

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOREEN E. HICKS and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH, Bethesda, MD

*Docket No. 99-1264; Submitted on the Record;
Issued January 5, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from the accepted work injury.

On April 15, 1997 appellant, then a 35-year-old secretary, filed a claim for compensation alleging that on April 14, 1997 she injured her back while in the performance of duty. The Office accepted appellant's claim for a back contusion on July 7, 1997.¹

In a medical report dated November 7, 1997, Dr. Philip B. Bovell, appellant's treating physician and an orthopedic surgeon, stated that appellant had chronic sprain and fibromyalgia and that she was unable to return to work pending a rheumatology evaluation.

On February 13, 1998 the Office authorized an electromyography (EMG) and nerve conduction studies (NCS) as requested by Dr. Cynthia R. Morgan, appellant's treating physician and Board-certified in orthopedic surgery.

On May 8, 1998 the Office referred appellant, a statement of accepted facts, a list of specific questions and her medical record to Dr. H.S. Pabla, Board-certified in orthopedic surgery, for a second opinion evaluation.

In a medical report dated May 27, 1998, Dr. Pabla noted a familiarity with appellant's history of injury and stated that he had read her diagnostic studies including a magnetic resonance imaging (MRI) scan of lumbar spine, computerized axial tomography (CAT) scan along with the EMG and NCS studies which he determined was normal. He noted that lumbar spine x-rays were normal, interval spaces were well preserved, normal preservation of lumbar lordosis and no evidence of defect in the pars interarticularis or spondylolisthesis. Dr. Pabla

¹ The Board notes that record pages numbered 208-230 are not related to this claim.

noted that pelvic x-rays were normal and also noted no evidence of degenerative arthritis. Upon examination, he found no gross postural deformity in the thoracolumbar spine, no lumbar or paravertebral muscle spasm and no tenderness over the lumbosacral area, sciatic notch, or popliteal fossa. Dr. Pabla noted spinal range of motion results: forward flexion at 75 degrees, extension at 25 degrees, right and left lateral flexion at 30 and 30 degrees. He noted thoracolumbar rotation was painless, straight leg raising was 60 degrees on the right, and 60 degrees on the left, Patrick test was negative, Lasegue's sign was negative and no weakness revealed on neurological examination. Dr. Pabla stated that appellant's subjective complaints were literally out of proportion to the normal examination of the thoracolumbar spine. Provocative tests were normal and neurological examination was intact. The multiple tests of symptom magnification were positive. He noted that appellant had reached maximum medical improvement and could return to perform her regular duties without any limitations or restriction. Dr. Pabla reported that she was not a candidate for a supervised course of physical therapy, chronic pain and stress management, or work-hardening program. He also reported that there was no element of fibromyalgia.

In a medical report dated July 8, 1998, Dr. Morgan stated that, upon examination, appellant had spasms of paraspinal muscles, tenderness along the lumbosacral spine, tenderness upon palpation and left sciatic notch. She noted tenderness around hips with full extension and flexion. Dr. Morgan stated that appellant had bursitis, chronic lumbar strain and sciatica. She recommended medications and supervised aqua therapy and restricted her to no prolonged sitting and standing and no pushing or pulling greater than five pounds.

In a medical report dated August 8, 1998, Dr. Morgan stated that appellant had shown some improvement over the last six months, but that if appellant should return to her position full time, she was at increased risk of trauma. She noted that appellant had early signs of fibromyalgia and should have an evaluation for work endurance before returning to her usual routine.

On December 7, 1998 the Office proposed that appellant's compensation be terminated on the grounds that the opinion of the second opinion physician, Dr. Pabla, constituted the weight of the medical evidence in this case and that appellant no longer had residuals of her April 14, 1997 work-related injury. The Office advised appellant that she had 30 days to submit evidence if she disagreed with the Office's proposal to terminate benefits.

On March 2, 1999 the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence established that she no longer had residuals of her April 14, 1997 work-related injury.

The Board finds that the Office did not meet its burden of proof to terminate appellant's benefits due to an unresolved conflict in medical opinion evidence.

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States

and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”²

In this case, Dr. Pabla, in his May 27, 1998 second opinion report, stated that, upon examination, appellant had no lumbar or paravertebral muscle spasm, no tenderness along the lumbosacral area or sciatic notch and that she was not a candidate for physical therapy and could return to work without restriction. However, the record also contain a July 8, 1998 medical report from Dr. Morgan in which she finds spasms of paraspinal muscles, tenderness along the lumbosacral spine and tenderness upon palpation and along the sciatic notch. She further noted that appellant was a candidate for aqua therapy and placed restrictions on her activities. Thus, the record contains an unresolved conflict in medical opinion evidence as to whether appellant’s employment-related disability has ceased.

The March 2, 1999 decision of the Office of Workers’ Compensation Programs is hereby reversed.

Dated, Washington, D.C.

January 5, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² 5 U.S.C. § 8123(a).