U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of HARRIETT A. URQUHART and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE MID ATLANTIC REGION, Bensalem, PA

*Docket No. 99-610; Submitted on the Record;*
*Issued May 23, 2000*

---

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's medical and compensation benefits.

The Office accepted that appellant's March 18, 1993 work injury resulted in a low back strain and a fracture of the left scaphoid of the wrist. The Office paid appropriate benefits and appellant returned to work at half-days on October 4, 1993 and resumed full-time duties on October 18, 1993. Appellant filed a subsequent claim for recurrent disability beginning November 18, 1993, which the Office denied in a decision of December 5, 1994. Thereafter, the Office terminated medical and compensation benefits in a decision of August 12, 1996. In a decision dated July 22, 1997, an Office hearing representative affirmed the prior decisions finding that all injury-related disability had ceased. By decision dated October 19, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

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

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.[1] 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.[2] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[3] To

[1] *Lawrence D. Price*, 47 ECAB 120 (1995).

[2] *Id.*

[3] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[4]

In an October 27, 1993 medical report, Dr. Richard Trabulsi, a Board-certified orthopedist and an Office referral physician, diagnosed low back strain/sprain; fracture, left scaphoid (carpal navicular); and bilateral carpal tunnel syndrome. He stated that appellant had no significant symptoms referable either to her wrist or to her low back and opined that neither injury was likely to produce any permanent disability. In a December 9, 1993 report, Dr. Richard L. Band, a Board-certified orthopedist, stated that appellant had acute low back pain due to degenerative disc disease. The Office determined that a conflict of medical opinion existed and referred appellant, a statement of accepted facts and a list of specific questions to Dr. Leonard Brody, a Board-certified orthopedic surgeon, for a complete medical evaluation. In an August 3, 1994 medical report, Dr. Brody reviewed the medical records and provided his examination results, which consisted of a normal examination of the left wrist and hand. He stated that appellant suffered from discogenic disease at L5-S1 with no residuals. Dr. Brody noted that because the narrowing of the L5-S1 interspace was seen on x-rays done on April 6, 1993, two weeks after the employment injury, it was obvious that these changes preexisted the employment injury. He further stated that appellant had no positive physical findings referable to either the left hand, left wrist, or lumbar spine. With that in mind, Dr. Brody opined that appellant had recovered from any soft tissue injuries, which she may have suffered at the time of her March 18, 1993 employment injury. Based on his examination, he further opined that appellant could work full time without restriction. Dr. Brody additionally felt that further medical treatment or physical therapy was not appropriate.

By decision dated December 5, 1994, the Office denied the recurrence of disability claim finding that the weight of the medical evidence rested with the reports of Drs. Trabulsi and Brody. Concurrently, on December 5, 1994, the Office issued a notice of proposed termination of all benefits. Appellant disagreed with the denial of benefits and requested a hearing.

The Office received reports from Drs. Conrad K. King, Jr., a Board-certified internist and Scott Fried, an osteopath. In a November 23, 1994 report, Dr. Fried opined that appellant's conditions of traumatic arthrosis in the hand, median and radial neuropathy of the left wrist, brachial plexus traction injury on the left and flexor tenosynovitis of the left hand were causally related to her March 1993 employment injury.

In a March 23, 1995 report, an Office medical adviser noted that Drs. King and Fried found conditions which Dr. Brody did not. He recommended that as Dr. Fried provided his own reading of the November 23, 1994 x-ray to support his opinion, the Office should have the x-ray read by a Board-certified radiologist to determine whether there was a pathology of the hand.

In an August 9, 1995 report, Dr. Hugh J. Mullin, a Board-certified radiologist and an Office referral physician, stated that he reviewed the previous radiographic images of the hands as well as an examination of the cervical spine and examination of both shoulders. He stated that all images were duplicative and because of the duplicating process, the images were less than

[4] *Id.*

optimal for evaluation. In addition, the seventh cervical vertebra was not included on the lateral views of the cervical spine and the C6-7 disc spaces were barely visible. After reviewing the films, Dr. Mullin concluded that there was no definite abnormality demonstrated in the shoulders. He stated that there appears to be slight degenerative disc disease at C6-7, but no other definite abnormality was seen in the cervical spine. Dr. Mullin noted slight degenerative arthritis in the wrists; specifically slight degenerative arthritis at the left and right first carpometacarpal (CMC) joints and mild degenerative arthritis at both radiocarpal joints. However, no other abnormalities were noted in the hands or wrists.

Both Drs. King and Fried continued to provide follow-up reports concerning appellant's treatment and progress. Dr. King continued to diagnose residuals of chronic lumbosacral stain/sprain and post-traumatic de Quervain's tendinitis of the left hand which were casually related to the March 1993 employment injury. He further opined that appellant remained totally disabled. Dr. King, however, failed to provide any medical rationale to support a relationship between his findings and the March 18, 1993 employment injury.

In a December 13, 1995 report, Dr. Fried diagnosed the conditions of left brachial plexopathy with an electromyogram (EMG) positivity; median neuropathy bilaterally with EMG positivity; traumatic arthrosis CMC joint left thumb; traumatic arthrosis left AC joint; and status post brachial plexus tractioning injury left. He indicated that appellant wished to proceed with surgical intervention. In a March 6, 1996 report, Dr. Fried diagnosed left brachial plexopathy EMG positive status post brachial plexus traction injury; median neuropathy bilaterally with EMG positivity; and traumatic arthrosis left thumb CMC joint and left AC joint. The various surgeries available were discussed as well as the potential of a reflex sympathetic dystrophy. Drs. King and Fried failed to submit any medical rational to support a causal relationship.

In a July 15, 1996 report, an Office medical adviser reviewed the file and stated that the accepted work-related conditions, fracture of the navicular and lumbar strain due to the fall over three years ago, had resolved. He stated that appellant had underlying lumbar degenerative joint disease and arthritis in both hands of the same severity. He noted that these conditions can produce symptoms, but were not caused by the fall. He noted that both Drs. Fried and King list several additional diagnoses and want authorization for surgery, but they do not adequately explain how these diagnoses arose from the 1993 injury; especially after the impartial orthopedic surgeon found her conditions due to the 1993 fall to have resolved. The Office medical adviser opined that no further medical care was indicated for the accepted conditions.

By decision dated August 12, 1996, the Office terminated both medical and compensation benefits. Appellant requested a hearing and submitted evidence which was already of record along with a March 17, 1997 report from Dr. King in which he reiterates his previous opinion. Progress reports from Dr. Juliette Louis-Charles, an osteopath, were also included. By decision dated July 22, 1997, an Office hearing representative affirmed the prior decisions.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective August 12, 1996 as the weight of the medical evidence supports that appellant did not suffer a compensable recurrence of disability in November 1993 and there are no residuals of her March 18, 1993 employment injury.

Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f 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."[5] The opinion of the physician selected by the Office, called an impartial medical examiner or independent medical specialist, if sufficiently well rationalized and based upon a proper factual background, must be give special weight.[6] In this case, the Office found a conflict in medical opinion to exist between appellant's attending physician, Drs. Band and Trabulsi, the Office second opinion physician.

To resolve the conflict in the medical opinion as to whether appellant was suffering from a compensable recurrence of disability in November 1993, the Office referred this claim to Dr. Brody, a Board-certified orthopedist, for an impartial medical evaluation. In his August 3, 1994 medical report, Dr. Brody reviewed the statement of accepted facts and all medical and factual evidence of record. He noted that the examination consisted of a normal examination of the left wrist and hand. Dr. Brody stated that appellant suffered from discogenic disease at L5-S1 with no residuals. He noted that because the narrowing of the L5-S1 interspace was seen on x-rays done on April 6, 1993, two weeks after the employment injury, it was obvious that these changes preexisted the employment injury. Dr. Brody further stated that appellant had no positive physical findings referable to either the left hand, left wrist, or lumbar spine. With that in mind, he opined that appellant had recovered from any soft tissue injuries, which she may have suffered at the time of her March 18, 1993 employment injury. Based on his examination, Dr. Brody further opined that appellant could work full time without restriction. He additionally felt that further medical treatment or physical therapy was not appropriate. The Board finds that Dr. Brody's opinion is based on a complete and accurate factual background and is sufficiently well rationalized to be accorded special weight.

However, as Dr. Fried had opined in his November 23, 1994 report, that appellant still suffered from residuals of the work injury and additionally suffered from traumatic arthrosis in the hand, neuropathy, brachial plexus traction, and flexor tensynovitis of the left hand, the Office requested that Dr. Fried's November 23, 1994 x-rays be read by Board-certified radiologist, Dr. Mullin. In his August 9, 1995 report, Dr. Mullin opined that the x-rays showed no definite abnormality in the shoulders, slight degenerative disc disease at C6-7, slight degenerative arthritis at the left and right first CMC joints and mild degenerative arthritis at both radiocarpal joints. He further opined that there was no evidence of fracture, dislocation, subluxation or other joint pathology.

As, the report by a specialist in the appropriate field of medicine, Dr. Mullins, is entitled to more weight than that of one whose speciality is in a less appropriate field, Dr. Fried, an osteopath who specializes in othopedics.[7] Moreover, although he opined that appellant continued to suffer from residuals of her work injury, Dr. Fried failed to supply any opinion or medical rationale to support such a relationship. Therefore, Dr. Fried's November 23, 1994

[5] 5 U.S.C. § 8123(a).

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

[7] *Mildred L. Cook*, 31 ECAB 1655 (1980).

report and his subsequent reports thereafter, which essentially mirror the findings and opinions in the November 23, 1994 report, are not of sufficient weight to create a conflict in the medical evidence or to overcome the weight of the medical evidence as represented by the report of Dr. Brody.

Although Dr. King had also opined that appellant continued to suffer residuals of her March 18, 1993 injury and has diagnosed several conditions, he is not an appropriate specialist and his reports are of diminished probative value as there is no medical rationale provided to support such a causal relationship. As such, the reports of Dr. King are not of sufficient weight to create a conflict in the medical evidence or to overcome the weight as represented by Dr. Brody.

Thus, based on the evidence before the Office at the time of the August 12, 1996 decision terminating benefits was rendered, the Office's termination of appellant's compensation benefits and medical treatment was proper.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he has a disability causally related to his accepted employment injury.[8] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

Although subsequent reports from Drs. Fried and King and new reports from Dr. Louis-Charles, an osteopath, and Dr. Martin D. Weaver, Board-certified in physical medicine and rehabilitation, supported injury-related disability and conditions not accepted by the Office neither physician provided a rationalized opinions to support injury-related disability. Accordingly, these reports are of limited probative value and are not of sufficient weight to create a conflict in the medical evidence or to overcome the weight as represented by Dr. Brody.

In his reconsideration request of July 14, 1998, appellant's attorney, Thomas R. Uliase, argued that Dr. Brody's report is not sufficiently reasoned to sustain the Office's burden in this case. Appellant's attorney contended that although Dr. Brody outlined the results of his examination, no rationale was provided for his conclusion that appellant recovered from her soft

[8] *George Servetas*, 43 ECAB 424, 430 (1992).

[9] *James Mack*, 43 ECAB 321 (1991).

tissue injuries sustained at the time of her work accident on March 18, 1993. It was noted that the claim was accepted for fracture of the left carpal navicular, not soft tissue injuries. Appellant's attorney also contended that although Dr. Brody's report confirmed that there was a substantial grip strength deficit on the left hand, Dr. Brody failed to discuss the relationship of the grip strength deficit to the work injury. Appellant's attorney further argued that Dr. Brody's report reflected an inaccurate medical history in his conclusion that appellant recovered from any "soft tissue injuries," as the claim was clearly accepted for a fracture.

The Office noted and the Board so finds, that Dr. Brody's report discussed appellant's soft tissue injuries because there is no evidence from either Dr. Brody or any of appellant's treating physicians, which support that appellant continued with residuals from the fracture of left carpal navicular. Dr. Trabulsi, in his report of October 7, 1993, noted the history of the fracture of left carpal navicular, but found appellant had no significant symptoms referable to her wrist. Although evidence of bilateral carpal tunnel syndrome was noted, this condition was not causally related to appellant's work injury. Dr. King's reports focused on appellant's complaints of continued back pain and Dr. Fried's reports focused on left upper extremity pain. Moreover, the November 23, 1994 x-rays taken by Dr. Fried and read by Dr. Mullin fail to demonstrate any evidence of a fracture or continuing residuals in November 1994. Accordingly, as there is no evidence of a fracture or continuing residuals from the accepted fracture of left carpal navicular, Dr. Brody could properly classify and address appellant's continuing complaints as a soft tissue injury.

Although appellant's attorney properly notes that Dr. Brody performed a J-Mar Dynamometer Grip Strength Reading on appellant, he opined there was a normal examination of the left wrist and hand. Moreover, it is noted that the record contains an August 9, 1994 Functional Capacity Evaluation which was found to be invalid. The assessment indicated that the results were not indicative of appellant's capabilities and that appellant was trying to manipulate the results of the assessment. Given these results, the grip strength testing is not considered to be probative of appellant's condition as it cannot be considered an objective test. Accordingly, none of the reports from appellant's physicians were sufficient to create a conflict or to overcome the weight of the medical evidence as represented by Dr. Brody.

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

Dated, Washington, D.C.
May 23, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member