds that the medical evidence established that she was able to return to her regular job. The Office noted that appellant's response to its notice was irrelevant to the medical issue involved.

The Board finds that the medical evidence is sufficient to meet the Office's burden of proof in terminating appellant's compensation. On August 13, 1996 Dr. Brentlinger stated that the "exact mechanism" of appellant's wrist injury was unclear, that the etiology of chronic pain in her right upper extremity was unknown, that her x-rays were within normal limits and that appellant was "guarding" her right arm and was "very difficult to examine."

An electromyogram (EMG) and nerve conduction studies showed very mild median compression neuropathy (carpal tunnel syndrome) of the right wrist. History and physical examination were highly suggestive of reflex sympathetic dystrophy of the right upper extremity. On October 9, 1996 Dr. Anagnostis again released appellant to work eight hours a day three days a week, limiting pushing and pulling with her right hand to four hours a day. On October 18, 1996 Dr. Ghandi diagnosed reflex sympathetic dystrophy, whose precise etiology was unknown. He found appellant unable to work because of reflex sympathetic dystrophy, noting that appellant would not permit manual examination of her right arm.

While appellant continued to be disabled for work, the cause of her disability was not the accepted tendinitis but a combination of reflex sympathetic dystrophy, deconditioning from

disuse and somatization. None of her physicians related these conditions to the initial work injury and Dr. Ghandi specifically found that appellant no longer had tendinitis.[10]

Further, Dr. Sobel released appellant to full-time, full-duty work on April 14, 1997, noting that while she had stated she was "highly motivated" to begin a treatment program that she "so desperately needs," she had failed to keep her therapy appointments and had reached maximum medical improvement. Inasmuch as the medical evidence establishes that appellant has no continuing disability resulting from the accepted tendinitis, the Board finds that the Office met its burden of proof in terminating appellant's compensation.[11]

The June 18, 1997 decision of the Office of Workers' Compensation Programs is affirmed.[12]

Dated, Washington, D.C.
June 17, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *Cf. Alfredo Rodriguez*, 47 ECAB 437, 444 (1996) (finding that the Office failed to meet its burden of proof in terminating compensation because while appellant returned to full-duty work, the medical evidence contained no objective clinical findings showing that appellant's work-related disability had resolved).

[11] *See Cleopatra McDougal-Saddler*, 47 ECAB 480, 488 (1996) (finding that the reports of the Office referral physician established that appellant's degenerative pathology was not work related and were sufficient to meet the Office's burden of proof in terminating disability compensation).

[12] Appellant submitted a June 30, 1997 medical report from her "family doctor." However, the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *William A. Couch*, 41 ECAB 548, 553 (1990). Thus, the new evidence dated June 30, 1997 cannot be considered by the Board because it post-dates the Office's final decision dated June 18, 1997.