U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE G. DELEONARDIS and DEPARTMENT OF THE NAVY, NAVAL AIR SYSTEMS COMMAND CENTERS, Point Mugu, CA

Docket No. 97-1123; Submitted on the Record;
Issued January 11, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the basis that she had no residual disability on or after June 24, 1994; and (2) whether appellant has established that her conditions of fibromyalgia, cervical strain and lumbar strain are causally related to her June 22, 1994 employment injury.

On June 22, 1994 appellant, then a 32-year-old computer clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her head, neck and lower back when she tripped over a seam in the carpet which had buckled up due to an earthquake.[1] The Office accepted appellant's claim for mild contusions of the forehead, mild abrasion of the right elbow and mild contusion of the lumbar spine. Appellant returned to light-duty work on August 10, 1994.

In a June 24, 1994 report, Dr. Jerry O. Waters[2] diagnosed a lumbar/cervical strain due to a fall on June 22, 1994 and noted that appellant could return to work on June 26, 1994.

In a June 24, 1994 report, Dr. Michael D. Rosco,[3] based upon a history of the employment injury, medical history and physical examination, diagnosed mild contusion of the forehead and lumbar spine, and mild abrasion of the right elbow by history. He noted that appellant had restricted motion of both her shoulders as he could only obtain a 90 degree abduction and there was no crepitus. Regarding the cervical spine, Dr. Rosco indicated that the range of motion was restricted, but when he performed the Adson's test appellant had full range

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[1] This was assigned claim number A13-1056886.

[2] A Board-certified emergency room physician.

[3] An attending Board-certified orthopedic surgeon.

of motion. Next, he noted a restricted range of motion in the lumbar spine. As to the lower extremities, he noted that straight leg raising was 20 degrees for both legs. Dr. Rosco noted two inconsistencies with the first inconsistency that appellant had "no improvement of hip flexion with the knees bent. I know of no orthopedic explanation for this phenomenon because it is well known that flexing the knees relieves low back pain." The second inconsistency was that appellant expressed no complaint of low back pain when he "slowly extended both knees fully, one at a time to 0 degrees" as this is equivalent to a 90 degree straight leg raise. Dr. Rosco opined that appellant had an "absolutely unbelievable symptom complex following a minor injury." In addition, Dr. Rosco noted that inconsistencies in the examination indicated an "obvious exaggeration of subjective complaints and that "[s]ome examiners consider the patient with nonorganic back pain to be malingering." Dr. Rosco opined that appellant did not have any temporary or permanent disability due to her employment injury and that no further medical treatment was required.

In an emergency note dated June 28, 1994, Dr. John R. Tesman[4] diagnosed a lumbar strain and advised appellant to rest.

In a treatment note dated June 28, 1994, Dr. Robert T. Mazurek[5] noted that appellant slipped at Marie Callender's on June 2, 1994 and injured her left knee. On July 11, 1994 he noted that appellant had injured her back when she fell on June 22, 1994 at work. On July 20, 1994 Dr. Mazurek noted that the magnetic resonance imaging (MRI) test showed no evidence of disc herniation. Dr. Mazurek diagnosed acute lumbar strain with possible herniated disc and placed her on temporary disability. In treatment notes dated August 3, 1994, he recommended a return to work on August 10, 1994 with restrictions. In treatment notes dated September 2, 1994, Dr. Mazurek recommended that light duty be continued for one month.

In a note dated June 29, 1994, appellant requested permission to change her physician from Dr. Rosco to Dr. Mazurek for further treatment of her injury. Appellant alleged that Dr. Rosco was negative toward her, hurt her during the examination, did not check where she said she had pain and informed her that her problem was not physical.

In a letter dated June 28, 1994, the employing establishment challenged that appellant's lower back pain and neck were due to her employment. The employing establishment indicated that appellant had chosen Dr. Rosco after contacting the Office and stating that she wanted to be seen by a physician of her choice.

By letter dated September 23, 1994, the Office requested a report from Dr. Mazurek and attached Dr. Rosco's report for his review.

By decision dated November 9, 1994, the Office found that appellant was not entitled to further compensation or medical treatment as she no longer suffered from residuals of her accepted June 22, 1994 employment injury after June 24, 1994. The Office found Dr. Rosco's opinion to represent the weight of the evidence in finding that appellant was no longer disabled

[4] A Board-certified emergency room physician.

[5] An attending Board-certified orthopedic surgeon.

due to her accepted injury. Regarding Dr. Mazurek's opinion, the Office determined that it was insufficient to establish any continuing disability as he failed to provide any objective findings to support his opinion that appellant was disabled. The Office thus found that appellant was not entitled to compensation for medical and wage-loss benefits after June 24, 1994 as the evidence of record failed to establish that appellant was disabled or suffered from residuals after that date.

In a letter dated November 10, 1994, Dr. Mazurek stated that he agreed with Dr. Rosco's June 24, 1994 report.

On May 23, 1995 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her lower back while she was moving a computer on May 22, 1995.[6] The Office accepted the claim for thoracic and lumbar strains on June 19, 1995. By letter dated December 19, 1995, the Office authorized anterior cervical discectomy and fusion surgery. Appellant stopped work on November 20, 1995. Appellant was riffed by the employing establishment effective July 31, 1996.

In a report dated October 9, 1995, Dr. Alex D. Gazaui,[7] based upon a physical examination, medical and employment injury history, diagnosed head trauma by history, myofascial sprain of cervical spine and myofascial sprain of the lumbar spine, chronic. Dr. Gazaui opined that appellant's June 22, 1994 injury "left her with minimal problems of the cervical spine" and opined that she had "remained with very little, if any, disability. I believe her disability can be categorized as intermittent, minimal to slight cervical spine pain." Next, Dr. Gazaui stated that he could "see Dr. Rosco's point where he states 'this patient has an absolutely unbelievable symptom complex following a minor injury.'" Dr. Gazaui noted that appellant had normal studies of her lumbar and cervical spines. In summary, Dr. Gazaui agreed with the approach of Dr. Rosco that further care was unnecessary.

In a supplemental report dated October 23, 1995, Dr. Gazaui reiterated his opinion that appellant had "very little disability and can be categorized in the area of intermittent, minimal to slight pain. Dr. Gazaui stated that appellant's June 22, 1994 employment injury "left her with minimal problems in the cervical spine." He also stated that he found "very little objective findings for a significant number and intensity of subjective complaints." Dr. Gazaui again stated that he agreed with Dr. Rosco that further medical treatment was not warranted.

By letter dated November 9, 1995, appellant requested reconsideration of the November 9, 1994 decision and submitted a November 17, 1994 report from Dr. Avrom Gart,[8] a June 24, 1994 report from Dr. Waters, a June 26, 1994 report from Dr. Tesman, and a July 6, 1994 report from Dr. Alexander Kowblansky[9] in support of her request. Appellant argued that

[6] This was assigned claim number A13-1079755.

[7] A Board-certified orthopedic surgeon.

[8] A Board-certified physician in physical medicine and rehabilitation.

[9] A Board-certified emergency room physician.

there was a conflict in the medical opinion evidence requiring referral to an impartial medical specialist.

In a report dated November 17, 1995, Dr. Gart, based upon a physical examination, employment injury history and medical history, diagnosed fibromyalgia syndrome and cervical and lumbar sprains. Dr. Gart noted that appellant had developed pain in her lower back, frequent headaches and neck pain subsequent to the injury and that appellant denied any prior injuries to her neck or lower back. In support of his diagnosis of fibromyalgia, Dr. Gart noted that appellant's "[O]ngoing muscular aches and pains accompanied by fatigue, difficulty sleeping, and depression are consistent with fibromyalgia syndrome."

On November 30, 1995 the Office referred appellant, along with a statement of accepted facts and medical records, to Dr. Ramana Rao[10] to resolve the conflict in the medical opinion evidence[11] between Dr. Rosco and the opinions of Drs. Gart and Gazaui.[12]

By letter dated February 26, 1996, the Office enclosed information in regards to appellant's most recent claim and attached a supplemental statement of accepted facts and all of the medical records.

In a report dated March 8, 1996, Dr. Rao, based upon a physical examination, statement of accepted facts and review of the medical record, diagnosed cervical sprain, cervical spondylosis and dorsolumbar sprain. Regarding appellant's fibromyalgia, Dr. Rao opined:

> "After a thorough review of this individual's records, the report of Dr. Gart and the examination of this patient, it is the opinion of this examiner that this is a secondary type of fibromyalgia and will resolve with the treatment of her primary complaints, *i.e.*, cervical sprain, cervical spondylosis and dorsolumbar sprain. During the course of examination of this patient, the stated trigger points as indicated by Dr. Gart were not consistent with the findings elicited by this examiner."

By letter dated August 26, 1996, the Office referred appellant, together with a statement of accepted facts and medical records, to Dr. Stuart H. Baumgard for a second opinion as to the extent of any disability or residual effects from her accepted employment injury.[13]

In a report dated September 11, 1996, Dr. Baumgard, after a review of the medical evidence, statement of accepted facts, position description and a physical examination, opined that there was no objective evidence to support appellant's symptoms with regard to her lumbosacral spine and that she had full range of motion of her cervical spine. Regarding the

[10] A Board-certified orthopedist.

[11] The conflict in the medical evidence was for claim number A13-1056886.

[12] Appellant's appointment was rescheduled as the impartial medical specialist was unable to examine appellant due to recent surgery.

[13] This was for claim number A13-1079755.

diagnosis of fibromyalgia, Dr. Baumgard reported that appellant did not meet the diagnostic criteria defined by the American Rheumatologic College and that Dr. Gart incorrectly diagnosed appellant as having fibromyalgia based upon a subjective finding of tenderness which Dr. Baumgard indicated was "in all likelihood related to minor areas of muscle spasm" and unrelated to a diagnosis of fibromyalgia. With regard to appellant's lower back, Dr. Baumgard indicated that the objective evidence was insufficient to support any diagnosis as she had full range of motion and "no clinical evidence of nerve root irritability in her lower extremities in conjunction with a negative MRI [scan]." In summary, Dr. Baumgard opined that appellant is capable of performing her usual job without restrictions.

By decision dated October 24, 1996, the Office reviewed the merits of appellant's case and denied modification of its November 10, 1994 decision terminating wage loss and medical benefits effective June 24, 1994. In the attached memorandum, the Office noted that the issues were whether appellant sustained a lumbar strain, cervical strain and fibromyalgia due to her accepted June 22, 1994 employment injury and if yes to sustained cervical and lumbar strains, whether they had been resolved. The Office also determined that the referee opinion had been in error as the conflict had been among three treating physicians and thus, Dr. Rao's opinion would be considered as a second opinion. Regarding the lumbar strain, the Office found the opinion of Dr. Rosco, supported by the opinions of Drs. Mazurek and Gazaui, to be the weight of the evidence that appellant did not have a lumbar strain. Next, the Office found that Dr. Rosco's opinion represented the weight of the medical evidence to establish that appellant had not sustained a cervical strain from her June 22, 1994 employment injury. Lastly, the Office found, based upon Dr. Baumgard's opinion, that appellant does not have fibromyalgia.

The Board finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.[14]

The medical evidence in this case establishes that appellant had no disability causally related to a June 22, 1994 employment injury after June 24, 1994. In a June 24, 1994 report, Dr. Rosco opined that appellant did not require any further medical treatment and that she did not have any temporary or permanent disability causally related to her June 22, 1994 employment injury.

The Board finds that Dr. Rosco's opinion is rationalized and based on accurate factual and medical backgrounds, and thus supports a finding that appellant had no disability due to her June 22, 1994 employment injury after June 24, 1994. There is no rationalized medical evidence from appellant's subsequent attending physician finding a continuing medical condition that is causally related to the June 22, 1994 employment injury. In a treatment note dated July 11, 1994, appellant's attending physician, Dr. Mazurek, noted that appellant had injured her back at

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

work on June 22, 1994 and in a July 20, 1994 treatment note, indicated that the MRI test showed no evidence of disc herniation and diagnosed acute lumbar sprain with possible herniated disc. Dr. Mazurek subsequently recommended a return to work on August 10, 1994 with restrictions.[15] Dr. Mazurek, however, does not explain how, with reference to the specific facts of this case, appellant's disability subsequent to June 24, 1994 was related to her injury on June 22, 1994. Thus, his opinion is of little probative value and is insufficient to support a finding that appellant had any disability due to the accepted employment injury subsequent to June 24, 1994, the date the Office found appellant no longer had any residuals due to her accepted employment injury. The Board, therefore, affirms that the Office properly terminated appellant's wage loss and medical benefits compensation effective June 24, 1994.

The Board further finds that appellant has not established that her conditions of fibromyalgia, cervical strain and lumbar strain are causally related to her June 22, 1994 employment injury.

A person who claims benefits under the Federal Employees' Compensation Act[16] has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.[17] As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.[18] The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.[19] Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.[20]

In the instant case, appellant has not submitted any rationalized evidence supporting that her fibromyalgia, cervical strain and lumbar strain were causally related to her accepted June 22, 1994 employment. In support of her claim, appellant submitted a November 17, 1994 report from Dr. Gart in which he diagnosed fibromyalgia. Dr. Gart's opinion is insufficient to establish appellant's burden of proof as the physician did not provide any supporting rationale or medical reasoning explaining how or why her fibromyalgia was related to her June 22, 1994 employment injury. Thus, as Dr. Gart's opinion is unrationalized, it is insufficient to support a causal connection between the diagnosis of fibromyalgia and her June 22, 1994 employment injury.

[15] Subsequent to the Office's decision, Dr. Mazurek submitted a letter stating he agreed with Dr. Rosco's June 24, 1994 report.

[16] 5 U.S.C. §§ 8101-8193.

[17] *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

[18] *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[19] *Juanita Rogers*, 34 ECAB 544, 546 (1983).

[20] *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

As noted in the October 24, 1996 decision, the referral to an impartial medical examiner was in error as there had not been a conflict between an Office physician and appellant's treating physician such that Dr. Rao would be considered a second opinion physician. Dr. Rao, in her report, opined that appellant had a "secondary type of fibromyalgia" which would resolve with the treatment of her complaints. However, Dr. Rao provided no opinion as to whether appellant's fibromyalgia was due to her June 22, 1994 employment injury beyond noting that it would be resolved with treatment of her complaints due to her cervical sprain, cervical spondylosis and dorsolumbar sprain. Dr. Rao's opinion is also insufficient to establish that appellant's fibromyalgia was due to her June 22, 1994 employment injury as the physician offered no opinion as to the cause of appellant's fibromyalgia beyond noting that it would resolve with the treatment of appellant's primary complaints.

Dr. Baumgard opined, in an August 26, 1996 report, that appellant failed to meet the criteria for a diagnosis of fibromylagia. Dr. Baumgard provided supporting medical rationale to support his opinion that appellant did not have fibromyalgia by noting the criteria defined by the American Rheumatologic College and that Dr. Gart based his findings upon a subjective finding of tenderness. The Board finds the opinion of Dr. Baumgard to be the only rationalized medical opinion and, thus, that appellant does not have fibromyalgia due to her June 22, 1994 employment injury.

Regarding the issue of whether appellant had sustained a cervical strain and lumbar strain due to her June 22, 1994 employment injury, the Board finds that the opinion of Dr. Rosco supported by the opinions of Drs. Mazurek and Gazaui to be the weight of the evidence to establish that appellant did not sustain a lumbar or cervical strain due to her June 22, 1994 employment injury.

Dr. Gart's opinion is insufficient to establish that appellant had a cervical or lumbar strain due to her June 22, 1994 employment injury. Dr. Gart provided no supporting rationale to support his opinion beyond noting that appellant had no prior injury to her neck or lower back and that she developed pain subsequent to her injury. The Board has held that an award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[21] The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury was insufficient, without supporting medical rationale, to establish causal relationship.[22] Without medical rationale supporting causal relationship, Dr. Gart's opinion is merely surmise and conjecture.

The medical evidence of record therefore does not support, with rationalized medical evidence, a finding that appellant had sustained a cervical strain, lumbar strain or fibromyalgia due to her June 22, 1994 employment injury.

[21] *William S. Wright*, 45 ECAB 498 (1994).

[22] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The decision of the Office of Workers' Compensation Programs dated October 24, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 11, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member