U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE WRIGHT and DEPARTMENT OF VETERANS AFFAIRS, LONG BEACH MEDICAL CENTER, Long Beach, CA

Docket Nos. 98-1913 & 98-2117; Oral Argument Held September 9, 1999; Issued November 29, 1999

Appearances: *Renee Wright, pro se*; *Catherine P. Carter, Esq.*, for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly suspended appellant's entitlement to compensation on the grounds that she failed to attend a physical examination pursuant to 5 U.S.C. § 8123(d); and (2) whether appellant met her burden of proof to establish that she was disabled from work for the periods April 1 through May 8, 1995 and March 20 through April 18, 1997.

On July 13, 1994 appellant, then a 44-year-old medical photographer, sustained an employment-related lumbosacral radiculitis.[1] She stopped work on July 14, 1994 and received wage-loss compensation through March 31, 1995 when her treating physician, Dr. Brian Kutsunai, who is Board-certified in preventive medicine, returned her to full duty. She continued to receive medical benefits and has not returned to work. On April 3, 1995 she filed a Form CA-8, claim for compensation, for the period March 31 to May 8, 1995, and on March 20, 1997 filed a Form CA-8 for the period March 20 to April 18, 1997.

[1] The instant claim was adjudicated by the Office under file number A13-1051399. Appellant has a separate claim for an emotional condition that was adjudicated by the Office under file number A13-1058942. She appealed the latter case to the Board. It was assigned docket number 98-1401 and is being adjudicated separately.

Appellant continued to submit medical evidence,[2] and by letter dated January 7, 1998, the Office informed her of a scheduled appointment with Dr. Thomas Dorsey, a Board-certified orthopedic surgeon with the Bay Brook Medical Group. In a letter faxed to the Office on January 23, 1998, appellant submitted a list of objections to the examination.[3] Dr. Dorsey informed the Office that the appointment, scheduled for January 26, 1998, had been canceled less than 24 hours prior to the scheduled time. In a January 27, 1998 letter, the Office informed appellant of the penalty provisions of 5 U.S.C. § 8123(d) and addressed her arguments, concluding that the decision by the Office to require a second-opinion examination was not subject to her approval of the process or information submitted to the examiner. Appellant was given 14 days in which to respond. In a letter faxed to the Office on February 10, 1998, she reiterated her arguments that good cause was shown for her failure to attend the examination.[4] A second appointment with Dr. Dorsey was scheduled for March 2, 1998. In a letter faxed to the Office on February 27, 1998, appellant objected to the scheduled examination and did not attend.

By decision dated March 17, 1998, the Office suspended appellant's entitlement to compensation pursuant to 5 U.S.C. § 8123(d) because she failed to undergo a scheduled second-opinion evaluation and, by decision dated April 8, 1998, the Office found that appellant failed to establish that she was disabled from work for the periods April 1 through May 8, 1995 and March 20 through April 18, 1997 on the grounds that the medical evidence was insufficient. The instant appeal follows.

The Board finds that the Office properly suspended appellant's entitlement to compensation pursuant to 5 U.S.C. § 8123(d).

Section 8123(a) of the Federal Employees' Compensation Act[5] provides that an employee shall submit to examination by a medical officer of the United States, or by a

[2] This evidence consisted of an April 10, 1996 report from Dr. Joseph B. Ascher, an orthopedic surgeon, a December 15, 1996 neurological evaluation from Dr. Chong-Sam Kim, a March 11, 1997 magnetic resonance imaging of the cervical, thoracic and lumbar spines, a September 15, 1997 electromyographic report and neurological consultation from Dr. Robert A. Rafael, a Board-certified neurologist, reports dated September 11 and November 5, 1997 from Dr. Robert W. Hunt, an orthopedic surgeon, and reports dated February 20 and 28, March 20, April 9, May 9 and 29, 1997 from Dr. Calvin J. Okey, an osteopathic physician.

[3] Appellant objected to the selection of the physician because he and the Bay Brook Medical Group were biased; she had not been properly notified of the examination; that the Office did not state the purpose of the examination, failed to provide the physician with complete and accurate information, failed to provide appellant with a copy of the statement of accepted facts and questions sent to the physician which were leading in nature, failed to include a job description with the letter of referral and failed to credit medical evidence in the record; and that a second-opinion evaluation had previously been completed by Dr. Robert Hunt. She also alleged that her wage-loss compensation had been improperly terminated.

[4] She additionally alleged that the Office should consolidate the case files for the instant claim, A13-1051399, and for her emotional condition claim, A13-1058942; *see supra* note 1.

[5] 5 U.S.C. §§ 8101-8193.

physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required.[6]

Section 8123(d) provides that, if an employee refuses to submit to or obstructs an examination, his or her right to compensation is suspended until the refusal or obstruction stops.[7] The Office shall inform an employee of the penalty for refusing or obstructing an examination required by the Office when giving notification of such an examination. If an employee fails to appear for an examination, the Office must ask the employee to provide in writing an explanation for the failure within 14 days of the scheduled examination. If good cause is not established, entitlement to compensation should be suspended in accordance with 5 U.S.C. § 8123(d), until the claimant reports for examination.[8]

In this case, upon receiving information from Dr. Dorsey's office that appellant failed to keep the January 26, 1998 appointment, the Office provided appellant the opportunity to present her reasons in writing for failing to keep the appointment. A second appointment was scheduled for March 2, 1998, which again, appellant did not keep. While appellant provided reasons for her failure, the Board finds that, in evaluating her allegations, none of the stated reasons constitute good cause for her refusal to submit to the medical evaluation.

The determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office. The only limitation on this authority is that of reasonableness.[9]

The Board finds that appellant's allegations of bias on the part of Bay Brook physicians is not supported by the record and further finds that the questions posed to the second-opinion examiner were not leading in nature but were routine questions concerning appellant's condition. Furthermore, Office procedures regarding the preparation of a statement of accepted facts provide that the Office is responsible for determining the facts in a case by weighing the evidence and drawing conclusions on that evidence.[10] Lastly, regarding appellant's contention that she had already had a second-opinion examination by Dr. Hunt, the record indicates that he is a treating physician. The Board, therefore, finds that the Office's action in requesting appellant to undergo evaluation to determine the degree of employment-related impairment was reasonable and did not constitute an abuse of discretion. Accordingly, as appellant refused to submit to a medical examination without good cause, the Office properly invoked the penalty provision of 5 U.S.C. § 8123(d) and her entitlement to compensation is suspended until this refusal stops.

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[6] 5 U.S.C. § 8123(a).

[7] 5 U.S.C. § 8123(d).

[8] *Margaret M. Gilmore*, 47 ECAB 718 (1996).

[9] *Daniel F. O'Donnell*, 46 ECAB 890 (1995).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.10(a) (June 1995).

The Board further finds that appellant failed to establish that she was disabled from work for the periods April 1 through May 8, 1995 and March 20 through April 18, 1997.

Causal relationship is a medical issue,[11] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[13]

The medical evidence relevant to the April 1 through May 8, 1995 period of claimed disability includes reports dated March 31 and May 12, 1995, in which Dr. Brian Kutsunai, who is Board-certified in preventive medicine, advised that appellant could return to full duty without restriction. Philip M. Carman, Ph.D., a licensed clinical psychologist, provided a March 31, 1995 report indicating that appellant was totally disabled until June 5, 1995 due to major depression single episode, severe. While Dr. Carman advised that appellant was totally disabled, the accepted employment injury in this case, is lumbosacral radiculitis. Dr. Kutsunai advised that appellant could return to work without restriction. The record, therefore, does not contain an opinion that she was disabled for the period April 1 through May 8, 1995 due to the July 13, 1994 employment injury. Thus, appellant failed to establish that she had any employment-related disability for this period.

Regarding the period March 20 through April 18, 1997, the medical evidence includes reports from Dr. Calvin J. Okey, an osteopathic physician. In a March 20, 1997 report, Dr. Okey noted findings of chronic pain behavior on examination and advised that appellant could return to temporary light duty with restrictions to her physical activity. He provided similar restrictions in reports dated April 9 and May 7, 1997. By report dated May 29, 1997, Dr. Okey released her to return to work without restriction. In a report dated September 25, 1997, Dr. Robert W. Hunt,[14] an orthopedic surgeon, advised that he had examined appellant on July 24, 1997. Dr. Hunt noted her history of injury and job description. He stated that a September 4, 1997 electromyographic examination of the lower extremities was normal. Dr. Hunt diagnosed lumbosacral strain with secondary radiculopathy into the left lower extremity and stated that appellant had subjective complaints of pain in the spine and low back, radiating to the left lower extremity and concluded that she should observe prophylactic work restrictions for the spine

[11] *Mary J. Briggs*, 37 ECAB 578 (1986).

[12] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[13] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[14] On February 28, 1998 the Office authorized Dr. Hunt as appellant's treating physician.

with no prolonged sitting, standing and walking and no heavy work and thus, could not return to her job as medical photographer due to the prolonged standing and bending it required.

While Dr. Hunt advised that, as appellant should observe prophylactic work restrictions, she could not return to her job as medical photographer, medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.[15] Likewise, Dr. Okey's reports are of limited probative value because he provided no opinion regarding the cause of appellant's physical limitations. Thus, neither he nor Dr. Hunt provided sound medical reasoning that appellant's condition was caused by the July 13, 1994 employment injury. It is well established that medical conclusions unsupported by rationale are of diminished probative value,[16] and the medical evidence in this case, is insufficient to establish that appellant was disabled for the period March 20 through April 18, 1997.

The decisions of the Office of Workers' Compensation Programs dated April 8 and March 17, 1998 are hereby affirmed.

Dated, Washington, D.C.
November 29, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[15] *See William C. Thomas*, 45 ECAB 591 (1994).

[16] *See Lourdes Davila*, 45 ECAB 139 (1993).