U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NEKEDRA MOORE and DEPARTMENT OF VETERANS AFFAIRS, EDWARD HINES VETERANS HOSPITAL, Hines, IL

Docket No. 00-2080; Submitted on the Record;
Issued May 14, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

On January 2, 1999 appellant, a 24-year-old licensed practical nurse, was struck in the left leg by a wheelchair. She filed a claim for benefits, which the Office accepted for left knee derangement and upper back strain. Appellant stopped work on the date of injury and returned to light-duty work on January 25, 1999. She missed work intermittently and the Office paid appropriate compensation and medical benefits.

In a report dated November 24, 1999, Dr. Shahid A. Ansari, a Board-certified orthopedic surgeon and appellant's treating physician, stated:

> "[Appellant] … has been under my care since February 1999, [when] she had an accident … while working at [the employing establishment] in which she fell after being struck by a patient in a wheelchair. [S]he had pains in the upper back, left knee and the entire left side. [Appellant's] left knee and neck have hardly ever bothered her[;] however, there has been a consistent complaint of the left upper back pain, in between the upper part of the scapulae and the spine. This is soft tissue pain. Somehow, it increases every time she tries to lift something at home or at work. Because of that, I gave her light duty. Occasionally, this flares up and she shows up at the clinic every three or four weeks. Lifting always increases the pain. The condition at this time is such that she cannot go back to lifting and pulling the patients. [These symptoms] started only after the accident, so … it is [definitely] work related."

To determine appellant's current condition and whether she still suffered residuals from her January 2, 1999 employment injury, the Office scheduled a second opinion medical examination with Dr. Richard H. Sidell, a Board-certified orthopedic surgeon.

In a report dated January 11, 2000, Dr. Sidell reviewed appellant's medical records and a statement of accepted facts, indicated findings on examination and stated:

> "[Appellant] at this point has minimal, if any, residuals from her injury. It is concluded that she has probably reached maximum medical improvement with a date nine months after the injury date. This was derived from knowledge of normal wound healing physiology, which takes approximately nine months for completion of healing. It is felt that [appellant] could return to her date[-]of[-]injury position as a [licensed practical nurse] without restriction at this time. It is felt that there is no permanent partial impairment based on this injury."

In a notice of proposed termination dated March 8, 2000, the Office, relying on Dr. Sidell's opinion, found that the weight of the medical evidence demonstrated that appellant no longer had any residuals from the January 2, 1999 employment injury. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

Appellant submitted a March 10, 2000 report from Dr. D.A. Minnis, who provided an impairment evaluation based on appellant's cervical spine and knee conditions.

By decision dated May 11, 2000, the Office terminated appellant's compensation and entitlement to medical benefits.

The Board finds that the Office failed to 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.[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]

In this case, there was disagreement between Dr. Sidell, the second opinion physician and Dr. Ansari, appellant's treating physician, regarding whether appellant was at least partially disabled due to residuals from her January 2, 1999 work injury. Dr. Sidell stated in his January 11, 2000 report that appellant had minimal or no residuals stemming from her accepted injury, which should have resolved within nine months after the date of injury. He advised that appellant could return to her date-of-injury position without restrictions.

Dr. Ansari stated in his November 24, 1999 report that appellant had experienced constant pain in her left upper back, resulting from her employment injury, which increased when she attempted to engage in lifting. Based on these complaints, Dr. Ansari placed her on light duty. He advised that appellant's condition precluded her return to lifting and pulling the

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] *Id.*

patients; *i.e.*, the required duties of a licensed practical nurse. This created a conflict in the medical evidence.

When such conflicts in medical opinion arise, section 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."[3] Therefore, the Office should have referred the case to a properly selected impartial medical examiner, using the Office procedures, to resolve the conflict between Drs. Ansari and Sidell. Accordingly, there remains an unresolved conflict in medical opinion.[4]

The May 11, 2000 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
May 14, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[3] Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part, "[i]f there is a 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." *See Dallas E. Mopps*, 44 ECAB 454 (1993).

[4] *See Shirley L. Steib*, 46 ECAB 309 (1994); *Vernon E. Gaskins*, 39 ECAB 746 (1988).