U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE K. MAYNARD and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Denver, CO

Docket No. 02-292; Submitted on the Record;
Issued December 10, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On July 28, 1995 appellant, then a 52-year-old computerized tomography (CT)/ angiogram technician, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee when she tripped over a cable and fell. The Office accepted the claim for contusion of the right patella, chondromalacia and a lumbar strain.

In a report dated February 23, 1996, Dr. John D. Papilion, an attending Board-certified orthopedic surgeon, concluded that appellant had permanent restrictions due to her employment injury. Based upon a February 8, 1996 functional capacity evaluation, he advised that appellant could perform duties involving lifting up to 25 pounds, engaging in frequent lifting of up to 20 pounds and no walking more than 2 hours at a time, with occasional kneeling and squatting. Regarding appellant's usual position as a radiology technician, Dr. Papilion concluded that she was unable to perform this position as it required her to occasionally lift up to 50 pounds, frequently lift up to 20 pounds and prolonged standing and walking.

Appellant filed a claim for a schedule award on March 11, 1996. The Office issued appellant a schedule award for a five percent permanent impairment of her right leg on May 15, 1996. On June 2, 1997 appellant was awarded a schedule award for an additional two percent permanent impairment of her right leg.

On April 4, 1996 appellant accepted the position of program support clerk, which was at a lower grade than her position as a radiology technician and started the job on April 14, 1996.

On November 11, 1996 appellant filed an occupational disease claim alleging that she subsequently developed soft tissue damage due to her accepted July 27, 1995 employment injury. By letter dated December 12, 1996, the Office advised appellant to file a recurrence claim if she was not claiming a new injury.

On January 21, 1997 appellant filed a recurrence claim which the Office accepted.[1]

In a September 27, 2000 report, Dr. Richard D. Talbott, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, diagnosed bilateral chondromalacia of the patella and idiopathic muscle contractions/essential myoclonus. He concluded that appellant had no residuals from her accepted lumbar strain. Regarding her bilateral chondromalacia of the patella, the physician opined that the condition was not disabling. Dr. Talbot also concluded that appellant's nonwork-related muscle spasms were not disabling and he did not believe appellant was currently disabled from performing the position of diagnostic radiologic technologist.

Dr. Talbot, in an October 17, 2000 report, responding to the Office's request for clarification, stated that he opined the chondromalacia was not disabling because:

> "The major activity causing symptoms with chondromalacia is stair steps and the most symptomatic activity is descending stairs. Therefore restrictions for activities would be to avoid stairs and ladders, and simply being ambulatory on a flat level surface should not cause any aggravation of the problem and should not be an activity that will cause any increase in symptoms. It is also my opinion that the best treatment for the condition would be a rapid repetition weight lifting type of exercise or stationary mobile bicycle riding to maintain function and strength in the quadriceps and hamstring muscles."

Dr. Talbott also opined appellant's lumbar strain had resolved as "there were no complaints of back pain, no limitation of motion in the back and no increased tone in the lumbar paravertebral muscles." He noted that lumbar strains typically resolve within four to six weeks.

On October 30, 2000 the Office issued a proposed notice of termination of compensation benefits based upon Dr. Talbott's opinion that she was no longer disabled from performing her date-of-injury position.

By decision dated December 1, 2000, the Office finalized appellant's termination of benefits effective December 2, 2000.

In a December 4, 2000 report, Dr. Papilion, noting appellant's employment injury history, found "persistent myoclonus with any attempted passive or active range of motion of the right lower extremity," tenderness of the medial patella and moderate supatellar crepitus. Based upon appellant's physical examination and the November 21, 2000 functional capacity evaluation, the physician concluded appellant was capable of performing light-duty work with restriction of no lifting over 20 pounds, no frequent lifting of more than 10 pounds and no constant lifting. The physician noted that appellant had been put on permanent restrictions February 1996 which included no lifting more than 25 pounds, no frequent lifting of more than 20 pounds, no walking more than 2 hours at a time and occasional kneeling and squatting.

[1] On the form appellant indicated that she stopped work on March 15, 1996 due to her recurrence of disability and returned to work on April 17, 1996.

In a letter dated December 6, 2000, appellant's counsel requested an oral hearing which was held on May 9, 2001.

By decision dated August 17, 2001, the hearing representative affirmed the December 1, 2000 Office decision.

The Board finds that the Office has failed to meet its burden.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 the instant case, Dr. Talbott based his opinion that appellant was capable of performing her date-of-injury job on the Office's statement of accepted facts which stated that she was a radiology technician and classified this as light work. At the time appellant was injured she was a CT/angiogram technician which is classified as medium work by the Department of Labor, *Dictionary of Occupational Titles*.[3] It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[4]

The Board finds that Dr. Talbott did not provide a reasoned medical opinion, based on a complete and accurate factual and medical background, establishing that appellant was capable of performing her date-of-injury position or that her employment-related disability of chondromalacia was no longer disabling. The record does not contain a probative medical report establishing that the employment-related disability had ceased as of December 2, 2000. Accordingly, the Board finds that the Office did not meet its burden of proof in this case.

[2] *Barbara L. Chien*, 53 ECAB ___ (Docket No. 00-1646, issued June 7, 2002).

[3] *Dictionary of Occupational Titles*, No. 078.362-054.

[4] *Douglas M. McQuaid*, 52 ECAB ___ (Docket No. 99-2212, issued May 24, 2001). *See generally* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.11(b) (June 1995).

The August 17, 2001 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
December 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member