U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRIS R. MANANSALA and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, CA

Docket No. 00-914; Submitted on the Record;
Issued May 17, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's authorization for medical treatment and compensation benefits; and (2) whether the Office abused its discretion by refusing to reopen appellant's case for merit review.

On August 27, 1997 appellant, a 36-year-old mail processor, filed an occupational disease claim alleging that she suffered from low back pain as a result of her federal employment. The Office accepted appellant's claim for lumbosacral sprain.

In a report dated February 11, 1998, appellant's treating physician, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, noted appellant's continuing complaints of low back pain. On physical examination, however, appellant demonstrated full motion of her lumbar spine. Dr. Tauber also explained that a recent magnetic resonance imaging (MRI) scan failed to demonstrate pathology.[1] He recommended certain work restrictions and advised that appellant undergo pain management.

In March 1998, the Office referred appellant for a second opinion examination with Dr. H. Harlan Bleecker, a Board-certified orthopedic surgeon. In a report dated April 19, 1998, Dr. Bleecker diagnosed right-sided paravertebral muscular pain, postural in nature. He explained that there was no true evidence of a low back or lumbosacral problem. Based upon the medical records and information provided by appellant, her problem had always been in the right flank area, beginning in the lower rib cage and extending distally to the mid-lumbar area.[2] Dr. Bleecker opined that this condition was postural in nature.

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[1] Dr. Avinash M. Sud interpreted a December 23, 1997 MRI of the lumbosacral spine as normal.

[2] Dr. Bleecker noted that the condition dissipated or worsened depending on whether appellant slept on a hard or soft surface.

Dr. Bleecker indicated that there was no evidence of lumbosacral strain, noting specifically that appellant's x-rays and MRI scan of the lumbar spine were normal. While appellant complained of ongoing symptoms, there was no objective evidence of abnormality.

In view of the absence of objective findings, Dr. Bleecker did not impose any work restrictions. However, as a prophylactic measure, he would not recommend changing appellant's current work restrictions. Dr. Bleecker stated that from an industrial standpoint no further treatment was needed.

Also he expressed uncertainty on whether a pain management program would significantly change appellant's symptoms. Because of her slight physical stature of only 93 pounds, Dr. Bleecker suggested that appellant undergo a formal work function capacity evaluation to determine what job she could perform within her normal physical capacity.[3]

On June 26, 1998 the Office issued a notice of proposed termination of compensation. In response, appellant submitted a July 15, 1998 report from Dr. Tauber, who recently examined appellant and reviewed Dr. Bleecker's report. He advised appellant that Dr. Bleecker's report was "accurate," that objective findings of disability and that her complaints were purely subjective in nature. He also noted that appellant was recently seen in a pain management center and was diagnosed with chronic myofacial pain, secondary to chronic lumbosacral strain. Dr. Tauber recommended that appellant continue pain management and agreed with Dr. Bleecker that appellant undergo a formal work function capacity evaluation.

By decision dated August 28, 1998, the Office terminated appellant's compensation and authorization for medical treatment, based on Dr. Bleecker's opinion

Appellant requested a review of the written record and submitted additional medical evidence regarding her recent treatment for pain management. In a decision dated December 23, 1998 and finalized December 31, 1998, the Office hearing representative affirmed the prior decision.

Appellant subsequently requested reconsideration on January 27, 1999. In a decision dated September 29, 1999, the Office denied appellant's request without reaching the merits of her claim.

The Board finds that the Office properly terminated appellant's compensation and medical benefits effective August 28, 1998.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[4] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer

[3] Dr. Bleecker had earlier surmised that appellant's slight physical stature was apparently not ideally suited for the physical demands of her position as a mail processor.

[4] *Curtis Hall*, 45 ECAB 316 (1994).

related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[6] 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.[7]

In this case, the Office relied on Dr. Bleecker's April 19, 1998 report in finding that appellant no longer had residuals of her employment-related lumbosacral sprain. Appellant's treating physician, Dr. Tauber, concurred with Dr. Bleecker's finding that appellant did not demonstrate any objective evidence of a low back or lumbosacral problem and that her symptoms were purely subjective. Based entirely on appellant's continuing subjective complaints of low back pain, Dr. Tauber referred her for pain management with Dr. Imad H. Rasool, a Board-certified anesthesiologist. In July 1998, he diagnosed chronic myofacial pain, secondary to chronic lumbosacral strain and began administering a series of lumbar epidural blocks. In August 1998, Dr. Rasool noted that appellant had an "excellent response" to the epidural blocks and he, therefore, released appellant from his service.

In a report dated September 16, 1998, Dr. Tauber confirmed the beneficial effect of Dr. Rasool's steroid injections. However, in October 1998, appellant again experienced low back pain and sought treatment with Dr. Marwan Chahayed, a chiropractor, who diagnosed lumbosacral myofascitis and bilateral radicular neuralgia.

First, Dr. Chahayed is not considered a physician under the Federal Employees' Compensation Act and, therefore, his opinion is of no probative medical value.[8] Second, Dr. Rasool diagnosed chronic myofacial pain related to lumbosacral strain, but did not specifically address the cause of appellant's condition.[9] Moreover, Dr. Rasool's various reports do not mention any specific history of an employment-related injury that could have contributed to appellant's current myofacial pain disorder. Therefore, they do not demonstrate that appellant's pain disorder stems from her accepted employment injury.

The Office met its burden of proof in terminating appellant's compensation based on the accurate, thorough and well-rationalized report of Dr. Bleecker.[10] He found no current objective evidence of the accepted lumbosacral strain and noted that appellant's current subjective complaints of pain did not emanate from the low back, but from her right flank area.

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[5] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[6] *Furman G. Peake,* 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.,* 32 ECAB 1019 (1981).

[7] *Furman G. Peake, supra* note 6; *Calvin S. Mays,* 39 ECAB 993 (1988).

[8] Inasmuch as Dr. Chahayed did not diagnose or treat appellant for a subluxation of the spine as demonstrated by x-ray, his October 13, 1998 evaluation does not constitute a physician's opinion, as that term is defined under the Act. 5 U.S.C. § 8101(2); *see Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[9] Where a claimant asserts that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[10] *See Samuel Theriault*, 45 ECAB 586, 590 (1994).

Dr. Bleecker characterized appellant's current muscular pain as postural in nature. Appellant's x-rays and MRI confirmed that she had a normal lumbar spine. Moreover, Dr. Tauber, appellant's treating physician, concurred with Dr. Bleecker's assessment that appellant had no objective evidence of a continuing lumbosacral condition. Accordingly, the Office properly terminated appellant's compensation and authorization for medical treatment.

The Board further finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[11] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

Appellant's January 27, 1999 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second requirements of section 10.606(b)(2). Appellant submitted two reports dated March 4, 1999 and October 6, 1998 from Dr. Rasool.[13] Although Dr. Rasool noted appellant's ongoing complaints of back pain, he did not specifically address the cause of appellant's pain.

Appellant also submitted x-rays associated with the treatment she received from Dr. Rasool in July and August 1998. This evidence also fails to address the cause or extent of appellant's current condition. Thus, the newly submitted evidence is not relevant to the issue of whether appellant still has residuals of her accepted employment injury.[14] Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement of section 10.606(b)(2).

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[11] 20 C.F.R. § 10.606(b)(2) (1999).

[12] 20 C.F.R. § 10.608(b) (1999).

[13] On reconsideration, appellant also submitted Dr. Rasool's earlier treatment records covering June through August 1998. Additionally, appellant submitted Dr. Chahayed's October 13, 1998 treatment records. This evidence, however, was already part of the record at the time the Office's hearing representative issued his December 31, 1998 decision. Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *James A. England*, 47 ECAB 115, 119 (1995); *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

[14] Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

As appellant did not meet any of the three requirements under section 10.606(b)(2), the Board finds that the Office acted within its discretion in denying appellant's January 27, 1999 request for reconsideration.[15]

The decisions of the Office of Workers' Compensation Programs dated September 29, 1999 and December 31, 1998 are hereby affirmed.

Dated, Washington, DC
May 17, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[15] The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its September 29, 1999 decision denying reconsideration. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).