U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRI L. BRADLEY and U.S. POSTAL SERVICE,
MAIL PROCESSING CENTER, Los Angeles, CA

Docket No. 98-2041; Submitted on the Record;
Issued April 21, 2000

DECISION and ORDER

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

The issue is whether appellant's disability causally related to her May 23, 1989 employment injury ended by May 25, 1996.

The Office of Workers' Compensation Programs accepted that appellant's May 23, 1989 employment injury, in which a chair collapsed and she fell flat on her back bumping her head on the floor, resulted in a head concussion, a left shoulder contusion, a neck sprain and a lumbar sprain. Appellant received continuation of pay beginning May 23, 1989, followed by payment of compensation for temporary total disability.

On March 20, 1996 the Office issued a notice of proposed termination of compensation, on the basis that the residuals of appellant's May 23, 1989 employment injury no longer prevented her from performing the job of accounting technician she was performing on the date she was injured. In response to this notice, appellant contended in an April 16, 1996 letter that she no longer held the temporary position of accounting technician at the time of her May 23, 1989 injury, but was working as a letter sorting machine operator at that time. By decision dated May 10, 1996, the Office found that appellant no longer had any disability due to her employment injuries,[1] and that it was "abundantly clear that appellant was working as an accounting clerk, not as a letter sorting machine operator, on May 23, 1989. The Office terminated appellant's compensation effective May 25, 1996. Following a hearing held at appellant's request on April 22, 1997, an Office hearing representative, by decision dated July 11, 1997, found that the opinions of the impartial medical specialists constituted the weight of the medical evidence and that the Office properly terminated appellant's compensation effective May 25, 1996.

[1] Appellant also sustained employment injuries on April 11, 1980 to her right ankle and to her low back on August 12, 1987 and February 6, 1989.

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 disability has ceased or that it is no longer related to the employment.[2]

The Board finds that appellant's disability causally related to her May 23, 1989 employment injury ended by May 25, 1996.

There was a conflict of medical opinion on the question of whether appellant continued to be disabled due to residuals of her May 23, 1989 employment injury. Appellant's attending physician, Dr. Thomas L. Horowitz, an osteopath, stated in a January 16, 1992 report: "The accident in May of 1989 appears to have aggravated her underlying rheumatoid disease and initiated the symptomatic cascade." In a report dated July 16, 1992, Dr. Horowitz stated that appellant was unable to work due to severe disabling degenerative joint disease and back pain. In a report dated July 31, 1992, Dr. Horowitz stated, "due to her fall on May 23, 1989, her rheumatoid arthritis was aggravated and inflamed secondary to the injuries sustained." In a report dated May 25, 1993, Dr. Howard J. Baker, a Board-certified neurologist to whom the Office referred appellant for a second opinion evaluation, stated that appellant's May 23, 1989 employment injury did not aggravate or accelerate her rheumatoid arthritis, which was a systemic arthritic disorder. Dr. Baker also concluded that appellant had no objective findings and that her subjective complaints were not disabling. In a report dated December 28, 1994, Dr. John H. Freeman, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation, concluded, after a review of her magnetic resonance imaging (MRI) scan, that appellant had no residuals from her employment injury and that she was not disabled.

To resolve this conflict of medical opinion, the Office referred appellant to a panel of physicians at the University of California, San Diego, Medical Center. These physicians -- Dr. Barry Friedman, a Board-certified orthopedic surgeon, Dr. Jody Corey-Bloom, a Board-certified neurologist, Dr. H. Arthur Silverman, a Board-certified rheumatologist, Dr. William G. Hughson, who is Board-certified in internal medicine and in preventive medicine and Dr. Stephen M. Stahl, a Board-certified psychiatrist -- submitted individual reports containing appellant's history and findings on examination and Dr. Hughson submitted a consolidation report. In a report dated October 28, 1995, Dr. Corey-Bloom concluded that appellant "likely suffered a muscle strain at the time of her industrial injury in 1989 but that this temporary aggravation has ceased," that appellant's "subjective complaints are all attributable to her rheumatoid arthritis, not the industrial injury," and that "from a strictly neurological point of view, there are no continuing residuals from the patient's work-related injury." In a report dated November 29, 1995, Dr. Hughson stated that appellant had "no internal medicine or pulmonary

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

conditions." In a report dated December 27, 1995, Dr. Stahl concluded that appellant had fully recovered from the mild head injury she sustained on May 23, 1989 and that she had no psychiatric disability. In a report dated January 21, 1996, Dr. Silverman concluded:

> "It is my feeling that the rheumatoid arthritis is not related to the industrial injury of May 23, 1989. Rheumatoid arthritis is a chronic inflammatory condition of unknown etiology and it is my strong opinion that [appellant] would have her present problems even absent the injury of May 23, 1989. The deformities in the peripheral joints are very typical of rheumatoid arthritis and rheumatoid arthritis can also involve the spine. The degenerative changes that are seen in the cervical and lumbar areas are not secondary to the injury of May 23, 1989. The injury was not severe enough to cause this type of difficulty at a later date and is more compatible with chronic arthritic change.
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> "It is my opinion that there are no continuing medical residuals of the work injury of May 23, 1989. The cervical and lumbar strains resolved long ago. The wedging at T6 could have been secondary to that accident but is asymptomatic and not disabling in any way."[3]

In a report dated October 24, 1995, Dr. Friedman diagnosed diffuse rheumatoid arthritis, status post right total hip replacement and bilateral total knee replacements and cervical and thoracic osteoarthritis, all of which the doctor considered not work related. Dr. Friedman also diagnosed "Chronic lumbosacral strain superimposed on probable lumbosacral disc degeneration and facet sclerosis. This is most probably due to permanent aggravation of a preexistent condition due to the work-related injury of May 23, 1989." Dr. Friedman stated: "From an orthopedic standpoint, this patient has had continued lower back pain since the work-related injury of May 23, 1989. She has radiographic evidence of lumbosacral disc degeneration and facet sclerosis. It is my opinion that her continued symptoms are due to aggravation and since the symptoms have continued, I would consider it permanent." Regarding appellant's ability to work, Dr. Friedman stated: "If it were not for the severe disability resulting from the rheumatoid arthritis involving the upper and lower extremities, in my opinion, the claimant could carry out the activities of an accounting technician. This, of course, assumes that the only condition she suffers from is the chronic lower back strain resulting from the May 23, 1989 injury." In an October 19, 1995 report of appellant's work tolerance limitations, Dr. Friedman indicated that appellant had a restriction against heavy lifting that was due to her employment injury and that her diffuse rheumatoid arthritis restricted her from all but sedentary activity for brief periods.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[4] The Board finds that the reports of the panel

[3] Dr. Freeman, the Office's second opinion specialist, stated in his December 28, 1994 report that slight wedging at T6 seen on appellant's MRI "may very well have been a residual of her fall on May 23, 1989."

[4] *James P. Roberts*, 31 ECAB 1010 (1980).

of impartial specialists are entitled to special weight and are sufficient to establish that appellant's disability causally related to her May 23, 1989 employment injury ended by May 25, 1996.

The Board-certified psychiatrist, Dr. Stahl, concluded that appellant had recovered from the head injury she sustained on May 23, 1989 and had no psychiatric condition. The Board-certified internist, Dr. Hughson, concluded that appellant had no internal medicine or pulmonary condition. The Board-certified neurologist, Dr. Corey-Bloom, concluded that appellant had no continuing neurological residuals of her May 23, 1989 employment injury. The Board-certified rheumatologist, Dr. Silverman, concluded that appellant's rheumatoid arthritis and the degenerative changes of her cervical and lumbar spine were not causally related to her May 23, 1989 employment injury.

Of the panel of impartial specialists, only the Board-certified orthopedic surgeon, Dr. Friedman, reported any residual of appellant's May 23, 1989 employment injury. Dr. Friedman concluded that appellant's chronic lumbosacral strain had been permanently aggravated by the May 23, 1989 employment injury, resulting in continuing low back pain. Dr. Friedman, however, concluded that, given only the injury-related residuals, appellant could perform the job of accounting technician she held when injured.

Appellant contends that at the time of her May 23, 1989 injury she had returned to her position as a letter sorting machine operator. The weight of the evidence supports that she had not and that at the time of this injury she was still performing the limited-duty position of accounting technician. On a duty status report sent by the employing establishment to a medical facility on May 23, 1989, the date of the injury, the employing establishment stated that appellant was working modified duty consisting of desk work only. In a letter dated February 22, 1989, the Office noted that appellant work duties since her August 11, 1987 injury had been "in an office environment, seated at a desk in a secretarial chair, where she performs routine office functions in the accounting department. This does not require her to do any prolonged standing or heavy lifting." The case record contains no indication appellant thereafter returned to her position as a letter sorting machine operator and her attending physician, Dr. Jamshid J. Hekmat, an orthopedic surgeon, consistently limited appellant to limited duty beginning March 6, 1989, a restriction he never lifted. In a report dated May 16, 1989, one week before the May 23, 1989 employment injury, Dr. Hekmat recommended that appellant "continue light activities." Against this evidence is appellant's bare assertion that she had returned to her duties as a letter sorting machine operator and her credibility on this point is diminished by her prior inaccurate representative to a physician on February 17, 1989, when she was working as an accounting technician, that she was performing heavy work with machines, involving heavy lifting. As the weight of the evidence establishes appellant was working as an accounting technician on May 23, 1989, Dr. Friedman's conclusion that her injury-related residuals did not prevent her from performing this position is sufficient to establish that her disability had ended.[5]

[5] The test of "disability" under the Federal Employees' Compensation Act is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured. *David H. Goss*, 32 ECAB 24 (1980).

The decision of the Office of Workers' Compensation Programs dated July 11, 1997 is affirmed.

Dated, Washington, D.C.
April 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member