U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUNE L. TOWNS and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

Docket No. 02-13; Submitted on the Record;
Issued December 23, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective April 2, 2000.

On June 12, 1985 appellant, then a 57-year-old clerk filed a claim alleging that she developed a heart condition and depression as a result of her employment duties. Appellant stopped work on May 22, 1985 and did not return.[1] The Office accepted the claim for angina pectoris and major depressive illness. Appellant was paid appropriate compensation.

Subsequently, appellant submitted various medical records from Dr. Leigh Truitt, a Board-certified internist and specialist in psychiatry, dated June 14 to August 26, 1985; Dr. Richard W. Rewey, an internist, dated July 2, 1985; and Dr. Forrest V. Frakes, a psychologist. Dr. Truitt's reports dated June 14 to August 26, 1985 document a history of appellant's condition noting that she was treated for chest pain and depression due to her work condition. He diagnosed appellant with coronary artery spasm with severe anxiety and depression. Dr. Truitt indicated that appellant's chest pain was due to the stress placed on her by her superiors to perform new and demanding roles. Dr. Rewey's report dated July 2, 1985 noted appellant was treated for major depression with associated anxiety. He noted appellant's symptoms were aggravated by her work and that her anxiety and depression could provoke a further episode of chest pain. Dr. Frakes, a psychologist, performed a personality assessment, which revealed a moderately severe emotional disorder of major depression.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to impartial medical examiners.

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[1] The record reflects that appellant did not return to the employing establishment and currently receives disability retirement.

Appellant continued submitting treatment notes from Drs. Frakes and Truitt indicating that she remained disabled and under treatment for angina pectoris and major depressive illness.

On April 9, 1997 the Office referred appellant for a second opinion to Dr. William W. Dahlberg, a specialist in psychiatry, and Dr. Philip Vigoda, a Board-certified internist and specialist in cardiology. The Office provided Drs. Dahlberg and Vigoda with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated May 29, 1997, Dr. Vigoda indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's condition. The physical examination was essentially normal. Dr. Vigoda opined that appellant's angina pectoris was not caused or aggravated by her work. He noted that he did not believe appellant was suffering from vasospastic angina as diagnosed previously. Dr. Vigoda indicated that appellant experienced angina with effort, which was inconsistent with vasospastic angina. He indicated that appellant has had functional chest pain for a long period of time and he believed this to be psychiatric in origin, malingering or Munchausen syndrome.

In reports dated May 6 and July 22, 1997, Dr. Dahlberg indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's condition. Dr. Dahlberg diagnosed her with major depression, well controlled with medication; personality disorder; cardiac problems; and diabetes mellitus. He noted that appellant continued to struggle with depression, which was well controlled with medication and from strictly a psychological standpoint she could return to work. However, Dr. Dahlberg noted that with her advancing age and problems with cardiac vessel instability she could not return to work. His July 22, 1997 report indicated that appellant continued to have problems with depression as a result of events other than the one compensable work factor. Dr. Dahlberg noted that appellant had a lot of emotional problems over the years and general health problems.

Subsequently, appellant submitted reports from Dr. Noel Hermele, a specialist in psychiatry, dated August 25, 1997 to February 10, 1998 and Dr. Roger Damle, a Board-certified internist, dated February 23, 1998. Dr. Hermele disagreed with Dr. Dahlberg's assessment of appellant's condition and noted that her depression was causally related to the events of her heart attack and all the losses and frustration of being denied a chance to return to gainful employment. He noted that this was a work-engendered situation and that appellant's depression was not currently controlled by medication. Dr. Hermele concluded that appellant was totally disabled and could not return to work at this time. Dr. Damle noted that appellant did have limitations in her capacity to engage in activities involving strenuous physical exertion because she experienced chest pain on minimal exertion. He noted that appellant could not work in a stressful situation as her past-suggested development of chest pain with significant emotional stress. Dr. Damle noted that appellant could not perform any employment, which required more than a minimal amount of exertion or stress.

The Office determined that a conflict of medical opinion had been established between Dr. Hermele, appellant's treating physician, who indicated that appellant was permanently disabled and unemployable, Dr. Dahlberg and prior Office referral physicians, who determined that appellant did not suffer psychological residuals from her work-related injury in 1985.

To resolve the conflict appellant was referred to a referee physician, Dr. Sam N. Demander, a psychologist and Dr. Howard J. Entin, a Board-certified psychiatrist.[2]

In a medical report dated March 16, 1999, Dr. Demander indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Dr. Demander indicated that appellant did suffer depression associated with the loss of her employment and the chronic disability associated with her angina. He noted that there were nonwork-related psychosocial events attributable to her family situation, which aggravated her condition. Dr. Demander noted that the compensable factors of work hours, clerk shortages and interfacing with angry customers were not attributable to her major depression. Dr. Demander indicated that the persistence of her condition was attributable to the chronic, disabling effect of her daily complaints of angina and the changes in identity from losing her employment. He noted that her medical and psychological condition prevent her from returning to work; however, the factors of work hours, clerk shortages and interfacing with angry customers were not attributable to her major depression.

In medical reports dated March 3, 1999 and January 19, 2000, Dr. Entin diagnosed appellant with major depressive episode -- recurrent in remission; depression associated with anxiety, ongoing and intermittent; possible personality disorder; and chronic angina pectoris. He indicated that appellant did not currently suffer from a major depressive episode. Dr. Entin noted that appellant had chronic depression with irritability and anxiety, which flared up at times when she was more, stressed. He indicated that the fact that appellant worked nine hours a day and dealt with angry customers was not the cause of her chronic emotional problems. Dr. Entin indicated that appellant had a preexisting history of angina and that the angina pectoris and the loss of her job lead to her major depression. He indicated that appellant could not return to work with the employing establishment because of her physical symptoms of angina, exertional shortness of breath and the fact that emotionally she had been in conflict with the employing establishment. However, Dr. Entin did indicate that appellant could work part time at a sedentary job that was not stressful. His report of January 19, 2000 opined that appellant's current depression was caused by her angina, significant physical problems and psychosocial stressors. Dr. Entin noted that her current depression was not caused by compensable factors of employment nor the work event but was clearly due to her chronic debilitating physical condition and psychosocial stressors.

The Office determined that a conflict of medical opinion had been established between Dr. Damle, appellant's treating physician, who indicated appellant was permanently disabled and unemployable and Dr. Vigoda, who determined that appellant did not suffer residuals from the accepted work-related conditions of angina pectoris and major depression.

[2] This included referring appellant to a second impartial specialist in 1999 when the first impartial specialist, in 1998, did not provide the clarification requested by the Office. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming to the Office or if the physician is unable to clarify or elaborate on the original report or if the physician's report is vague, speculative or lacks rationale, the Office must refer the employee to another impartial medical specialist for a rationalized medical opinion on the issue in question. *See Margaret M. Gilmore,* 47 ECAB 718 (1996); *Terrence R. Stath,* 45 ECAB 412 (1994); *Nathan L. Harrell,* 41 ECAB 402 (1990); *John I. Lattany,* 37 ECAB 129 (1985).

To resolve the conflict appellant was referred to a referee physician, Dr. Scott R. Valent, a Board-certified internist and specialist in cardiovascular disease. In his report dated July 1, 1999, he noted that appellant's chest pain or angina pectoris was in no way caused or aggravated by the compensable work factors of her employment. Dr. Valent indicated that there was no data to suggest that stress had a clear relationship in the development of coronary artery disease. He noted that appellant's coronary artery disease was not related to the factors of her employment, instead it was the result of the natural progression of a preexisting condition such as underlying coronary plaques or fatty streaks which are secondary to genetic factors, hypertension, diabetes, tobacco use or hypercholesterolemia. Dr. Valent indicated that he has encountered no data, which suggested that unsuitable working conditions, including stress, were related to the development of coronary artery disease. Rather he indicated that appellant's history of diabetes was a strong risk factor for coronary artery disease. Dr. Valent noted that appellant's functional capacity was decreased and he opined that it was doubtful that her coronary artery disease was limiting this. He noted that appellant could return to full-time work, 8 hours a day with restrictions of no lifting of greater than 10 pounds; no carrying over 5 pounds; no prolonged bending, kneeling or standing.

On February 23, 2000 the Office issued a notice of proposed termination of compensation on the grounds that Drs. Entin, Demander and Valent reports established no continuing disability as a result of the 1985 employment injury.

Thereafter, appellant submitted a report from Dr. Olivia V. Adair, a Board-certified internist; a report from Dr. Hermele dated February 21, 2000; and a narrative statement. Dr. Adair diagnosed appellant with coronary artery disease consistent with a quite small right coronary artery, which has caused her anginal symptomology. She indicated that patients with diabetes such as appellant are at risk for small vessel disease. Dr. Adair noted that appellant was capable of making a practicable job effort. Dr. Hermele's report indicated that appellant was totally and permanently disabled at this time from all employment. She again noted that appellant's disabilities were a direct consequence of her work environment.

By decision dated April 5, 2000, the Office terminated all appellant's compensation benefits effective the same date on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her 1985 employment injury.

On April 19, 2000 appellant requested an oral hearing before an Office hearing representative. The hearing was held on September 19, 2000. Appellant submitted a report from Dr. Maged Rizk, a specialist in internal medicine, dated July 14, 2000. Her report noted a history of appellant's work-related injury. Dr. Rizk's diagnosed appellant with hypertension with diastolic dysfunction; nonobstructive coronary artery disease; and cardiac x syndrome. She indicated that appellant's shortness of breath was a combination of diastolic dysfunction from her long-standing hypertension and left ventricular hypertrophy as well as angina from her syndrome X.

In a decision dated December 7, 2000, the hearing representative affirmed the Office decision dated April 5, 2000.

On April 25, 2001 appellant requested reconsideration of the Office decision dated December 7, 2000. Appellant submitted an ultra sound dated December 21, 2000; a carotid artery test dated January 2, 2001; and an operative report dated February 13, 2001. The carotid duplex ultrasound revealed severe stenosis of the right internal carotid artery and moderate stenosis of the left internal carotid artery with evidence of plaques of the external carotid arteries. The echocardiogram revealed a left ventricular diastolic dysfunction, mild mitral regurgitation and mild pulmonary hypertension. The history and physical examination revealed appellant's complaints and treatment for suddenly falling to the ground in the weeks before the January 16, 2001 visit. The right carotid endarterectomy with bovine pericardial patch angioplasty performed by Dr. Mark R. Gazall, an osteopath, noted severe right carotid artery stenosis and drop attacks secondary to vertebral basilar disease. The treatment notes from Dr. Javier Muniz, a family practitioner, documented general office visits and noted appellant's episodes of falling and syncope.

In a decision dated June 27, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the application was insufficient to warrant modification of the prior decision.

The Board finds that the Office has met its burden of proof to terminate benefits effective April 5, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[3] After it has determined that an employee has a 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.[4]

In this case, the Office accepted appellant's claim for angina pectoris and major depressive illness. The Office reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant's attending psychiatrist, Dr. Hermele, who disagreed with Dr. Dahlberg concerning whether appellant had any continuing work-related mental condition. The Office also determined a conflict existed between appellant's attending cardiologist, Dr. Damle, who disagreed with Dr. Vigoda, the Office referral physician, concerning whether appellant had any work-related cardiology condition. Consequently, the Office referred appellant to Drs. Demander, Entin and Valent to resolve the conflicts.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[5]

[3] *Harold S. McGough*, 36 ECAB 332 (1984).

[4] *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[5] *Aubrey Belnavis*, 37 ECAB 206 (1985).

The Board finds that, under the circumstances of this case, the opinion of Drs. Demander, Entin and Valent are sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Dr. Demander reviewed appellant's history, reported findings and noted that appellant did suffer depression associated with the loss of her employment and the chronic disability associated with her angina. He noted that there were nonwork-related psychosocial events attributable to her family situation, which aggravated her condition. Dr. Demander noted that the compensable factors of work hours, clerk shortages and interfacing with angry customers were not attributable to her major depression. He indicated that the persistence of her condition was attributable to the chronic, disabling effect of her daily complaints of angina and the changes in identity from losing her employment. Dr. Demander noted that her medical and psychological condition prevented her from returning to work; however, the factors of work hours, clerk shortages and interfacing with angry customers were not attributable to her major depression.

In medical reports dated March 3, 1999 and January 19, 2000, Dr. Entin diagnosed appellant with major depressive episode -- recurrent in remission; depression associated with anxiety, ongoing and intermittent; possible personality disorder; and chronic angina pectoris. He noted that appellant did not currently suffer from a major depressive episode. Dr. Entin indicated that the fact that appellant worked nine hours a day and dealt with angry customers was not the cause of her chronic emotional problems. He noted that appellant had a preexisting history of angina and that the angina pectoris and the loss of her job lead to her major depression. Dr. Entin indicated that appellant could work part time at a sedentary job that was not stressful. His report of January 19, 2000 opined that appellant's current depression was caused by her angina, significant physical problems and psychosocial stressors. Dr. Entin noted that her current depression was not caused by compensable factors of employment nor the work event, but was clearly due to her chronic debilitating physical condition and psychosocial stressors.

In his report dated July 1, 1999, Dr. Valent, noted that appellant's chest pain or angina pectoris was in no way caused or aggravated by the compensable work factors of her employment. He indicated that there was no data to suggest that stress had a clear relationship in the development of coronary artery disease. Dr. Valent noted that appellant's coronary artery disease was not related to the factors of her employment instead it was the result of the natural progression of a preexisting condition such as underlying coronary plaques or fatty streaks which were secondary to genetic factors, hypertension, diabetes, tobacco use or hypercholesterolemia. Dr. Valent indicated that he has encountered no data, which suggest that unsuitable working conditions, including stress, were related to the development of coronary artery disease. Rather he indicated that appellant's history of diabetes was a strong risk factor for coronary artery disease. He noted that appellant's functional capacity was decreased and he opined that it was doubtful that her coronary artery disease was limiting this. Dr. Valent noted that appellant could return to full-time work, 8 hours a day with restrictions on no lifting of greater than 10 pounds; no carrying over 5 pounds; no prolonged bending, kneeling or standing. Drs. Demander, Entin and Valent found no basis on which to attribute any continuing disability to appellant's employment injury.

After issuance of the pretermination notice, appellant submitted a report from Dr. Adair and Dr. Hermele dated February 21, 2000. Dr. Adair diagnosed appellant with coronary artery disease consistent with a quite small right coronary artery, which caused her anginal symptomology. She indicated that patients with diabetes such as appellant are at risk for small vessel disease. Dr. Adair noted that appellant was capable of making a practicable job effort. However, her report failed to mention a history of appellant's work-related injury of June 12, 1985, rather she attributed appellant's entire present status to a small right coronary artery. The Board has found that a medical opinion based on an incomplete history is insufficient to establish causal relationship.[6] Dr. Hermele's report indicated that appellant was totally and permanently disabled at this time from all employment. She again noted that appellant's disabilities were a direct consequence of her work environment. However, Dr. Hermele's report is similar to her prior reports and is insufficient to overcome that of Dr. Entin or Dr. Meander or to create a new medical conflict.[7]

The Board finds that, under the circumstances of this case, the opinions of Drs. Demander, Entin and Valent are sufficiently well rationalized and based upon a proper factual background such that they are the weight of the evidence and established that appellant's work-related condition has ceased.

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.[8] However, medical evidence submitted by her after termination of benefits either did not specifically address how any continuing condition was due to the June 12, 1985 work injury or other incidents or was duplicated evidence previously considered by the Office. Appellant submitted a report from Dr. Rizk dated July 14, 2000. She diagnosed appellant with hypertension with diastolic dysfunction; nonobstructive coronary artery disease; and cardiac X syndrome. Dr. Rizk indicated that appellant's shortness of breath was a combination of diastolic dysfunction from her long-standing hypertension and left ventricular hypertrophy as well as angina from her syndrome X. However, her report failed to mention a history of appellant's work-related injury of June 12, 1985. Rather she attributed appellant's entire present status to hypertension with diastolic dysfunction, nonobstructive coronary artery disease and cardiac X syndrome. The Board has found that a medical opinion based on an incomplete history is insufficient to establish causal relationship.[9] Therefore, Dr. Rizk's report is insufficient to overcome that of Dr. Valent or to create a new medical conflict.[10]

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[6] *See Cowan Mullins*, 8 ECAB 155, 158 (1955).

[7] *See Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Hermele's report does not contain new findings or rationale upon which a new conflict might be based.

[8] After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; *see Howard Y. Miyashiro, supra* note 7.

[9] *See Cowan Mullins, supra* note 6.

[10] *See Howard Y. Miyashiro, supra* note 7; *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Rizk's report does not contain new findings or rationale upon which a new conflict might be based.

Other medical records submitted by appellant did not specifically address how any continuing condition was causally related to the June 12, 1985 employment injury.

The Board finds that there is no medical evidence, which supports that appellant's disability was causally related to her accepted work-related condition. Drs. Demander, Entin and Valent had full knowledge of the relevant facts and evaluated the course of appellant's condition. They are specialists in the appropriate fields. At the time benefits were terminated they clearly opined that appellant had absolutely no work-related reason for disability. Their opinions are found to be probative evidence and reliable. The Board finds that Drs. Demander, Entin and Valent's opinions constitute the weight of the medical evidence and are sufficient to justify the Office's termination of benefits.

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated June 27, 2001 and December 7, 2000 are hereby affirmed.

Dated, Washington, DC
December 23, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member