

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY B. NOTTENKAMPER and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Little Rock, AR

*Docket No. 99-806; Submitted on the Record;
Issued February 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant had any disability after January 15, 1998, the date the Office of Workers' Compensation Programs terminated her monetary compensation benefits, causally related to her accepted employment injuries.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the September 23, 1997 decision of the Office hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹ As the hearing representative reversed the original termination decision, the case was returned to the Office for further development. The Office, having properly found a conflict in the medical opinion evidence of record, was directed to obtain further clarification from the orthopedic impartial medical specialist regarding appellant's accepted orthopedic disabilities and to obtain an impartial medical opinion from a Board-certified rheumatologist regarding appellant's accepted rheumatological conditions.²

On October 9 and November 17, 1997 the Office requested that Dr. Joseph W. Crow, a Board-certified orthopedic surgeon and the IME, provide further clarification as to whether

¹ The hearing representative found that the impartial medical examiner's (IME) opinion required clarification and that the orthopedic IME was not the appropriate medical specialist to address appellant's accepted rheumatological condition.

² The Office had accepted that on February 14, 1970 appellant sustained aggravation of preexisting rheumatoid arthritis with multiple joint complaints, degenerative disc disease, lumbar spine strain and Sjogren's syndrome, due to being kicked on the left leg above the knee; conditions not due to injury were noted to include heart disease, congestive heart failure, obesity, peptic ulcer disease, edema of the legs, chronic fatigue, gallstones, anemia, de Quervain's disease at the wrist, multiple rotator cuff injuries, irritable bowel syndrome, a cholecystectomy, a hysterectomy, hyperactive thyroid and depression.

appellant's accepted conditions of degenerative disc disease and/or lumbar spine strain caused continuing disability for work.

On October 9, 1997 the Office also requested that Dr. Melody St. John, a Board-certified rheumatologist, review the statement of accepted facts and the relevant case record, examine and test appellant and provide an opinion as to whether appellant's aggravation of rheumatoid arthritis had ceased or was permanent, whether appellant's accepted Sjogren's syndrome was active and causing disability and as to what appellant's current disability was due.

By response dated October 23, 1997, Dr. Crow responded:

"Degenerative disc disease as noted in [appellant] in the mid to lower thoracic area as well as in the mid cervical area is progressive degenerative phenomenon associated with aging and the symptoms of which can be aggravated by injury. In my opinion, [appellant's] degenerative disc disease was preexisting and was not aggravated by the work-related injury of a kicking episode which occurred in 1970. [Appellant] has generalized spinal disease as already stated and has some noted limited motion in her lumbar area but specifically I would not diagnose her as a chronic lumbar sprain and have not made this diagnosis in the past. She does have a spinal sprain involving the upper areas where it is associated with spondylosis and degenerative disc disease both of which are related to normal aging. Therefore, I do not feel that either of these conditions were caused, aggravated or accelerated or precipitated by her work injury of February 14, 1970.

"My opinion regarding her work status is now just as it was stated in my report of November 18, 1996. That being that she is able to work in a sedentary, clerical type position for four to eight hours per day. I do feel that she is totally disabled from her job as a nurse but she is able to perform other work as outlined already in this letter."

By report dated November 10, 1997, Dr. St. John reviewed appellant's factual and medical history, conducted a physical examination, reviewed her laboratory test results and opined:

"There is no evidence to suggest that [appellant] had rheumatoid arthritis prior to her injury on February 14, 1970. She did develop a disease sometime during the following 12 months while she was actively working with repetitive motion. Her job could temporarily aggravate the condition causing increasing swelling and/or pain. When this activity ends, aggravation gradually resolves. [Appellant's] arthritis has progressed over the years, but not as a result of her employment. Rheumatoid has a natural progression to more severe limitations, if it is not treated or does not go into remission spontaneously. [Appellant] has refused medications to place her into remission on three separate occasions as documented by the medical record. Many of the reports from her doctors report that her rheumatoid was not active. I believe it to be a safe assumption that, although she has some flares with her arthritis, it is basically stable. As far as her

degenerative disc disease, or osteoarthritis, these two are illnesses that progress throughout a lifetime. Therefore, although she may now have disability secondary to her back pain, her work 24 through 27 years ago did not cause a permanent aggravation and is not now responsible for her discomfort.

“Sjogren’s syndrome is an autoimmune disease often associated with rheumatoid arthritis. Its main symptom consists of dry eyes and dry mouth. This is known as sicca syndrome, both of these can be treated with lubricating drops or sprays. Although this is uncomfortable, by itself, it is not considered disabling. I see no evidence that it has progressed beyond this sicca[-]type symptoms.

“[Appellant’s] disability is secondary to progression of her rheumatoid arthritis and degenerative disc disease. The aggravation she experienced secondary to her job was temporary. Acute lumbar strain heals if not constantly aggravated. Sjogren’s syndrome or sicca symptoms are not disabling. [Appellant’s] rotator cuff injuries have resolved. [Appellant’s] heart disease was secondary to thyrotoxicosis, which is inflammation of the thyroid gland and was not work related. Her congestive heart failure did contribute to fatigue, shortness of breath and lower extremity swelling. Acid peptic disease was secondary to large amounts of aspirin or nonsteroidals that she took to combat arthralgias and has since resolved. Her irritable bowel syndrome is alternating constipation and/or diarrhea with cramping. This may be caused by many factors including stressors, or foods which you eat. The cholecystectomy is a surgery which she should have long since recovered from. Obesity could be secondary to her hypothyroidism but it is probably secondary to her lack of exercise. The [d]e Quervain’s disease of the wrists may be associated with her rheumatoid but should not be aggravated by work 25 years ago. At this time, [appellant’s] ability to work, or disability, is secondary to progression of her medical problems. I do not believe she would be able to return to her job as an RN. This is not only because of her arthritis, which would prohibit her from performing her duties, but also because her knowledge and skills have diminished with each year that she has not practiced her profession.”

Dr. St. John noted that at age 69 most people are retired and that she doubted that appellant would have the stamina with her multiple medical problems to undergo any further training, mentally as well as physically. Dr. St. John opined that appellant was totally disabled at the present time, but that her temporary aggravation ceased two decades ago.

On December 8, 1997 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical evidence, as constituted by the thorough and well-rationalized impartial medical reports of Drs. St. John and Crow, established that her injury-related conditions had ceased. The Office gave appellant 30 days within which to provide evidence to the contrary.

By letter dated January 3, 1998, appellant disagreed with the proposed termination of compensation, noting that she was 69 years old and that Dr. St. John had opined that she was disabled. In support appellant submitted a December 12, 1997 rheumatoid consultation from

Dr. James H. Abraham, III, a Board-certified rheumatologist, which reviewed her history, conducted a physical examination and noted that, based upon her physical examination that date, “I think it [i]s very unlikely that she ever did have rheumatoid arthritis. I think all along she has probably had primary Sjogren’s syndrome.” Dr. Abraham noted that, although it was known that there might be certain triggering phenomena for conditions like rheumatoid arthritis, there had never been any sort of cause and effect relationship between these types of things.

Appellant also submitted an excerpt from a medical book regarding rheumatoid arthritis.

By decision dated January 15, 1998, the Office terminated appellant’s compensation finding that the evidence of record established that she was no longer disabled for work due to residuals of her accepted employment injuries. The Office found that Dr. Abraham found that appellant never had rheumatoid arthritis and that the reports of Drs. Crow and St. John constituted the weight of the medical opinion evidence of record and established that appellant was no longer disabled due to effects of her accepted employment injuries. The Office further noted that the excerpt from a medical book was not probative in appellant’s case.

By letter dated January 23, 1998, appellant requested reconsideration and submitted medical reports previously of record dating from 1973 through 1976. Appellant contended in a January 23, 1998 letter that she was totally and permanently disabled for her nursing job and she referred to the reports of her treating physician, Drs. Michael N. Harris and Harold H. Chakalas, a Board-certified orthopedic surgeon.³

By decision dated April 22, 1998, the Office denied modification of the January 15, 1998 decision. The Office found that the weight of medical opinion did not establish that appellant had any disabling injury residuals of her February 14, 1970 work injury.

By letter dated May 16, 1998, appellant disagreed with the April 22, 1998 decision and again requested reconsideration, contending that her February 14, 1970 injury ended her nursing career and caused an enormous amount of pain and suffering. Appellant alleged that she was totally and permanently disabled and had been unable to work for 25 years.

By decision dated June 8, 1998, the Office denied reconsideration of the merits as it found the argument submitted in support repetitious and, therefore, insufficient to require reopening of appellant’s case for further review.

By letter dated June 25, 1998, appellant requested reconsideration and submitted a May 11, 1998 report from Dr. Chakalas, which noted appellant’s diagnoses as rheumatoid arthritis, degenerative disc disease, rotator cuff injury bilaterally, obesity, irritable bowel syndrome and de Quervain’s disease. He noted that appellant had apparently been told that she had rheumatoid arthritis, but that he had not seen any medical records to that effect. Dr. Chakalas noted that appellant continued to have persistent chronic neck pain with pain across her shoulders and up and down her spine. Dr. Chakalas opined:

³ Dr. Harris, a physician of unknown specialty and Dr. Chakalas, a Board-certified orthopedic surgeon.

“At this time, the major limiting problem that [appellant] has that would prevent her from working would be the cervical spondylosis with moderately severe foraminal encroachment at C5-6, C6-7 and the degenerative changes of the hands. The hands show progressive osteoarthritis, probably superimposed on rheumatoid arthritis. From a clinical standpoint, [appellant] is disabled and unable to work. She is getting progressive degenerative changes of the neck and hands. I feel she is a poor rehabilitative candidate. She manifests evidence of progressive polyarthritis involving multiple joints, primarily the hands at this time, with some involvement of the major joints of the body in general. She has a continuation of the Sjogren’s disease and also has a continuation of lumbar and cervical degenerative disc disease.”

By decision dated September 14, 1998, the Office denied modification of its prior decisions. The Office found that Dr. Chakalas addressed appellant’s cervical spondylosis and degenerative changes of the hands, neither of which were accepted by the Office as being employment related. The Office noted that Dr. Chakalas was on one side of the conflict in medical opinion evidence that was resolved by Dr. Crow, the IME and that his additional report was insufficient to create a new conflict.

The Board finds that appellant had no disability after January 15, 1998, the date the Office terminated her monetary compensation entitlement, causally related to her accepted employment injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ 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.⁵ In the present case, the Office met its burden to terminate appellant’s compensation, based upon the well-rationalized reports of Drs. Crow and St. John.

Dr. Crow addressed appellant’s orthopedic status in both his initial impartial medical report and in his supplemental clarification and he opined that appellant’s degenerative disc disease was preexisting and was not aggravated by the work-related injury of a 1970 kicking episode. Dr. Crow opined, in clear, concise and well-rationalized responses that appellant did not have chronic lumbar sprain and that her upper spinal sprain was associated with spondylosis, an unaccepted condition and with degenerative disc disease related to normal aging. He did not find that either of these conditions were related to the 1970 employment injury and opined that appellant as not totally disabled and could work at a sedentary position for up to eight hours per day.

Dr. St. John opined, in a complete and well-rationalized report based upon a complete factual and medical background, that appellant’s rheumatoid disease was not active, as indicated

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

by multiple other medical reports of record, and was stable and that appellant's work 25 years ago did not cause a permanent aggravation and was not now responsible for her discomfort.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶ In this case, the Office properly found that Dr. St. John's impartial medical report was entitled to special weight and that it, therefore, represented the weight of the medical opinion evidence in establishing that appellant's employment-related aggravation of her preexisting rheumatoid disease had ceased and that any continuing rheumatoid medical condition was not related to her employment. The Office further found that Dr. Crow's impartial medical report with its clarification was also entitled to special weight and that it, therefore, represented the weight of the medical opinion evidence in establishing that appellant's employment-related orthopedic disability had ceased and that any continuing orthopedic condition was not related to her February 14, 1970 kick injury. The weight of medical opinion establishes that appellant's employment-related disability has ceased. Drs. Crow and St. John attributed appellant's ongoing disability to her progressive degenerative disease, obesity and other medical conditions. They found that appellant's accepted conditions were not permanently aggravated by the accepted incident of being kicked on the left leg above the knee.

The Office also properly found that Dr. Chakalas' May 11, 1998 report was insufficient to create a further conflict as it attributed appellant's continuing disability of two conditions not accepted by the Office as being causally related to the February 14, 1970 kick injury and as Dr. Chakalas was on one side of the conflict in medical opinion evidence that was resolved by Dr. Crow's report. The Board has frequently explained that, when appellant's attending physician is on one side of the conflict in medical opinion which was resolved by the impartial specialist, additional reports from the attending physician are insufficient to overcome the weight of the impartial specialist or to create a new conflict in medical opinion.⁷ Therefore, Dr. Chakalas' new report is insufficient to establish that appellant was disabled by continuing injury-related residuals.

Consequently, the Office has discharged its burden of proof to justify termination of appellant's compensation after January 15, 1998.

⁶ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

⁷ *Dorothy Sidwell*, 41 ECAB 857 (1990).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated September 14, June 8, April 22 and January 15, 1998 are hereby affirmed.

Dated, Washington, DC
February 8, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member