

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHNE' CONEY and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Bensalem, PA

*Docket No. 98-1560; Submitted on the Record;
Issued March 20, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective January 13, 1997.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective January 13, 1997.

Appellant, a tax examiner, filed a claim on May 3, 1994 alleging that on that date she injured her back, left knee and left ankle when an elevator malfunctioned. The Office accepted her claim for aggravation of preexisting back and knee conditions and a left ankle sprain.¹ By decision dated November 16, 1995, the Office terminated appellant's compensation benefits. She requested an oral hearing and by decision dated August 29, 1996 and finalized September 5, 1996, the hearing representative found that the report of the second opinion physician was not sufficient to meet the Office's burden of proof and set aside the November 16, 1995 decision. The Office proposed to terminate appellant's compensation benefits by letter dated December 10, 1996. The Office terminated her benefits on January 13, 1997. Appellant requested an oral hearing on January 15, 1997 and by decision dated January 29, 1998 and finalized February 2, 1998, the hearing representative affirmed the Office's January 13, 1997 decision finding that the report of Dr. Easwaran Balasubramanian, a Board-certified orthopedic surgeon, established that appellant was no longer disabled for her accepted employment-related injuries.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.²

¹ Appellant sustained injuries to both knees, her left foot and her lower back in a motor vehicle accident in April 1994.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.⁵

In this case, appellant's attending physician, Dr. Steven Klein, an osteopath, supported her total disability for work. The Office referred appellant for a second opinion evaluation with Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon. He completed a report on July 19, 1995 and reviewed the statement of accepted facts. Dr. Eckbold stated that he needed to review additional historical medical reports. In his November 16, 1995 report, he reported residual warmth of the infrapatellar fat pad of the left knee.⁶ Following the hearing representative's September 5, 1996 decision, the Office requested an additional report from Dr. Eckbold. On October 7, 1996 he reviewed additional medical records and stated that his examination on July 19, 1995 indicated only that appellant had residual warmth secondary to the arthroscopy. Dr. Eckbold stated that this was the lone objective finding and that it was normal given her recent surgery. He stated, "Otherwise [appellant] had subjective complaints with no objective functional deficits referable to the spine or extremities.... [She] is able to return to her preinjury job, primarily sitting, occasional walking and mild lifting to 10 pounds. I anticipate no further treatment in the future for [appellant's] subjective complaints."

Dr. Klein completed a report on July 26, 1996 and noted appellant's history of injury. He listed his physical findings including limited range of motion of the lumbar spine with spasm as well as pain in the left ankle with no swelling. Dr. Klein concluded that appellant was totally disabled and stated that he expected acute exacerbations of her injured areas.

The Office found a conflict of medical opinion evidence between Drs. Klein and Eckbold and referred appellant for an impartial medical evaluation by Dr. Balasubramanian, a Board-certified orthopedic surgeon, on November 5, 1996.⁷ The Board notes that the second hearing representative found that Dr. Balasubramanian was not an impartial medical examiner as

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ Appellant underwent knee surgeries on July 25 and December 7, 1994.

⁷ Dr. Balasubramanian was selected in accordance with the Office's established procedures for selecting an impartial medical examiner. Appellant's attorney requested to participate in the selection of the impartial medical examiner to "assure that the claimant receives a truly impartial evaluation concerning this matter." The Board has held that a claimant must offer a valid reason for any participation request. *Irene M. Williams*, 47 ECAB 619, 623 (1996). In this case, appellant did not pursue this request following Dr. Balasubramanian's selection as the impartial examiner and did not offer a valid reason for the request to participate; *see* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(4) (March 1994).

there was no direction in the August 29, 1996 hearing representative decision for an impartial examination.

Section 8123(a) of the Federal Employees' Compensation Act,⁸ provides, "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." At the time of the Office's referral on November 5, 1996, the Board finds that there was a conflict of medical opinion evidence between Dr. Klein, who opined that appellant had objective findings of lumbar spasm and was totally disabled and Dr. Eckbold, who found no objective findings of disability other than warmth of the infrapatellar fat pad secondary to surgery and opined that appellant could return to full duty with no further medical treatment.

In his report dated December 6, 1996, Dr. Balasubramanian noted appellant's history of injury, including the automobile accident in April 1994, described her prior medical treatment and reviewed the medical reports of record. He performed a physical examination and noted that appellant's ankle examination was inconsistent. Dr. Balasubramanian stated that appellant reported that she could not move her ankle but that when walking appellant was able to bring the ankle up without any problem. He found that appellant demonstrated greater range of motion of the spine when sitting than she did on direct examination. Dr. Balasubramanian stated, "At the present time based on my history taken, physical examination and review of the extensive medical records I feel that [appellant] has symptom magnification as there are many contradictive findings on the examination. I feel that at this time answering your question that there are no objective findings to demonstrate a current lumbosacral sprain." He also found that appellant had no ongoing condition related to her work injury. Dr. Balasubramanian attributed appellant's knee symptoms to severe chondromalacia which was evident prior to accepted employment injury and stated that she had no objective signs of any ongoing problems of the ankle.

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.⁹ In this case, Dr. Balasubramanian reviewed the factual and medical history and performed a physical examination. He noted the existence of contradictory findings on physical examination and explained why these findings indicated symptom magnification. Dr. Balasubramanian found no objective findings supporting continuing back or ankle conditions due to appellant's accepted employment injury. He further noted that appellant had a preexisting left knee condition and explained why he felt that this condition was not related to appellant's accepted employment injury. The Board finds that Dr. Balasubramanian's detailed report is entitled to the weight of the medical evidence.

Dr. Klein submitted an additional report on January 9, 1997 noting appellant's history of injury including her April 1994 motor vehicle accident. He performed a physical examination

⁸ 5 U.S.C. §§ 8101-8193, 8123(a).

⁹ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

which demonstrated left ankle pain on palpitation as well as a difference in circumference at two levels between appellant's left and right ankles. Dr. Klein reviewed a magnetic resonance imaging (MRI) scan of appellant's left ankle taken on January 6, 1997. He found ongoing posterior tibialis tenosynovitis and soft tissue edema demonstrated. Dr. Klein also reviewed a January 3, 1997 MRI scan of appellant's left knee and found incomplete interstitial tear of the insertion of the quadriceps tendon, lateral subluxation of the patella and chondromalacia of the patella. He opined that appellant was totally disabled.

On April 17, 1997 Dr. Klein repeated his earlier report and noted that he examined appellant on April 16, 1997. He reported left ankle pain on palpitation and spasm of the lumbosacral spine with range of motion limited due to pain. Dr. Klein did not report any new findings in regard to appellant's left knee. He concluded that appellant was totally disabled.

While these reports offer objective physical findings in appellant's left knee and left ankle demonstrated on MRI scans, Dr. Klein did not provide any medical reasoning explaining why or how her employment injury resulted in these continued conditions. This explanation is necessary given appellant's preexisting knee condition and the detailed report of Dr. Balasubramanian which found that any knee condition was due to preexisting impairments and that her back and ankle had no objective physical findings. Furthermore he did not explain how appellant's conditions demonstrated on MRI scans prevented her from performing the duties of the date-of-injury position. Finally, as Dr. Klein was on one side of the conflict that Dr. Balasubramanian resolved, the additional reports from Dr. Klein are insufficient to overcome the weight accorded Dr. Balasubramanian's report as the impartial medical specialist or to create a new conflict with it.¹⁰

Appellant submitted a report from Dr. Gerald D. Hayken, a Board-certified orthopedic surgeon, dated February 18, 1997. He noted appellant's motor vehicle accident in April 1994 and resulting injuries as well as her accepted employment injuries. Dr. Hayken performed a physical examination finding loss of range of motion of the left knee and ankle. He noted that appellant sustained injuries in the motor vehicle accident that were exacerbated by her employment injury. Dr. Hayken stated that appellant's range of motion of her left knee was within normal limits following her surgery and that he did not understand why she was so limited currently. He also diagnosed posterotibial tendinitis of the left ankle and recommended further treatment. Dr. Hayken did not provide an opinion regarding whether appellant's current conditions were due to her accepted employment injury. Without the necessary medical rationale explaining the causal relationship between appellant's current conditions and her accepted employment injuries, his report is not sufficient to create a conflict with the well-reasoned opinion of Dr. Balasubramanian.

¹⁰ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

The February 2, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 20, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member