

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA NAGER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Northport, NY

*Docket No. 99-886; Submitted on the Record;
Issued February 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an aggravation of her preexisting multiple sclerosis due to her accepted employment injury; and (2) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board has duly reviewed the case on appeal and finds that it is not in posture for decision.

Appellant, the chief of audiology and speech pathology, filed a traumatic injury claim alleging that on February 14, 1996 she slipped and fractured her coccyx. The Office accepted appellant's claim for anterior displacement of the coccyx on July 15, 1996.

Appellant submitted medical evidence that she had sustained an aggravation of her preexisting multiple sclerosis due to her employment injury. The Office undertook further development of the medical evidence by referring appellant for a second opinion evaluation. The Office then found a conflict of medical opinion evidence on this issue and referred appellant for an impartial medical evaluation. By decision dated May 2, 1997, the Office denied appellant's claim for aggravation of her multiple sclerosis. Appellant requested reconsideration of this decision and the Office denied modification of its prior decision.¹

The Office proposed to terminate appellant's compensation by letter dated August 20, 1998. By decision dated November 16, 1998, the Office terminated appellant's compensation finding that she was no longer disabled due to her accepted condition.

¹ The nonfatal summary accompanying the case record indicates that the Office issued this decision on November 16, 1998. However, the copy of the decision in the record is not dated.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

In this case, appellant submitted medical evidence from her attending physician, Dr. Leonard Leonardi, a Board-certified orthopedic surgeon, supporting a causal relationship between her accepted employment injury and the aggravation of her preexisting condition of multiple sclerosis. He stated that on March 19, 1996 apparently the stress of the coccyxgeal fracture and the increased intrathecal pressure caused appellant to have significant worsening of her multiple sclerosis symptoms. On May 30, 1996 Dr. Leonardi stated that the trauma to appellant's coccyx had caused swelling in the spinal cord and resulted in an exacerbation of appellant's multiple sclerosis. In a January 3, 1997 report, he stated that there was anecdotal evidence in the medical literature to support a causal relationship between traumatic injury and an exacerbation of multiple sclerosis.

In a report dated June 5, 1996, Dr. Brian R. Apatoff, a Board-certified neurologist, described the course of appellant's multiple sclerosis and noted her history of injury. He stated that appellant's coccyxgeal and sacral nerve injury resulted in an exacerbation of her multiple sclerosis. Dr. Apatoff stated, "[i]t is reasonable to conclude that the fall and the damage to the coccyxgeal and sacral nerve could have increased fluid levels in the areas around the spinal cord, precipitating an exacerbation of her multiple sclerosis." He continued to support a causal relationship between appellant's employment injury and her exacerbation of multiple sclerosis symptoms on September 24, 1996 and January 7, 1997.

The Office referred appellant for a second opinion evaluation with Dr. Richard Goodman, a Board-certified orthopedic surgeon. On September 3, 1996 he noted appellant's history of injury and reviewed her medical records. Dr. Goodman performed a physical examination and stated that appellant had developed coccyxdynia due to her employment injury, that this condition was no longer disabling. He stated that appellant's current symptoms and disability were exclusively due to her preexisting multiple sclerosis.

Dr. Richard H. Blanck, a Board-certified neurologist, performed a second opinion evaluation on October 14, 1996. He stated that there was no scientific evidence that proves that trauma is a cause of multiple sclerosis or that trauma could cause an exacerbation of multiple sclerosis. He further stated that appellant had coccyxgeal pain, which was related to her employment injury as well as recurrent pressure ulcers in the sacroiliac area, which may be related to her injury as well. Dr. Blanck concluded: "[I]t would appear that the disability is not solely due to the employment incident of February 14, 1996. The course of multiple sclerosis is

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

unpredictable and while there is a temporal relationship between the accident the onset of the patient's current problems, I cannot say with certainty that there is a causal relationship."

The Office determined that there was a conflict of medical opinion evidence and referred appellant to Dr. Sue de Lanerolle, a Board-certified neurologist of professorial rank. The Office stated that Dr. de Lanerolle should resolve the conflict of the medical evidence between Dr. Apatoff and Dr. Blanck on the issues of causal relationship and continuing disability.

Section 8123(a) of the Act⁴ 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." In this case, the Office found a conflict between Dr. Apatoff, appellant's attending physician, who found that appellant's employment injury exacerbated her multiple sclerosis symptoms and the second opinion physician, Dr. Blanck, who opined that there was no clear causal relationship between appellant's employment injury and her multiple sclerosis symptoms.

In a report dated March 19, 1997, Dr. de Lanerolle noted appellant's history of injury, her medical history and performed a physical examination. She concluded:

"I can state with medical certainty that there is no scientific evidence to prove that trauma does precipitate multiple sclerosis. As there is a temporal relationship between the accident and the onset of the patient's current problems, I cannot state with certainty that there is a causal relationship. She is advised an independent neurological evaluation with Dr. Patricia Coyle, who is the Director of the M[ultiple] S[cclerosis] Society for Long Island."

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.⁵

The Board finds that Dr. de Lanerolle's March 19, 1997 report is not sufficient to resolve the conflict of medical opinion regarding the causal relationship between appellant's accepted employment injury and the exacerbation of her multiple sclerosis. Dr. de Lanerolle states that trauma does not cause multiple sclerosis. However, the issue in this case is whether the trauma appellant experienced could have exacerbated the symptoms of her multiple sclerosis. Dr. de Lanerolle notes that there is a temporal relationship between appellant's employment injury and the exacerbation of her symptoms and concludes that she cannot state with certainty that there is a causal relationship. Dr. de Lanerolle does not offer a clear opinion with medical rationale explaining whether or not she believes that appellant's exacerbation of multiple sclerosis is employment related. Due to this deficiency regarding the central issue before her, Dr. de Lanerolle's report is not sufficient to resolve the existing conflict of medical opinion.

⁴ 5 U.S.C. §§ 8101-8193, 8123(a).

⁵ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

In a report dated April 10, 1997, Dr. Coyle, a Board-certified neurologist, performed a physical examination. She stated that there had never been documentation for trauma worsening multiple sclerosis. Dr. Coyle stated that the temporal relationship could be completely incidental. She concluded, "I do not believe that the [employment] incident caused an exacerbation of the patient's multiple sclerosis based on objective literature, review and data."

In its May 2, 1997 decision, the Office stated that Dr. de Lanerolle was designated as the impartial medical specialist to resolve the conflict of medical opinion. However, the Office noted that Dr. de Lanerolle stated that she was not a specialist in the treatment of multiple sclerosis and that she felt that it would be beneficial in obtaining an opinion from Dr. Coyle. The Office stated that Dr. Coyle was the "referee physician in this case...." The Office relied on her report to deny appellant's claim for aggravation of multiple sclerosis.⁶

A physician selected by the Office to serve as an impartial medical specialist should be one wholly free to make a completely independent evaluation and judgment. In order to achieve this, the Office has developed specific procedures for the selection of impartial medical specialists designed to provide adequate safeguards against any possible appearance that the selected physician's opinion was biased or prejudiced. These procedures, set forth in the Federal (FECA) Procedure Manual provide, in pertinent part, as follows:

"b. *Selection of Physician.* The CE [claims examiner] may use Form CA-19, Request for Specialists Referral (Exhibit 1), to initiate the referral. Unlike the selection of second opinion examining physicians, selection of referee physicians is made by a strict rotational system using appropriate medical directories....

(1) *The services of all available and qualified* Board-certified specialists will be used as far as possible to eliminate any inference of bias or partiality. This is accomplished by selecting specialists in alphabetical order as listed in the roster chose under the specialty and/or subspecialty heading in the appropriate geographic area and repeating the process when the list is exhausted...."⁷

The procedures contemplate that impartial medical specialists will be selected on a strict rotating basis to negate any appearance that preferential treatment exists between a particular physician and the Office. Because Dr. Coyle was not the impartial medical specialist selected by the Office in accordance with its rotating selection procedures, her opinion is not entitled to special weight and cannot resolve the existing conflict of medical opinion evidence.⁸

⁶ There is no evidence in the record that Dr. de Lanerolle reviewed Dr. Coyle's report prior to the Office's May 2, 1997 or November 16, 1998 decisions. On May 21, 1998 the Office informed Dr. de Lanerolle that Dr. Coyle had examined appellant as she suggested.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b) (March 1994).

⁸ *Shirley L Steib*, 46 ECAB 309, 316-17 (1994).

Accordingly, the case is remanded to the Office for referral of appellant, the case record and a statement of accepted facts to an appropriate medical specialist selected in accordance with the Office's procedures. After such further development as the Office deems necessary, the Office should issue an appropriate decision on this claim.

The Board further finds that the Office did not meet its burden of proof to terminate appellant's 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.⁹ 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.¹⁰ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.¹¹ 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.¹²

The Office accepted appellant's claim for anterior displacement of the coccyx. On May 21, 1998 the Office requested a supplemental report from Dr. de Lanerolle. The Office asked whether appellant was disabled due to her fractured coccyx.

In a July 30, 1998 report, Dr. de Lanerolle stated, "[appellant] is partially disabled as the result of multiple sclerosis. There is no disability due to the fractured coccyx." The Office relied on this report in proposing to terminate appellant's compensation on August 20, 1998.

In a report dated September 4, 1998, Dr. Leonardi stated that appellant sustained a fracture and anterior displacement of the coccyx due to her employment injury. He stated that appellant's injury led to coccyxdynia due to a deformed coccyx and pressure ulcers from her inability to sit. Dr. Leonardi stated that appellant's coccyxdynia pain syndrome had been persistent and incapacitating. He stated:

"Coccyxdynia has been well established in the medical literature (Knapp M.E.; Wright, B.D.; Stern, F.H.; Wray A.R.; Hodge, J; Johnson, P.H.; Wessleman, U.; Maigne, J.Y.; Postacchini, F.) as being a disabling pain syndrome that can be very difficult to treat and on occasion permanent in nature. This has been the result for this unfortunate patient."

Dr. Leonardi concluded that the results of the injury on February 14, 1996 had left appellant permanently disabled with severe physical limitations precluding even sedentary work.

⁹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

¹⁰ *Id.*

¹¹ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹² *Id.*

On September 17, 1998 the Office requested that Dr. de Lanerolle review Dr. Leonardi's report and address whether the diagnosed conditions were causally related to appellant's employment injury and whether appellant was disabled due to the diagnosed conditions.

In a report dated October 6, 1998, Dr. de Lanerolle noted appellant's history of injury and medical history. She performed a physical examination. Dr. de Lanerolle concluded that appellant sustained a coccyxgeal fraction and dislocation of the last three segments resulting in coccyxgeal pain on February 14, 1996. She stated that, based on the lack of objective evidence, appellant did not currently have coccyxdynia as a result of the injury. Dr. de Lanerolle stated that appellant's pain and complaints were more extensive than that caused by coccyxdynia, but she stated that the pain syndrome appellant exhibited should not prevent her from performing her duties as a speech therapist. Dr. de Lanerolle indicated that appellant's disability for work was due to her multiple sclerosis.

Although Dr. de Lanerolle was properly designated as an impartial medical specialist on the issue of whether appellant's multiple sclerosis was exacerbated by her employment injury, she was not designated as the impartial specialist on the issue of whether appellant's coccyx fracture and displacement resulted in disability for work. In the referral letter to Dr. de Lanerolle, the Office specifically stated that the conflict was between appellant's physician, Dr. Apatoff, and Dr. Blanck, the second opinion physician. However, Dr. Blanck diagnosed coccyxdynia and indicated that appellant was disabled due to the coccyxgeal fracture and displacement. Therefore, his report does not conflict with those of Dr. Apatoff on this issue. Any conflict between these two physicians would not include the issue of disability from the coccyxgeal fracture. Dr. de Lanerolle's opinions on the disability resulting directly from the coccyxgeal fracture and displacement are on an issue outside of the previous conflict in the medical opinion. Therefore, his opinion regarding disability due to coccyxgeal displacement and fracture has probative value but is not entitled to special weight.¹³

The Board finds that there is an unresolved conflict in the medical evidence regarding whether appellant is currently disabled due to her accepted condition. Appellant's attending physician, Dr. Leonardi, opined that appellant's fracture and displacement of her coccyx had resulted in a pain syndrome, which left her totally disabled. Dr. de Lanerolle, an Office physician, found that appellant was not disabled due to her accepted employment injury and that her current pain syndrome was not due to the fracture and displacement of her coccyx. As there is an unresolved conflict in the medical opinion evidence, the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

¹³ *Leanne E. Maynard*, 43 ECAB 482, 489-90 (1992).

The November 16, 1998 decision of the Office of Workers' Compensation Programs terminating appellant's compensation benefits is hereby reversed. The November 16, 1998 decision, denying appellant's claim for employment-related exacerbation of her multiple sclerosis, is set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, DC
February 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member