

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN S. BROWN and DEPARTMENT OF VETERANS AFFAIRS,
DURHAM VETERANS ADMINISTRATION HOSPITAL, Durham, NC

*Docket No. 98-1678; Submitted on the Record;
Issued October 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective August 17, 1997; (2) whether appellant met her burden of proof, following the Office's termination of compensation, to establish that she had a work-related disability on or after August 17, 1997, causally related to her accepted July 4, 1986 cervical strain; (3) whether appellant met her burden of proof to establish that she has a chronic cervical strain causally related to her federal employment; and (4) whether appellant met her burden of proof to establish that she developed a psychiatric condition as a consequence of her 1986 accepted cervical strain.

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.

On July 4, 1986 appellant, then a 41-year-old nurse, filed a claim for traumatic injury alleging that on that date she sustained an injury to her neck while assisting a patient in the performance of duty. The Office accepted her claim for a cervical strain.

In addition to her employment-related cervical strain, appellant had several nonwork-related neck and back injuries. On November 25, 1985 following an automobile accident, appellant underwent a C5-6 hemilaminectomy and C6 foraminotomy. Cervical spine x-rays performed on April 8, 1986 revealed the presence of mild to moderate cervical spondylosis. She also underwent a lumbosacral spinal fusion in 1993 and underwent a follow-up surgical procedure to remove the fusion hardware and implant a bone graft stimulator in June 1996. In September 1996 appellant was involved in another motor vehicle accident and reported increased neck pain. In December 1996 her bone graft stimulator was surgically removed. In addition, on April 2, 1991 appellant admitted herself to Holly Hill Hospital for psychiatric treatment. She worked intermittently and received continuation of pay from August 25 to 28, 1996. Appellant returned to work until July 11, 1990, when she stopped work and filed a claim for a recurrence of disability. She subsequently retired on Office of Personnel

Management disability. In May 1991 she elected to receive Office benefits and has been in receipt of compensation for temporary total disability since May 1, 1991.

In a letter dated February 6, 1997, the Office proposed to terminate appellant's compensation benefits. After reviewing additional medical evidence by decision dated July 21, 1997, the Office terminated appellant's compensation and medical benefits effective August 17, 1997. Appellant, through counsel, requested reconsideration and submitted additional arguments in support of her claim. In a decision dated March 25, 1998, the Office found the arguments submitted by appellant insufficient to warrant modification of the July 21, 1997 decision terminating 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 terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

In this case, the record contains numerous medical reports and progress notes from appellant's various treating physicians dating from 1985 through 1994, however, the evidence contemporaneous with the Office's decision to terminate appellant's compensation benefits is more limited. This evidence includes treatment notes from the Carolina Pain Consultants Clinic dating from September 6, 1995 through June 13, 1996, where she received trigger point injections for myofascial pain and chronic back pain syndrome. None of the reports from the pain clinic physicians, however, contains an opinion as to the cause of appellant's back pain, or its relationship, if any, to appellant's July 4, 1986 cervical strain. The record also contains a March 11, 1997 report from Dr. Kenneth Banks, a Board-certified family practitioner and treating physician. In his report, Dr. Banks listed his diagnosis as cervical and lumbar sacral disc disease with radiculopathy, and noted that appellant was also status post cervical and lumbar discectomy and laminectomy. He further noted that appellant remained in constant pain with paresthesia and weakness of the arms and legs, and that she required a cane for ambulation. Dr. Banks stated that appellant could sit for only an hour or less, could only walk a few feet before needing a rest, and could not bend, stoop, crawl or carry over five to ten pounds. He finally noted that appellant had also been very depressed over the past few years, mainly concerning her poor health and concluded that he did not believe appellant could be gainfully employed, but was medically disabled. Dr. Banks did not discuss, however, the causal relationship, if any, between appellant's back pain and her July 4, 1986 cervical strain. The

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

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

⁴ *Id.*

record further contains an April 8, 1997 report from Dr. William J. Mallon, a Board-certified orthopedic surgeon and treating physician. In his report, Dr. Mallon noted appellant's lengthy history of back and neck problems and stated that her primary complaint was back pain, although she also had neck pain. He noted that neurologically appellant was intact in all major muscle groups in both the upper and lower extremities and that range of motion of the cervical and lumbar spine was limited mostly by pain, although no specific findings were found on physical examination. Dr. Mallon diagnosed low back pain with failed back syndrome and cervical pain with failed cervical syndrome. He concluded that he felt he had nothing further to offer appellant and advised that she be treated by a pain clinic or a psychiatrist and have someone manage her medicines. Dr. Mallon did not discuss the cause of appellant's neck or back conditions, other than to note that she had had multiple failed surgeries.

On July 12, 1996 the Office referred appellant, together with a statement of accepted facts, the medical opinions of record and a list of issues to be addressed, to Dr. George S. Edwards, a Board-certified orthopedic surgeon, for a second opinion evaluation.⁵ In his report dated September 18, 1996, Dr. Edwards noted appellant's history of multiple neck and back injuries, including a motor vehicle accident that had occurred just two weeks prior to his examination. He performed a complete physical examination, noting that appellant had full flexion and extension and full lateral motion of her neck, as well as full range of motion of all her upper limbs, with good grip strength and good agility. Dr. Edwards added that while appellant complained of pain, especially in the left trapezius area, the muscle was soft with no spasm and there were no objective findings on examination of the neck and upper limbs, except for the healed surgical scar from her prior laminectomy. He concluded that appellant's 1986 employment-related cervical strain had resolved. Dr. Edwards explained his conclusion stating:

"I have no objective findings whatsoever to indicate that she continues to have cervical strain since July 4, 1986. She has had another recent automobile accident that possibly has given her cervical stain, but this would have nothing to do with her previous injury after 10 years. She has had normal EMG's and nerve conduction studies after her 1986 injury. True cervical strains resolve on their own and in her case, it is my opinion that it did resolve although initially it may have aggravated a preexisting cervical disc that was removed two years prior. The work injury could have made her neck hurt from the strain, but due to her normal nerve studies, it was not a permanent condition. As I have never seen this patient before and it has been 10 years since the work injury occurred, I [a]m certainly not able to say or give the approximate date the aggravation ceased. Due to other problems such as her back problems and other problems not related with her cervical strain, I do not believe she is able to be employed. As far as cervical strain is concerned she could be employed with no restrictions."

The Board finds that the weight of the medical opinion evidence rests with Dr. Edwards' well-rationalized narrative report. Dr. Edwards provided a history of injury and appellant's

⁵ In January 1994 the Office referred appellant to Dr. Barrie Hurwitz for a second opinion evaluation. However, after several unsuccessful attempts to elicit further elaboration and clarification for Dr. Hurwitz, the Office chose to send appellant to Dr. Edwards.

medical history, reviewed the results of early tests, and performed a complete physical examination. He noted that there were no objective signs of appellant's accepted cervical strain, and added that the accepted condition, given the normal nerve studies, would have resolved within a few months. While Dr. Edwards found appellant probably totally disabled, he specifically stated that as far as appellant's accepted 1986 cervical strain was concerned, she could be employed with no restrictions. Therefore, the Office properly relied on Dr. Edwards' report in terminating appellant's benefits. Furthermore, the record contains no contrary medical evidence as none of appellant's physicians addressed the cause of appellant's current condition, or its relationship, if any, to her 1986 accepted cervical strain. As Dr. Edwards stated that appellant had no objective signs of her accepted condition and further stated that her current disability was not due to her accepted condition, the Office met its burden of proof to terminate appellant's compensation benefits effective August 17, 1997.

The Board further finds that appellant did not meet her burden of proof, following the Office's termination of compensation, to establish that she had a work-related disability on or after August 17, 1997, causally related to her accepted July 4, 1986 cervical strain.

In support of her claim for continuing disability, by letter dated October 24, 1997, appellant, through counsel, requested reconsideration of the Office's decision, and presented arguments in support of her claim. The issue in this case, however, which is whether appellant had further employment-related disability after August 17, 1997, is medical in nature and thus must be resolved by the submission of pertinent medical evidence.⁶ Accordingly, as appellant has not submitted additional medical opinion evidence establishing that she had continuing disability causally related to her accepted employment injury, she has not met her burden of proof.

The Board additionally finds that appellant failed to meet her burden of proof to establish that she has a chronic cervical strain causally related to her federal employment.

Appellant, through counsel, asserts that her 1986 accepted cervical strain actually evolved into a chronic strain, which is at least the partial cause of her current total disability. Appellant asserts that in a report dated April 26, 1991, Dr. Thomas A. Dimmig, a Board-certified orthopedic surgeon and treating physician, diagnosed chronic strain, and that the Office failed to expand the accepted conditions to include this diagnosis. A review of Dr. Dimmig's report reveals, however, that while Dr. Dimmig did offer as his sole diagnosis, "cervical muscle strain chronic," he did not offer any opinion as to the cause of this muscle strain other than a recitation of appellant's extensive history of both employment and nonemployment-related neck injuries. Furthermore, the physician specifically noted that even this medical history was somewhat unreliable, as appellant had presented little or no documentation regarding her prior medical diagnoses and treatment. Therefore, appellant has not met her burden of proof to establish that her diagnosed chronic cervical strain is causally related to her federal employment.

⁶ *Ronald M. Cokes*, 46 ECAB 967 (1995).

Finally, the Board finds that the issue of whether appellant met her burden of proof to establish that she developed a psychiatric condition as a consequence of her 1986 accepted cervical strain is not in posture for a decision.

Appellant asserts that she developed a psychiatric condition, namely major depression, as a consequence of her July 4, 1986 accepted cervical strain. By letter dated November 13, 1991, the Office referred appellant, together with a statement of accepted facts, copies of the medical evidence of record and a list of questions to be answered, to Dr. Wilson Sidney Comer, Jr., a Board-certified psychiatrist, for a second opinion. In his report dated January 22, 1992, Dr. Comer diagnosed somatoform pain disorder, and specifically stated that the onset of this disorder was caused and precipitated by appellant's July 4, 1986 accepted cervical strain. Dr. Comer further stated that appellant's somatoform pain disorder had contributed to and exacerbated appellant's underlying depression, which further impaired her ability to be gainfully employed. The record also contains a medical report dated March 8, 1993 from Dr. Douglas M. Conrad, appellant's primary treating psychiatrist. In his report, Dr. Conrad diagnosed "major depression and psychological factors affecting physical condition," and stated that this diagnosis differed from Dr. Comer's in that he believed that appellant did have actual physical neck and back conditions which caused her chronic pain, and which, in turn, caused her major depression. In its July 21, 1997 and March 25, 1998 decisions, the Office found that appellant had not met her burden of proof to establish that she developed a psychiatric condition as a consequence of her July 4, 1986 cervical strain.

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and has the obligation to see that justice is done. Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.⁷ As Dr. Comer, the Office second opinion physician, clearly opined that appellant developed a psychiatric condition causally related to her accepted 1986 cervical strain, and as his opinion is uncontradicted, the Office is under an obligation to further develop this aspect of appellant's claim.

⁷ See *Robert F. Hart*, 36 ECAB 186 (1984); *Isidore J. Gemmino*, 35 ECAB 442 (1983).

The decisions of the Office of Workers' Compensation Programs dated March 25, 1998 and July 21, 1997 are affirmed in part and reversed in part, and the case remanded for further development consistent with this decision.

Dated, Washington, DC
October 17, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member