U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THURMAL B. STRICKLAND and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Los Angeles, CA

Docket No. 99-1980; Submitted on the Record;
Issued January 21, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation on June 10, 1996; and (2) whether appellant met her burden of proof to establish that she had any disability after June 10, 1996 causally related to her employment injury.

On October 7, 1993 appellant, then a 41-year-old claims representative, sustained an employment-related back strain, acute cervical disc herniation and aggravation of cervical spondylosis symptoms when she was hit on her side by a closing door.[1] She stopped work that day and has not returned. The Office continued to develop the claim, and on March 10, 1994 and February 14, 1996 referred her to Board-certified orthopedic surgeons Drs. Fernando Ravessoud and Geoffrey Miller, respectively, for second-opinion evaluations. By letter dated May 8, 1996, the Office informed appellant that it proposed to terminate her compensation, based on the opinion of Dr. Miller. In response, appellant submitted a Form CA-8, claim for compensation and an attending physician's report from her treating Board-certified family practitioner, Dr. Alex Lippert. By decision dated June 10, 1996, the Office terminated her benefits, finding that she had no ongoing orthopedic condition causally related to either the October 21, 1991 or October 7, 1993 employment injuries.

By letter dated June 12, 1996, the Office issued a preliminary determination that appellant had received an overpayment of compensation in the amount of $1,209.60, which arose because life insurance premiums had not been withheld from her compensation for the period March 16, 1995 through May 26, 1996. The Office sent appellant an overpayment recovery questionnaire which she returned on June 18, 1996 requesting waiver and a hearing. At the hearing held on February 27, 1997, appellant indicated that she was appealing both the termination of benefits and the overpayment in compensation. By decision dated May 9, 1997,

[1] The record indicates that on October 22, 1991 appellant sustained an employment-related cervical strain after which she was off work for several days.

an Office hearing representative waived the overpayment of compensation and affirmed the decision dated June 10, 1996 terminating appellant's compensation. The facts of this case as set forth in the hearing representative's decision are hereby incorporated by reference. On April 27, 1998 appellant requested reconsideration. In a May 19, 1998 decision, the Office denied modification of the prior decision. The instant appeal follows.

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

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.[2] The term "disability" under the Federal Employees' Compensation Act means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.[3]

The medical evidence relevant to the termination of appellant's compensation includes a number of reports from her treating Board-certified family practitioner, Dr. Lippert. In an Office form report dated July 2, 1995, he noted findings of pain in the left posterior base of the neck and superior thoracic spine with radiation to the left shoulder and arm. Dr. Lippert diagnosed fibromyalgia and opined that appellant was disabled with a poor prognosis. He also indicated that on May 1, 1994 she was capable of performing some work with restrictions on lifting, pulling, pushing and no use of the left arm. In an August 21, 1995 treatment note, Dr. Lippert noted findings of tenderness on examination and diagnosed history of cervical disc disease and low back syndrome.

On March 10, 1994 the Office referred appellant to Dr. Fernando Ravessoud, a Board-certified orthopedic surgeon, for a second-opinion evaluation. In a May 2, 1994 report, he diagnosed cervical spondylosis at C5-6 and C6-7 with evidence of a relatively recent cervical disc herniation. Dr. Ravessoud advised that the disc herniation was employment related and that she continued to suffer residuals of the October 7, 1993 employment injury. He recommended that she undergo surgery and opined that her prognosis was guarded, depending on her choice of treatment.

On February 14, 1996 the Office referred appellant, along with the medical record, a statement of accepted facts and a set of questions, to Dr. Miller, a Board-certified orthopedic surgeon, for a second-opinion evaluation. In a March 20, 1996 report, he noted the history of injury and advised that appellant had recovered, "for the most part," within six months of the injury. Dr. Miller stated that her complaints could not be validated by objective findings and

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

[3] *See Major W. Jefferson*, III, 47 ECAB 295 (1996).

advised that there was no medical contraindication to her returning to work. Dr. Miller concluded:

> "It is impossible to determine whether or not [her] increased complaints since 1993 have anything to do with musculoskeletal injury as they could equally be the responsibility of what she describes as 'stress' which existed beforehand since she has no objective orthopedic changes. It is speculation to conclude that she has any disability from her 1993 incident, but accepting her statements, it appears that a slight permanent aggravation is reasonable, but not corroborated."

Following an Office request, in a supplemental report dated April 12, 1996, Dr. Miller stated that appellant was capable of performing her full duties as a claims representative. He advised that any aggravation was temporary and that she did not sustain any permanent disability due to the 1993 employment injury.

With her request for reconsideration, appellant raised a number of arguments that the termination was improper. Regarding her contention that the Office solicited a favorable response from Dr. Miller by requesting a supplementary report, the Board finds that the Office properly requested that he explain an apparent contradiction in his March 20, 1996 report. Appellant also argued that Dr. Miller based his conclusion on an incorrect history of injury. He was, however, furnished with a statement of accepted facts that contained a history of injury as described by appellant. She also argued that Dr. Miller stated that she had previously worked with lupus when this had just been diagnosed and that he stated that she lacked motivation to return to work. These allegation by appellant are irrelevant to whether her employment-related disability had ceased. Appellant also commented regarding the vocational rehabilitation services offered to her. The Board notes that the Office is vested with discretionary power to determine an injured employee's needs.[4] Lastly, appellant argued that a conflict in the medical opinion evidence had been created between the opinions of Drs. Ravessoud and Miller. The Board notes that to establish a conflict, the disagreement must be between a physician making the examination for the Office and the physician of the employee.[5] In this case, both Drs. Ravessoud and Miller provided second-opinion evaluations for the Office.

Regarding the medical evidence, the Board initially notes that the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians.[6] Here, as Dr. Lippert is not a specialist in the relevant field, his opinion is entitled to less weight than that of Drs. Ravessoud or Miller.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and

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[4] *See Edward E. Johnson*, 39 ECAB 611 (1988).

[5] *Charles F. Burke*, 47 ECAB 185 (1995).

[6] *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7] The Board finds that the weight of the medical evidence rests with the comprehensive reports of Dr. Miller. While Dr. Ravessoud advised in March 1994 that appellant continued to suffer from residuals of the employment injury, in his March and April 1996 reports, Dr. Miller advised that there was no contraindication to appellant's returning to work and that the aggravation of her spondylosis was temporary and had ceased. The Office, therefore, met its burden of proof to terminate appellant's compensation benefits,

The Board further finds that appellant failed to establish that she had an employment-related disability after June 10, 1996.

As the Office met is burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had disability causally related to her accepted injury.[8] To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[9] Causal relationship is a medical issue,[10] 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.[11] Medical evidence of bridging symptoms between the current condition and the accepted injury must support a physician's conclusion of a causal relationship.[12]

The evidence submitted by appellant subsequent to the June 10, 1996 Office decision, terminating her compensation includes a July 15, 1996 report in which Dr. Lippert advised that appellant continued to experience pain due to the employment injury, stating that if she were to return to work, "her symptoms would interfere with her ability to perform her usual and

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

[8] *See George Servetas*, 43 ECAB 424 (1992).

[9] *See* 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, 45 ECAB 383 (1994).

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

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

[12] *See Leslie S. Pope*, 37 ECAB 798 (1986).

customary duties." He concluded that she was "permanently partially disabled." In a March 4, 1997 report he stated:

> "To clarify my letter of July 15, 1996 -- the term "permanently partially disabled" refers to the patient's ability to do some work given certain restrictions. (See limited-duty restrictions -- March 1994). Total disability would indicate the patient is unable to return to any gainful employment."

A medical opinion consisting solely of a conclusory statement regarding disability, without supporting rationale, is of little probative value.[13] The Board, therefore, finds that Dr. Lippert's reports are insufficient to establish that appellant continued to be disabled after June 10, 1996 due to the October 7, 1993 employment injury. She, thus, failed to meet her burden of proof.

The decision of the Office of Workers' Compensation Programs dated May 19, 1998 is hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[13] *See Marilyn D. Polk*, 44 ECAB 673 (1993).