U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS STUART and DEPARTMENT OF VETERANS AFFAIRS, FORT LYON VETERANS HOSPITAL, Fort Lyon, CO

Docket No. 00-2311; Submitted on the Record; Issued September 19, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT, PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability causally related to her November 18, 1993 employment injury.

On November 18, 1993 appellant, then a 45-year-old medical clerk, was struck by a patient in the center of her back with his fist while she was walking down the hall. Appellant was off work from November 23 to 28, 1993 and returned to regular duty on November 29, 1993.

Initial medical treatment records indicate that appellant was treated for cervical tension, neck pain and headache. On December 8, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for cervical contusion and strain.

On May 22, 1995 appellant filed a notice of recurrence of disability alleging that she continued to have headaches and stress in the neck and right shoulder since the date of the injury. Appellant also claimed that she had intervening injuries on December 13 and 21, 1994 causing more stress to her neck and shoulder.

On May 26, 1995 the Office advised appellant of the additional factual and medical evidence needed to establish her claim for a recurrence of disability and requested that she submit such. Appellant was allotted 30 days to submit the requested evidence.

By decision dated June 26, 1995, the Office rejected appellant's claim on the grounds that she failed to establish that her claimed condition was causally related to her November 18, 1993 injury.

In an undated statement received by the Office on July 3, 1995, appellant described her original injury in November 1993. She indicated that a month after the injury she started having chest pains and never stopped having headaches. By letter dated July 18, 1995, appellant requested reconsideration and submitted additional factual and medical evidence.

In an August 30, 1995 letter, appellant stated that she slipped and fell at work on December 21, 1994 and completed a claim form. She described her hobbies and her previous activities. She indicated that she had had a tumor on the left side of her brain (since birth) and after three surgeries to correct it, she had very few problems and enjoyed her work until the injury of November 18, 1993. Appellant stated that there was not a single day since then that she did not have a headache.

In a September 14, 1995 decision, the Office denied modification following a merit review of the claim.

Subsequently, appellant repeatedly requested reconsideration and submitted additional factual and medical evidence. The Office denied her requests on December 21, 1995, December 5, 1996, June 10, 1998, June 2, 1999 and June 22, 2000 finding the evidence insufficient to modify its previous decisions.

In an October 2, 1995 report, Dr. Erick R. Ratzer, a Board-certified surgeon and thoracic surgeon, indicated that he was consulted by appellant to ascertain whether she needed further surgery on her neck for the possibility of a recurrent carotid body tumor. He opined that there was nothing definitive in the magnetic resonance imagining (MRI) scan to indicate a recurrence of her tumor and he did not believe that the tumors were responsible in any way for her neck pain or headaches.

In an October 5, 1995 report, Dr. David C. Kelsall, a Board-certified otolaryngologist, indicated that he was seeing appellant in follow up for her glomus tumor surgeries, conductive hearing loss and patulous Eustachian tube. Dr. Kelsall stated that while appellant had an area on her MRI scan that enhances, he did not feel that this represented a tumor recurrence; however, he was planning a repeat MRI scan to be certain that this area did not show enlargement. Dr. Kelsall further opined that in any event, this would not cause symptoms of headache, even if it represented a small recurrent benign tumor. He indicated that he also discussed this with Dr. Ratzer and he also concurred that this would not account for any of her headache or neck pain symptoms.

Dr. Kelsall also indicated that appellant's surgery in May 1995 was done entirely for her conductive hearing loss and was not related to her pain syndrome and would not have contributed to her pain syndrome. He further explained that patulous Eustachian tube symptoms do not cause pain or discomfort and he did not feel that this was aggravating her condition. Dr. Kelsall concluded his report by stating that he did not feel that her ear symptoms, ear surgery, MRI scan abnormalities or previous surgical procedures for her glomus tumors would at all contribute to her recent complaints of headache and neck pain. He further opined that he could not address the chronic sinus infections as a contributing factor.

In a November 7, 1995 report, Dr. Richard A. Shand, Board-certified in internal medicine, stated that he had treated appellant for quite some time with respect to her multiple medical problems. Dr. Shand indicated that she had long-standing/chronic sinus infections, which have been clinically and radiographically evident and treated appropriately with long-term spectrum antibiotic therapy with appropriate cultures being obtained and she responded to therapy over this period of time. He indicated that appellant was relatively symptom free with

regard to her chronic sinus infection. Dr. Shand opined that appellant's recurrent neck and occipital/parietal discomfort on the right side of her head, did not seem to correlate with her recurrent bouts of sinusitis and seemed to be musculoskeletal in nature. He indicated that he did not feel that her present occipital and neck pathology were based on any of her preexisting health care problems for which he had treated appellant dating back to 1978.

In a November 4, 1996 letter, Dr. Donald A. Johnston, a psychiatrist, opined that appellant was referred for evaluation of depression and chronic pain with multiple medical complaints. He noted that appellant's history began on November 18, 1993 when she was injured by a patient at work. Dr. Johnston noted appellant's past history contained tumors in her carotid artery and cranium with removal of glomulus tumors of the cerebrum. Following the surgeries, she was left with impaired hearing. He noted a history of gall bladder removal and peptic ulcer disease. Dr. Johnston stated that despite these extreme medical conditions, she made a good recovery in the mid-eighties and was able to return back to work. He stated that she was in a good mental condition and was not depressed until she was injured at work on November 18, 1993. Dr. Johnston stated that pain control was largely headache and neck pain resulting from prior injuries.

In a May 10, 1996 report, Dr. Dan Montgomery, a Board-certified opthamalmologist, opined that appellant's chronic headaches have elements of muscle contraction headache, depression and some aspects of post-traumatic stress disorder (PTSD) after the very anxiety provoking attack she experienced two years ago, worsening these headaches. He stated that the work injury was at least a partial contributor to her chronic headache syndrome.

In an October 28, 1997 report, Dr. Johnston indicated that he first saw appellant on August 30, 1996 and saw her on a regular basis from one to every three weeks. He stated that appellant had depression and chronic pain to the neck and shoulders that was directly caused by injuries received at work. Dr. Johnston stated that her prognosis was guarded and he doubted that she would be able to work in the future and remained chronically disabled as a result of these injuries.

In a January 21, 1999 report, Dr. Timothy O. Hall, Board-certified in physical medicine and rehabilitation, indicated that he had evaluated appellant on October 12, 1998. Dr. Hall opined that appellant's diagnosis of musculoskeletal/tension headache without vascular component related directly to the soft tissue injury she experienced during her workers' compensation injury in 1993. He further opined that he did not think that there was any relationship between her headache problem and the tumor history. Dr. Hall observed that the tumor problem had been worked up and there did not seem to be any recurrence. He also noted that it was his understanding that appellant did not have a preexisting headache situation for the compensable injury to aggravate or accelerate. Dr. Hall further observed that the compensable injury was the sole cause of appellant's musculoskeletal headache and explained how local muscle spasm through the splenius capitis area could lead to irritation of the occipital nerves, which could produce headaches. He noted that Dr. Johntson had diagnosed depression but stated he could not comment on that although he had seen this occur with chronic pain.

In a May 26, 1999 report, Dr. Johnston opined that appellant's present condition of depression, chronic pain and altered mental status made it not possible for her to work at the

hospital or any job similar to it. He further opined that were it not for the incident at work on November 18, 1993, she would not have these symptoms.

In an April 9, 1996 report, Dr. Shand stated that he had been appellant's attending physician since the late 1970s. He stated that appellant continued to have ongoing symptomatology that included pain in her nuchal and occipital areas as a result of an injury incurred on November 18, 1993. Dr. Shand stated that it was his opinion that her present clinical condition was associated with a significant amount of situational depression as well as a result of her ongoing discomfort.

In an October 12, 1998 report, Dr. Hall stated that appellant had about a foot of records and x-rays, however, he was not going to do a comprehensive discussion of her history as it was not relevant to what he was asked to evaluate. Dr. Hall narrowed his comments to the thoracic-neck-headache situation, which resulted from the work incident of 1993 where she was hit in the back by a patient while working in a nursing facility in Fort Lyons, Colorado. He noted appellant's situation was complicated by her history of a brain tumor, which was operated on a total of four times. Dr. Hall also stated that there was some recurrence of a brain tumor but it was not changed over the last two to three years. He stated that he spent about 25 minutes reviewing a lot of the documents and focused on Dr. Shand's notes. Dr. Hall stated his impression was that of; musculoskeletal/tension type headaches without vascular components; myofascial dysfunction through cervicothoracic area with fairly severe postural distortions particularly through the cervicothoracic junction; facet dysfunction through the mid thoracic levels; probable temporomandibular joint (TMJ) dysfunction probably related to chronic pain/soft tissue dysfunction; history of hormonal dysfunction due to hypopituitarism; history of brain tumor resection which was not really evaluated today. He stated that he believed that appellant's ongoing headaches related directly to the soft tissue injury she experienced during the injury of November 1993. Dr. Hall noted that she had fairly significant postural distortions and myofascial problems through this cervicothoracic area which could certainly be associated with this type of headache. He suggested that the TMJ situation might also be contributing to her headaches and a thorough evaluation was needed, including possible splinting of the area and a possible MRI scan to rule out any other pathology that might exist in the thoracic spine.

In a June 22, 2000 decision, the Office denied modification following a merit review of the claim.

The Board finds that this case is not in posture for decision.

While appellant had the burden to establish entitlement to compensation, the Office shares the responsibility in the development of evidence.[1] When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician.[2]

[1] *Dennis J. Lasanen,* 43 ECAB 549 (1992).

[2] *John J. Carlone,* 41 ECAB 354 (1989).

In this case, the Office accepted that appellant had cervical contusion and strain. Appellant subsequently filed a notice of recurrence alleging that she continued to have headaches and stress in the neck and right shoulder since the date of the injury.

Appellant provided an October 2, 1995 report from Dr. Ratzer, who opined that he did not believe appellant's tumors were responsible for her neck pain or her headaches. She provided an October 5, 1995 report from Dr. Kelsall, who stated that appellant's previous symptoms would not cause appellant's symptoms of headache even if they were small recurrent tumors. In a November 7, 1995 report, Dr. Shand attempted to explain that appellant's preexisting conditions were not the cause of appellant's occipital and neck pathology. Although these reports did not address causal relationship with respect to the accepted employment injury, they attempted to explain that appellant's headaches did not derive from the preexisting conditions that she had prior to her November 18, 1993 employment injury.

Appellant submitted additional reports from Dr. Shand. In his April 9, 1996 report, Dr. Shand stated that he was appellant's attending physician since the late 1970's. He opined that appellant continued to have ongoing symptamatology that included pain in her nuchal and occipital areas as a result of an injury incurred on November 18, 1993. Additionally, he stated that her present clinical condition was associated with a significant amount of situational depression as well as a result of her ongoing discomfort.

Appellant submitted reports from Dr. Johnston from November 4, 1996 to May 26, 1999. In his November 4, 1996 report, he opined that appellant's history began following an injury at work on November 18, 1993. Dr. Johnston explained that despite appellant's preexisting conditions, she was able to return to work and was in a good mental condition and was not depressed until she was injured at work on November 18, 1993. He stated that pain control was largely headache and neck pain resulting from appellant's prior injuries. In his October 28, 1997 report, Dr. Johnston indicated that appellant's depression and chronic pain to the neck and shoulder was directly caused by injuries received at work. He stated she remained chronically disabled as a result of these injuries. In his May 26, 1999 report, Dr. Johnston further opined that were it not for the incident at work on November 18, 1993, she would not have these symptoms.

In his May 10, 1996 report, Dr. Montgomery opined that appellant's chronic headaches had elements of muscle contraction headache, depression and some aspects of PTSD after the incident at work on November 18, 1993, worsening these headaches. He further stated that the work injury was at least a partial contributor to her chronic headache syndrome.

Dr. Hall submitted two reports. In his October 12, 1998 report, Dr. Hall noted appellant's history of injury and treatment, although he stated he was narrowing his comments to the situation resulting from the November 18, 1993 work injury. Dr. Hall indicated that he believed appellant's ongoing headaches were directly related to the soft tissue injury in 1993. He suggested that a thorough evaluation of the TMJ situation was needed including an MRI scan to rule out any pathology in the thoracic spine and possible splinting of the area. In Dr. Hall's January 21, 1999 report, he again elaborated that appellant's diagnosis of musculoskeletal/ tension headaches without vascular components was directly related to the soft tissue injury she experienced during her workers compensation injury of 1993. Dr. Hall again elaborated that the

compensable injury was the sole cause of appellant's musculoskeletal headache and explained how the local muscle spasm through the splenius capitis area could lead to the irritation of the occipital nerves and cause headaches.

While the reports of Drs. Ratzer, Kelsall, Shand, Johnston, Montgomery and Hall are not sufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that the head aches were causally related to her accepted November 18, 1993 employment injury, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.[3] The Board further notes there is no medical evidence of record directly refuting a causal relationship between appellant's headaches and the injury of November 18, 1993.

On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The June 22, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
September 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[3] *See Horace Langhorne,* 29 ECAB 820 (1978).