U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA G. ADKINS and DEPARTMENT OF THE AIR FORCE,
OKLAHOMA CITY AIR LOGISTICS CENTER,
TINKER AIR FORCE BASE, OK

Docket No. 99-2430; Submitted on the Record;
Issued January 19, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective April 7, 1999.

On March 27, 1987 appellant, then a 38-year-old motor vehicle operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on March 23, 1987, she sustained an injury to her right ankle and right knee when she was exiting her truck and trying to find a foothold and her right foot hyperextended. Appellant lost intermittent periods of work until June 1987, when she stopped work completely. The Office accepted appellant's claim for a right knee and right ankle strain. Appellant remains off work having elected disability retirement under the Office of Personnel Management. Appellant received periodic checks for compensation.

By decision dated June 20, 1990, appellant was awarded a schedule award for a 49 percent permanent impairment to her right lower extremity.

On September 19, 1995 the Office asked the Office medical adviser whether appellant's continued physical therapy program was warranted due to the work-related injury of March 23, 1997 and asked what the appropriate length of such physical therapy would be. In a note dated September 21, 1995, the Office medical adviser stated that, after review of the medical evidence of record, he was of the opinion that the extended physical therapy program was not warranted as a result of appellant's injury of March 23, 1987. He found that the initial diagnoses of sprains to the right knee and ankle are now "perioneal tendonitis (sic)" and "subpatellar bursitis" and that these conditions have apparently not responded to sporadic physical therapy, medication and osteopathic manipulation. The Office medical adviser suggested an independent medical examination, as the conditions should have resolved long ago and needed to be reevaluated.

In a report dated October 25, 1995, from Dr. G. Barry Robbins, a Board-certified internist, to the Office medical adviser, Dr. Robbins noted that he had been appellant's treating

physician since the beginning of the case and had firsthand knowledge of her current and past condition; and that, in his professional opinion, appellant's treatment by manipulation, pain medication for severe discomfort and hydrotherapy were all related to her on-the-job injury of March 23, 1987. He stated that he was still under the opinion that appellant suffered from some subpatellar burstis of her right knee as well as peroneal tendinitis of the right foot and that she remained temporarily totally disabled. Dr. Robbins did opine that appellant had reached maximum medical improvement.

In a letter dated October 2, 1995, the Office found that, based on the opinion of the Office medical adviser, the Office would not authorize physical therapy programs beyond October 13, 1995.

On April 24, 1996 the Office referred appellant to Dr. Karl Sauer for a second opinion. In a medical opinion dated September 23, 1996, Dr. Sauer opined:

> "It is my medical opinion that, as a result of the injury of March 23, 1987, [appellant] did sustain a sprain of the posterior cruciate ligament and eventually developed a medial patellar plica syndrome. [She] apparently has had several neuromas of the right foot, however, I do not feel that these are a result of the injury of March 23, 1987. At this point this [appellant] presents with a metatarsalgia, which I do not feel is related to the accident of March 23, 1987. I further feel that [appellant] does demonstrate an extremely negative approach to her entire problem and is upset with numerous people because of her problems. I further feel that she has made a good recovery from her knee surgery and the only therapy that I would advise at this point would be range of motion and strengthening exercises to the right lower extremity. I do not feel that hydrotherapy would be of that much benefit."[1]

In a medical opinion dated December 29, 1997, Dr. Laurence Altshuler, a Board-certified internist and appellant's second treating physician, stated that he examined appellant and that she suffered from musculoligamentous strain to the right knee, acute musculoligamentous strain to the right ankle and foot with subsequent development of neuromas and secondary musculoligamentous strain to the lumbosacral spine with involvement of the spinal nerve roots, secondary to the above. He recommended that appellant undergo an aggressive course of physical therapy directed to the affected areas. Dr. Altshuler was also of the medical opinion that appellant remained permanently and totally disabled at this time. In a reevaluation dated March 17, 1998, he stated that it was his opinion that appellant would benefit from having a health spa in her home, that the major relief she gets for the right knee and foot problems is with hydrotherapy, but she has a great deal of problems getting in and out of cars going to therapy. Dr. Altshuler also thought this would be less expensive in the long run. In a report dated April 9, 1998, he stated that appellant's treatment, which involved fluidotherapy, massage and laser therapy, which was medically necessary to reduce her symptomatology, had helped her considerably. In a report dated May 26, 1998, Dr. Altshuler noted that, although appellant had done well with therapy at their facility and it has reduced her symptomatology, she continues to

[1] In a letter dated November 18, 1996, Dr. Sauer noted that his office received a very angry call about this report from appellant.

have flare-ups of pain and will need intermittent therapy in the future, which would involve physical therapy modalities, including massage and low energy laser treatment. On October 20, 1998 Dr. Altshuler prescribed a home spa for appellant.

In a magnetic resonance imaging (MRI) on January 19, 1998, Dr. Weyton W. Tam, a Board-certified radiologist, found minimal right knee joint effusion, but an otherwise normal right knee.

The Office medical adviser opined on March 2, 1999 that the main therapeutic effect of a spa is through the salutary effects of warm moist heat and that this therapeutic component can be just as effectively administered by a warm tub bath; therefore, the prescribed spa did not meet the criteria under the regulations as necessary therapeutic equipment. Appellant then submitted a medical report dated February 5, 1999 by Dr. Altshuler, wherein he indicated that appellant suffered from musculoligamentous injury to the right knee with development of arthritis and chronic sprain of the right ankle and foot, with subsequent neuroma and osteoarthritis. He opined that appellant would benefit from additional physical therapy using the Gallium Aluminum Arsenide Laser and IST.

On March 3, 1999 the Office sent appellant a notice of proposed termination of compensation in which it noted that the weight of medical opinion established that her work-related condition was no longer disabling.

In a decision dated April 7, 1999, the Office terminated appellant's compensation benefits. The Office based this determination on Dr. Sauer's report, which it found was entitled to the greatest weight.

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation effective April 7, 1999.

Once the Office accepts a claim, it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to employment.[2] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.[3]

In the instant case, the Board finds a conflict in the medical evidence between appellant's treating physician, Drs. Altshuler and Sauer, the second opinion physician. These doctors are in disagreement about the extent of appellant's disability from the work-related injury and the benefits of spa treatments and physical therapy. Dr. Altshuler found that appellant had done well with therapy and that appellant was permanently and totally disabled. Dr. Sauer found that

[2] *Martin T. Schwartz*, 48 ECAB 521, 522 (1997).

[3] *Id.*

therapy was not necessary, that appellant's metatarsalgia was not related to her injury of March 23, 1987 and that appellant had an extremely negative view towards her problems.

Where there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.[4] Based on the above-referenced conflict in the medical evidence between Drs. Altshuler and Sauer, the Board finds that the Office should have referred appellant's case for an impartial medical examination.[5] The Office, therefore, improperly terminated benefits effective April 7, 1999.

The decision of the Office of Workers' Compensation Programs dated April 7, 1999 is reversed.

Dated, Washington, DC
January 19, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member

[4] 5 U.S.C. § 8123(a); *see also Lawrence C. Parr,* 48 ECAB 445, 453 (1997).

[5] *See Craig M. Crenshaw, Jr.,* 40 ECAB 919 (1989) (finding that the Office failed to meet its burden of proof because a conflict in the medical evidence was resolved).