U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENETH M. DEMESME and DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, New York, NY

Docket No. 98-1705; Submitted on the Record;
Issued January 18, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on June 26, 1997; (2) whether appellant met her burden of proof to establish that the work-related accident of September 30, 1986 caused injury to her cervical spine; and (3) whether appellant met her burden of proof to establish that her February 1, 1997 fall was consequential to her accepted September 30, 1986 injury.

On September 30, 1986 appellant, then a 54-year-old correctional officer, filed a claim alleging that she slipped on a wet floor and sustained injuries to her back, right shoulder and right hip. The Office accepted the claim for trauma to the right shoulder and right hip and trauma to the back with lumbar radiculopathy and paid appropriate benefits. Appellant stopped work on October 1, 1986 and has not returned. On February 1, 1997 appellant fell when she was entering her apartment building and hit her back and head. On April 14, 1997 the Office issued a notice proposing to terminate appellant's compensation benefits. By decision dated June 26, 1997, the Office terminated benefits, finding that the weight of the medical evidence rested with the opinion of Dr. Daniel Feuer, a Board-certified neurologist and referral physician, who found that appellant did not have any continuing disability as a result of the injury of September 30, 1986. Appellant requested a review of the written record.[1] In a decision dated November 3, 1997, an Office hearing representative found that the weight of the medical evidence established that appellant recovered without residuals no later than June 26, 1997 in regard to the September 30, 1986 employment injury to the right shoulder and trauma to the back with lumbar radiculopathy; appellant failed to meet her burden of proof that the September 30, 1986 incident caused an injury to her cervical spine; and that appellant failed to establish that the

[1] Appellant initially requested an oral hearing, but withdrew this request and asked for a review of the written record.

February 1, 1997 fall was caused by any of her accepted conditions. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference.

The Board has reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation on June 26, 1997.

Once the Office accepts a claim it has the burden of proving that the employee's disability has ceased or lessened before it may terminate or modify compensation benefits.[2] 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.[3] To discharge its burden of proof, it is not sufficient for the Office to simply produce a physician's opinion negating causal relationship. As with the case where the burden of proof is upon a claimant, the Office must support its position on causal relationship with a physician's opinion which is based upon a proper factual and medical background and which is supported by medical rationale explaining why there no longer is, or never was, a causal relationship.[4] 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.[5]

In the present case, the Office accepted that appellant sustained a trauma to her right shoulder, right hip and back with lumbar radiculopathy when she slipped on September 30, 1986. The Office terminated appellant's compensation benefits effective June 26, 1997 on the grounds that appellant had no continuing disability or residuals due to her accepted conditions.

The record reflects that no mention is made of appellant's accepted right shoulder condition until 1991. Of the pertinent medical evidence, there is no rationalized medical opinion to establish an ongoing causal relationship between appellant's current shoulder condition and the September 30, 1986 work-related accident. In her April and October 1991 reports, Dr. Nori noted that appellant had a history of lumbosacral radiculopathy and right shoulder pain, myofascitis since 1986 and provided a diagnosis of AC joint calcific tendinitis of the right shoulder. Dr. Nori, however, did not offer an opinion regarding the cause of appellant's shoulder condition or provide an explanation as to why appellant's shoulder complaints caused or contributed to continuing disability for work. In his August 11, 1992 report, Dr. Manspeizer reported findings of restricted motion in appellant's right shoulder, noted that the x-rays showed

[2] *Karen L. Mayewski*, 45 ECAB 219, 221 (1993); *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

[3] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[4] *Frank J. Mela*, 41 ECAB 115, 125 (1989).

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

osteoarthritic changes of the AC joint, and opined that appellant may have a rotator cuff tear. Dr. Manspeizer did not offer an opinion for the cause of appellant's condition or provide an explanation as to why she was experiencing such changes in her shoulder. Although, in his October 21, 1992 report, Dr. Charles diagnosed a right cervical radiculopathy and provided objective findings from the electromyography (EMG) and nerve conduction studies of the upper extremities, he did not offer an opinion regarding the cause of appellant's right cervical radiculopathy. In his August 15, 1994 report, Dr. Gladstone noted that appellant had full range of motion in her right shoulder but experienced pain in all ranges. She noted a diffuse tenderness of the right shoulder, especially anteriorly and crepitus in both shoulders. Dr. Gladstone noted that, although an October 1992 medical report mentioned an L5-S1 radiculopathy and calcific tendinitis of the right shoulder, she found no evidence of radiculopathy on the neurological examination. Dr. Gladstone opined that, as appellant does not have any neurological deficit, her symptoms were not causally related to the September 30, 1996 accident. In his September 7, 1995 report, Dr. Maker found pain in the right shoulder limited to 4/5 and diagnosed a right cervical radiculopathy based on the EMG abnormality found in 1992. He suggested a repeat magnetic resonance imaging (MRI) scan of the cervical and lumbosacral spines as well as an EMG of both the upper and lower extremities. These studies were completed in July and August 1996 and revealed evidence of a right cervical radiculopathy. In his May 6, 1997 report, which noted appellant's February 1997 nonwork-related accident, Dr. Maker failed to mention the new studies but continued to diagnose a right cervical radiculopathy present since trauma in 1986. Inasmuch as Dr. Maker did not refer to the objective testing in 1996 which first revealed evidence of a right cervical radiculopathy, his opinion is of less probative value as he failed to mention any objective findings for his conclusion or explain the physical basis and medical reasoning which resulted in his conclusion.

The Office had also accepted that the September 30, 1986 accident caused trauma to the back with lumbar radiculopathy. At the time the Office terminated appellant's compensation benefits, the most recent objective evidence included a July 1996 and February 1997 MRI of the lumbar spine which referenced an L5-S1 disc herniation. An earlier MRI of the lumbar spine taken in November 1988 revealed degenerative disease but no evidence of disc herniation. In his August 11, 1992 report, Dr. Manspeizer opined that appellant had findings of a chronic lumbosacral sprain with some minimal degenerative changes in the lumbosacral spine. In his October 21, 1992 report, Dr. Charles provided an impression of lumbosacral radiculopathy and bilateral carpal tunnel syndrome, which is not an accepted condition in this case. Dr. Maker also diagnosed lumbar radiculopathy in his reports of September 1995 and May 1997. Although in his May 6, 1997 report, Dr. Maker noted that appellant underwent a new lumbosacral MRI and this MRI was reported to be unchanged from a previous one, he described no objective findings on physical examination or provided objective evidence to support his diagnosis that appellant's lumbosacral radiculopathy has been present since 1986. Moreover, Dr. Maker failed to explain the physical basis and medical reasoning which resulted in his conclusion.

In his report of March 27, 1997, Dr. Feuer stated that appellant's neurological examination failed to demonstrate objective deficits referable to the central or peripheral nervous system. No objective neurological findings on examination supported appellant's subjective complaints of lower back pain with radiation into the right lower extremity. Dr. Feuer stated that the herniated disc at L5-S1 was not related to appellant's fall of September 30, 1996 as this

finding was not present on the 1988 MRI scan. He further stated that the 1996 MRI findings did not produce any objective neurological deficits to account for appellant's subjective complaints and, thus, there was no objective evidence of lumbosacral radiculopathy. He opined that appellant was suffering from a subjective lumbosacral pain syndrome which could be accounted for on the basis of degenerative changes to her lumbosacral spine due to the natural course of aging.

Dr. Feuer's March 27, 1997 report has the reliability, probative value and convincing quality with respect to the issue of whether appellant has any residuals from her accepted right shoulder trauma condition and trauma to the back with lumbosacral radiculopathy and provides a proper basis for the Office's termination of appellant's compensation benefits. In an opinion dated March 27, 1997, Dr. Feuer stated that he found no objective neurological findings on examination and the 1996 MRI finding of a herniated disc did not produce any objective neurological deficits to account for appellant's subjective complaints. There was no objective evidence of lumbosacral radiculopathy. There was also no objective neurological evidence or subjective complaints consistent with a cervical radiculopathy or carpal tunnel syndrome, conditions which were not accepted by the Office. Dr. Feuer stated that appellant does not demonstrate any objective neurological disability which is causally related to the accident of September 30, 1996. The Office hearing representative noted that, although it appeared that Dr. Feuer did not have all of appellant's prior medical records for review, he had the relevant objective testing of the lumbar spine performed in 1986, 1988, and 1996 and the EMG of the upper extremities performed in 1996. Dr. Feuer also had the benefit of an accurate statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Feuer provided proper analyses of the factual and medical history and findings on examination, including the results of the diagnostic testing and provided a medical rationale for his opinion by noting that appellant's subjective lumbosacral pain syndrome could be accounted for on the basis of degenerative changes of the lumbosacral spine due to the natural course of aging and there was no subjective complaints consistent or objective neurological evidence of cervical radiculopathy.

Thus, based on the evidence before the Office at the time of the June 26, 1997 decision, the Office's termination of appellant's compensation benefits was proper. After termination of compensation benefits, clearly warranted on the basis of the evidence, the burden of reinstating compensation benefits shifts to appellant.[6]

The Board finds that appellant has not established that the September 30, 1986 work accident caused an injury to her cervical spine.

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from that injury is deemed to arise out of the employment, unless it is the result of an intervening cause which is attributable to the employee's own intentional conduct.[7] An employee has the burden of establishing that any

[6] *Gary R. Sieber*, 46 ECAB 215 (1994).

[7] *Robert W. Meeson*, 44 ECAB 834 (1993).

specific condition for which compensation is claimed is causally related to the employment injury.[8]

Conditions concerning appellant's cervical spine were not accepted by the Office as being work related. Complaints involving the upper extremities did not arise until nearly six years after the accident when appellant was examined by Dr. Charles in August 1992. In her October 21, 1992 report, Dr. Charles diagnosed a right cervical radiculopathy following October 1992 EMG and nerve conduction studies. Dr. Maker also diagnosed a cervical radiculopathy in his reports of September 1995 and May 1997. While reports from both Drs. Charles and Baker noted appellant's upper extremity conditions and symptoms, the physicians failed to provide an opinion on whether appellant's cervical radiculopathy was causally related to the September 30, 1986 injury and provide medical rationale explaining why this condition would arise approximately six years postinjury. Moreover, it is noted that Dr. Gladstone, in his August 1994 report, stated that the EMG results of 1992 were not necessarily valid in 1994 and that the 1992 EMG evaluation of the cervical region was incomplete and not conclusive. As appellant has not provided medical opinion evidence causally relating her upper extremity conditions of cervical radiculopathy or carpal tunnel syndrome to the September 30, 1986 fall, the evidence is insufficient to meet appellant's burden of proof.[9]

The Board further finds that appellant has not established that her February 1, 1997 fall was consequential to her September 30, 1986 work-related accident.

The Board notes that although appellant contended that her February 1, 1997 fall in her apartment building constituted a consequential injury arising from her September 30, 1986 fall, there is no probative medical evidence establishing that the February 1, 1997 fall arose from or was caused by residuals of the September 30, 1986 injury. Only Dr. Maker's report of May 6, 1997 notes a history of the February 1, 1997 fall, however, he does not provide any other comments or note an injury arising from such fall. As appellant has not provided medical opinion evidence causally relating the February 1, 1997 fall to any of her accepted conditions, the evidence is insufficient to meet appellant's burden of proof.

[8] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence. *Elizabeth Stanislav*, 49 ECAB ___ (Docket No. 96-1030, issued May 26, 1998). Thus, as a lay person, appellant's opinion that her cervical condition and upper extremity conditions are causally related to her employment injuries has no probative value on the medical issue. *Birger Areskog*, 30 ECAB 571 (1979); *see also James A. Long*, 40 ECAB 538 (1989).

The Office of Workers' Compensation Programs decision dated November 3, 1997 is affirmed.

Dated, Washington, D.C.
January 18, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member