U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHLOE F. AINSWORTH and UNITED STATES DEPARTMENT OF JUSTICE, FEDERAL CORRECTIONAL INSTITUTION, Tallahassee, FL

Docket No. 00-1580; Submitted on the Record;
Issued August 20, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's wage-loss compensation effective February 27, 2000; and (2) whether appellant has met her burden of proof to establish that she is entitled to continuing compensation benefits on or after February 27, 2000.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's wage-loss compensation effective February 27, 2000.

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

On January 31, 1994 appellant, then a 29-year-old correctional officer, filed a claim for traumatic injury alleging that on December 31, 1993 she sustained a head injury in the course of her employment when an 80-pound hatch suddenly closed, striking her on the head. After a

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

[2] *Id.*

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

[4] *Id.*

period of medical and factual development, on February 16, 1994 the Office accepted her claim for a closed head injury.

In her initial report dated April 23, 1999, Dr. Bertha J. Blanchard, a neurologist whom appellant began seeing after her physician of many years closed his practice, noted appellant's history of employment injury and her complaints of persistent frequent headaches, transient numbness in the left arm and cognitive difficulty since the date of injury. Dr. Blanchard further noted that appellant's medical history was extensive, that she had undergone numerous neuropsychological evaluations and was currently taking several medications, including Prozac. She stated that examination revealed that appellant was alert, awake and oriented, her recent and remote memory was intact and her fund of knowledge was full. Dr. Blanchard diagnosed post-traumatic headaches in the form of migraines, causally related to appellant's employment accident. In a follow-up treatment note dated July 21, 1999, she noted that appellant's post-traumatic headaches were now taking the form of cluster headaches and noted that this was not unusual for post-traumatic headaches, which can take any form and adjusted her medication. In a report dated November 3, 1999, Dr. Blanchard noted that appellant's headaches were somewhat improved, but that she observed that appellant had a titubation,[5] which both appellant and her husband thought was getting worse. Dr. Blanchard diagnosed worsening titubation and tremor and post-traumatic headaches and arranged for further diagnostic testing, including magnetic resonance imaging.

On November 23, 1999 at the request of the Office, appellant was seen by Dr. James J. Corbett, a Board-certified neurologist, for a complete medical evaluation and second opinion.[6] The Office provided Dr. Corbett with a statement of accepted facts, a list of specific questions and the relevant medical evidence of record. In a report dated December 8, 1999, he reviewed the medical evidence of record, noting that, while a review of appellant's neuropsychological testing records indicated that appellant allegedly lost 50 points in her I.Q. scale, this was difficult to believe on the basis of her examination. Dr. Corbett also noted that appellant had a history of vestibulopathy in 1995. He then summarized the results of his own physical examination and testing, noting normal examinations of appellant's visual fields, facial motility and sensation, tongue protrusion, palate elevation, shoulder shrug and head turn and arm and leg reflexes. Dr. Corbett further noted that, on cerebellar examination, appellant had slow rapid alternating movements, almost deliberately poking herself in the forehead with her finger when asked to touch her finger to her nose with her eyes closed. He further noted that appellant's strength and tone was normal in the arms and legs, although appellant was slow to perform particularly in the left arm and exhibited breakaway weakness in the left arm initially. Sensory examination was intact to vibration and pin, although appellant claimed position sense loss in the left hand with variable performance of strength, position and grip. There was no drift to the left arm and no evidence of sensory athetosis. The physician also noted that appellant was

[5] A staggering or stumbling gait with shaking of the trunk and head, commonly seen in cerebellar disease. Dorland's Illustrated Medical Dictionary 1726 (27th ed. 1988).

[6] The Office originally determined that appellant should be seen by a neuropsychiatrist, but later determined that it was preferable to refer appellant for two separate neurological and psychiatric evaluations. An internal office memorandum contained in the file states, however, that the appointment with psychiatrist, Dr. Elizabeth Henderson, had been cancelled because the physician felt that appellant did not have a psychiatric condition.

slow to waggle her tongue despite the fact that her speech was entirely normal. Dr. Corbett entered a diagnosis of post-traumatic headache and added that appellant's prior vestibular dysfunction was not currently a problem. He further added:

> "I do not see any evidence of disabling residuals. She has headaches which can be treated but no significant objective signs of damage to the central or peripheral nervous system to account for her symptoms. The causal relation of the post-traumatic headaches after being hit on the head with a[n] 80-pound door is self-evident. Post-traumatic headaches may persist for a long period of time. I think it is entirely possible for a person to sustain a head injury that will give them a post-traumatic headache that will last for a long period of time; however, I do not believe that it will completely incapacitate them for work of any kind. I think that she is limited in her ability to work in squatting, kneeling or climbing mainly related to her injury to the left knee which made it impossible for her to squat. The damage to her knee was not related to the injury that she suffered as a result of the blow to her head."

Dr. Corbett further stated that appellant was neither temporarily nor permanently impaired as a result of her December 31, 1993 injury and reiterated that appellant's nonemployment-related knee injury was her major limiting factor. He concluded, stating:

> "Continued treatment of her headaches with a variety of medications should maximize her medical recovery but I frankly think she is not highly motivated to improve and that she will continue to have headaches (whether or not as severe as she claims would be difficult to challenge) and headaches can be an impediment to efficient work."

Based on the medical evidence of record, the Office proposed to terminate appellant's compensation benefits on January 5, 2000. The Office allowed appellant 30 days to submit additional evidence or argument. Appellant responded on January 10, 2000 but did not submit any additional medical evidence.

The Office terminated appellant's wage-loss compensation, effective February 27, 2000, by decision dated February 7, 2000. The Office specifically stated that appellant continued to be entitled to medical treatment for her accepted post-traumatic headaches. By letter dated February 20, 2000, appellant requested reconsideration of the Office's February 7, 2000 decision and submitted additional medical evidence in support of her request. In a decision dated March 9, 2000, the Office found the newly submitted evidence insufficient to warrant reopening appellant's claim for a review of the merits.

The Board initially finds that the weight of the medical evidence rests with the well-reasoned opinion of Dr. Corbett, the Office referral physician upon whom the Office principally relied in terminating appellant's benefits. He provided a detailed report, relying on the statement of accepted facts, as well as appellant's personal history and medical records and concluded that there were no objective neurologic findings sufficient to establish that appellant has any disabling residuals of her employment-related condition. While Dr. Blanchard, appellant's treating physician, diagnosed post-traumatic headaches, she did not offer an opinion as to

whether appellant had any disability for work causally related to either the headaches, or any other employment-related condition.

As the weight of the medical evidence before the Office at the time of its February 7, 2000 decision, establishes that appellant was no longer disabled due to her accepted employment-related closed head injury, the Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation effective February 27, 2000.

The Board further finds, however, that this case is not in posture for a decision on the issue of whether appellant has established any continuing disability after February 27, 2000 causally related to her accepted employment conditions.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she has a disability causally related to her accepted employment injury.[7] 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.[8]

In support of her request for reconsideration, appellant submitted additional medical evidence, including an unsigned comprehensive treatment plan form from Pine Belt Mental Healthcare Resources and a February 29, 2000 report from Dr. Blanchard, appellant's treating physician.[9] In her treatment note, Dr. Blanchard noted that appellant continued to experience post-traumatic headaches, about two per month, in addition to a minor chronic daily headache and also continued to exhibit tremor, specifically with outstretched hands, left greater than right and titubation of the head. She diagnosed post-traumatic brain syndrome and associated headaches and tremor. With respect to appellant's ability to work, Dr. Blanchard stated:

> "She is asking me about her work status and I have told her I continue to think that she is incapable of working in a federal prison and carrying a gun. This would be detrimental to society given her situation. I do not think that she is capable of handling a job such as this. She should continue taking her

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

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

[9] While the unsigned treatment plan contains diagnoses of mood disorder due to head injury and closed head injury migraines, this form, lacking proper identification, cannot be considered as probative evidence in support of appellant's claim. *Merton J. Sills*, 39 ECAB 572 (1988).

> medications and again I want to point out that working in a prison as she did previously and having to carry a firearm is in my opinion dangerous for this patient."

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." When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.[10]

The Board finds that the reports of Dr. Blanchard, taken as a whole, are sufficient to create a conflict in the medical evidence with Dr. Corbett, the Board-certified neurologist to whom the Office referred the case for a second opinion, on the issue of continuing employment-related disability. In his reports, Dr. Corbett stated that he could not find any neurologic objective findings attributable to the 1993 injury and concluded that, therefore, he could not identify anything that prevented appellant from doing her job, other than her own subjective complaints. In contrast, Dr. Blanchard concluded in a February 29, 2000 report, that appellant suffered from post-traumatic brain syndrome, including headaches, tremors and titubation and that, as a result of this condition, remains incapable of performing her usual work, which requires the use of a firearm. In order to resolve this conflict of medical opinion, the Office should refer appellant, the medical record and a statement of accepted facts to an impartial medical examiner in the appropriate field of medical specialty. The statement of accepted facts should clearly set forth the injuries and conditions accepted by the Office. The impartial specialist should submit a rationalized medical report setting forth findings on examination and addressing whether appellant continues to suffer from employment-related disability. Following such development as the Office deems necessary, the Office should issue an appropriate decision.

[10] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

The March 9, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board. The decision of the Office dated February 7, 2000 is affirmed.

Dated, Washington, DC
August 20, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member