U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. LUCAS and DEPARTMENT OF THE ARMY,
U.S. ARMY TROOP SUPPORT, COMMISSARY, Darmstadt, Germany

Docket No. 97-2554; Submitted on the Record;
Issued May 24, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had any disability or injury residuals after June 25, 1995, causally related to her June 11, 1990 contusion injuries.

The Office of Workers' Compensation Programs accepted that on June 11, 1990 appellant, then a 45-year-old meat cutter, fell on her buttocks and sustained contusions of her left arm and back.[1] Appellant was thereafter placed on the periodic rolls and received appropriate compensation benefits.

On May 23, 1991 Dr. James B. Boone, a Board-certified orthopedist and appellant's treating physician, noted no objective physical findings other than subjective complaints of low backache. On July 17, 1991 Dr. Boone opined that appellant could return to limited type of work in the next six weeks. On August 18, 1991 Dr. Boone noted that appellant was neurologically sound, with negative straight leg raising, no atrophy and normal motor and sensory testing. He indicated that he had nothing else to offer her.

By report dated March 12, 1992, Dr. Robert J. Abresch, a Board-certified rheumatologist, discussed appellant's chronic low back and neck pain, noted tenderness to palpation in the thoracic spine at the scapular level and into the trapezius and noted tenderness around the lateral aspects of both hips. He diagnosed appellant as having "chronic lower back and neck pain status post fall in March 1991.[2] At this time, this appears to be a chronic musculoligamentous strain, which has evolved into a chronic myofascial pain syndrome accounting for an increased pain level, less tolerance of the pain and marked sensitivity and tenderness in all of these musculoskeletal areas to touch and to palpation." Dr. Abresch did not discuss causation of the

[1] The Board notes that, according to appellant's injury claim form, she returned to work on June 12, 1990 and worked until July 7, 1990 before stopping.

[2] Appellant was actually injured on June 11, 1990.

chronic musculoligamentous strain, or explain how it was causally related to her accepted left arm and back contusions.

By report dated April 20, 1992, Dr. Boone noted that findings upon examination included chronic pain and stiffness, without focal neurologic deficits. He reported a positive antinuclear antibody (ANA) test on the arthritis screen and early arthritic/degenerative changes upon x-ray and magnetic resonance imaging (MRI). Dr. Boone noted that appellant's degenerative changes preexisted her accident but that the accident aggravated them and he opined that appellant's "present condition was caused by the accident." He did not, however, explain how or why appellant's current condition was causally related to the 1990 fall, or how her left arm and back contusions aggravated preexisting degenerative disc disease.

The Office determined that a second opinion was necessary and it referred appellant, with a statement of accepted facts, the complete case record and questions to be answered to Dr. Terrell B. Bounds, a Board-certified orthopedic surgeon. By report dated July 8, 1994, Dr. Bounds reviewed appellant's history, noted her present complaints, conducted a complete physical examination and reviewed appellant's medical records. Dr. Bounds noted that upon examination appellant had no hard signs to support either cervical or lumbar radiculopathy, and that sensory examinations of the left upper and lower extremities revealed hypoesthesia that was not consistent upon repeat examination. He diagnosed "cervical syndrome, lumbar syndrome, [and] resolved contusion, left upper extremity," noted that appellant's present symptoms were inconsistent with the injury that occurred in 1990 and opined that the symptoms from the 1990 injury should have resolved.

By notice dated May 3, 1995, the Office advised appellant of the proposed termination of compensation indicating that Dr. Bounds was the weight of the medical evidence in establishing that the symptoms of appellant's 1990 injury had resolved. Appellant was afforded 30 days within which to submit further evidence or argument as to why her compensation should not be terminated. Through her congressional representative appellant responded that the proposed termination was in error, and she furnished some physical therapy notes and a medical progress note from Dr. Boone that did not address continuing disability.

By decision dated June 15, 1995, the Office terminated appellant's compensation finding that appellant had no continuing disability after June 25, 1995.

Appellant, through her representative, requested a hearing which was held on February 20, 1996. At the hearing appellant testified that her condition had worsened since the 1990 injury and that she was unable to work. However, the hearing representative noted that the record contained no objective findings to support continued problems or disability related to the 1990 injury. By decision dated April 17, 1996, the hearing representative affirmed the prior Office decision finding that the weight of the medical evidence lay with Dr. Bounds.

Appellant, through her representative, requested reconsideration of the hearing representative's decision. Appellant's representative argued that he had faxed a report from Dr. Michael K. Vandenberg, a Board-certified rheumatologist, to the hearing representative,

which was not considered for his April 17, 1996 decision,[3] that the enclosed medical evidence constituted the weight of the medical opinion evidence, and that Dr. Bounds' report was based upon an incomplete and inaccurate history and was patently inconsistent, conclusory and speculative.

Submitted with the request for reconsideration was an April 15, 1996 report from Dr. Vandenberg, which stated that appellant's diagnoses included unclassified connective tissue disease, possible CREST syndrome, adrenal gland dysfunction, lumbar spine arthritis without evidence of nerve impingement and degenerating discs. Dr. Vandenberg noted that it was impossible for him to determine whether an injury in 1990 had anything to do with appellant's present symptoms. He then speculated that appellant's low back degenerative disc disease and arthritis "may have been made somewhat worse by the fall in 1990" but noted that he could not conclude that that had definitely continued as a symptomatic component of her current problems.

Also included was a March 19, 1997 report from Dr. Shane VerVoort, a Board-certified specialist in physical medicine and rehabilitation, which noted a history of injury as provided by appellant, and which was not consistent with the factual history of injury as documented by the evidence of record, provided a narration of appellant's current symptoms, reported physical examination results and diagnosed "History of lumbosacral trauma secondary to work injury of June 11, 1990 superimposed upon mild L4-5 and L5-S1 degenerative disc disease, chronic low back pain and referred bilateral lower extremity pain secondary to #1, chronic complaints of neck pain, unclassified connective tissue disease, adrenal gland dysfunction, long-standing history of migraine headaches." Dr. VerVoort opined that appellant had "traumatic lumbar facet joint arthropathy caused by work-related injury of June 11, 1990." His rationale was that "the records clearly reveal a consistent complaint of back pain over the years and MRI scan findings and physical examination findings are consistent with a traumatic injury superimposed upon a preexisting asymptomatic degenerative disc disease of the lumbar spine." He further stated that he was unable to state whether appellant's complaints of neck pain were causally related to the work injury of June 11, 1990.

By decision dated April 28, 1997, the Office denied modification of the April 17, 1996 decision. The Office found that Dr. Vandenberg's report was of little probative value as he admitted that he could not state with medical certainty that appellant's current conditions were related to the original fall, and found that Dr. VerVoort relied on a history unsupported by any other evidence of record, and hence inconsistent with the factual record and that he failed to provide any rationale for his opinion on causal relation. Accordingly, the Office found that Dr. VerVoort's opinion was also of diminished probative value and, therefore, was insufficient to support continuing injury-related residuals.

The Board finds that the weight of medical evidence establishes that appellant has no disability or residuals after June 25, 1995, causally related to her June 11, 1990 injuries.

[3] The Board notes that no such faxed report appears in the present case record.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] 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 disability has ceased or that it is no longer related to the employment.[5] However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[6] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[7] The Office met its burden of proof to terminate both compensation and medical benefits in this case.

In the present case, appellant's June 11, 1990 injury claim was accepted only for the conditions of contusion of the left arm and back. No further or other injury was accepted. In a 1992 report, Dr. Abresch diagnosed chronic musculoligamentous strain, but he failed to explain how this was related to appellant's accepted conditions of contusions of the left arm and back, and failed to provide adequate medical rationale to explain how the June 1990 fall on her bottom caused chronic musculoligamentous strain not diagnosed until 1992. Consequently, Dr. Abresch's report is insufficient to support continuing contusion injury-related disability or residuals or to establish that in 1990 appellant's fall on her bottom caused chronic musculoligamentous strain diagnosed two years later.

In an April 1992 report, Dr. Boone noted findings which were subjective only, except for a positive ANA and MRI findings of degenerative changes. He opined that appellant's fall aggravated her preexisting degenerative changes, but he did not explain, either mechanically or pathophysiologically how this was so, nor did he provide any opinion of the duration of such aggravation. Dr. Boone further opined that appellant's present condition was caused by the accident, but he did not explain how a positive ANA and degenerative changes were related to either appellant's accepted conditions of left arm and back contusions or were caused by her June 1990 fall on her bottom. As this report was conclusory and completely unrationalized it is of diminished probative value, and is insufficient to support continuing contusion injury-related disability or residuals, or to establish that appellant's 1990 fall on her bottom caused a positive ANA or degenerative changes.

The record contains no further medical evidence supporting continuing contusion injury-related disability or contusion related residuals, or even medical treatment from 1992 until Dr. Bounds' examination in July 1994.

In July 1994 Dr. Bounds, who was given a complete and accurate statement of accepted facts, and who had at his disposal the complete case record and the questions to be resolved,

[4] *Harold S. McGough*, 36 ECAB 332 (1984).

[5] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[6] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[7] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

provided a complete, thorough and well-rationalized report and determined that appellant's left upper extremity contusion injury had resolved. Dr. Bounds diagnosed two conditions unrelated to appellant's accepted employment-related contusion injuries, and further opined that her present symptoms were inconsistent with the contusion injury that occurred in 1990. Dr. Bounds further opined that appellant's symptoms from the 1990 injury should have resolved.

As the report of Dr. Bounds was based upon a complete and accurate factual and medical history and was thorough and well rationalized, and as there was no other contemporaneous medical evidence of record supporting continuing contusion injury-related disability or contusion injury residuals, and as the most current medical evidence of record from 1992 was not rationalized and was of diminished probative value, the Office was correct in determining that Dr. Bounds' report constituted the weight of the medical opinion evidence and established that appellant had no continuing contusion injury-related disability or contusion injury-related residuals. Accordingly, the Office met its burden of proof to terminate compensation entitlement and to terminate authorization of medical benefits.

Thereafter, the burden of proof switches to appellant to prove further or recurring injury-related disability or residuals.

In support of appellant's claimed further or recurring disability or injury residuals, she submitted a 1996 report from Dr. Vandenberg which listed multiple diagnoses not including contusions of the left arm and back.. Dr. Vandenberg opined that it was impossible for him to determine whether an injury in 1990 had anything to do with appellant's present symptoms. The Board notes that this statement does not in any way support appellant's contentions. Dr. Vandenberg further speculated that appellant's low back degenerative disc disease and arthritis may have been made somewhat worse by the fall in 1990, but noted that he could not conclude that that had definitely continued as a symptomatic component of her current problems. As this opinion is facially speculative, it is of reduced probative value,[8] and as it is unrationalized, it is insufficient to support appellant's contentions of further or recurring disability or injury residuals and is insufficient to create a conflict with the existing evidence of record.

Also in support of her claim, appellant submitted a March 1997 report from Dr. VerVoort, which was based on an inaccurate history not substantiated by the case record. The Board has frequently explained that reports not based upon a complete and accurate factual and medical history are of diminished probative value.[9] Dr. VerVoort opined that appellant sustained traumatic lumbar joint arthropathy during her 1990 fall, but he provided no medical rationale for this conclusion, instead merely citing that the reports of record revealed continuing complaints of back pain, and stating that MRI and examination findings were consistent with traumatic injury superimposed upon preexisting degenerative problems. Dr. VerVoort did not explain how, mechanically or pathophysiologically, appellant's continuing complaints of back pain up until that date were related to a left arm and back contusion injury in 1990, or how,

[8] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[9] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

diagnostically, MRI and physical examination results in 1997 "were consistent with traumatic injury" in 1990, seven years earlier, superimposed on degenerative changes. The Board has delineated that the medical evidence that is required to establish a causal relationship, generally, is rationalized medical opinion evidence.[10] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition(s) and the implicated employment factors or incidents. The opinion of the physician must be based on a complete factual and medical background of the claimant,[11] must be one of reasonable medical certainty,[12] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition(s) and the specific employment factors identified by the claimant.[13] This medical report merely recounts appellant's version of her history of symptomatology, offers a diagnosis of an unaccepted condition and provides conclusory statements regarding causation. Consequently, it cannot be considered rationalized medical evidence sufficient to establish further or recurrent disability or injury residuals as alleged. Further, as Dr. VerVoort's report attributing multiple chronic and degenerative conditions to the accepted soft tissue injuries in 1990, is not well-rationalized or based upon a proper factual and medical background, it is, therefore, insufficient to create a conflict in medical evidence with the complete and well-rationalized medical report by Dr. Bounds.[14]

As the medical evidence submitted in support of appellant's claim of further or recurring disability and contusion injury-related residuals is insufficient to establish that appellant has further or recurring disability or contusion injury-related residuals, and as it is also insufficient to create a conflict with the well-rationalized report of Dr. Bounds, which would require further resolution, appellant has failed to submit evidence sufficient to support her claim.

[10] *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

[11] *William Nimitz, Jr.*, *supra* note 9.

[12] *See Morris Scanlon*, *supra* note 8.

[13] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[14] *Connie Johns*, 44 ECAB 560 (1993); *see also Billie C. Rae*, 43 ECAB 192 (1991) and cases cited therein.

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 28, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 24, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member