U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATIE V. ROUSE and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Chicago, IL

Docket No. 00-1212; Submitted on the Record;
Issued February 22, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant had any disability or residuals requiring further medical treatment on or after January 12, 1999, causally related to her July 4, 1978 employment injuries.

On July 4, 1978 appellant, then a 38-year-old nursing assistant, sustained head injuries and contusions involving her face, nose and jaw, loss of consciousness, cervical strain, left knee strain and a major depressive disorder, following an attack by a psychiatric patient. Appellant underwent injury-related surgery and was paid appropriate compensation benefits. She did not return to work.

The Office referred appellant for a second opinion examination to Dr. Leonard R. Smith, a Board-certified orthopedic surgeon. In a report dated May 22, 1986, Dr. Smith stated: "Certainly, this is not a disabling condition." He noted that appellant's history of depression and other psychiatric problems predated her work incident and were not related to the work incident. Dr. Smith diagnosed mild neck arthritis without evidence of radiculopathy and concluded that appellant had no residuals from her accepted cervical strain condition. He opined that she was able to work with a 40- to 50-pound lifting limit.

In 1988 appellant sought treatment with Dr. Galo L. Tan, a Board-certified neurologist. By report dated January 5, 1995, Dr. Tan noted continuing diagnoses of cervical radiculopathy, cervical spondylosis, bilateral shoulder bursitis, right arm lymphadenopathy, sciatica and lumbosacral spondylosis. He noted that appellant required further physical therapy. By report dated May 8, 1996, Dr. Tan indicated that appellant was disabled due to migraine headaches, depression, postmastectomy, chronic pancreatitis and low back pain. Trigeminal neuralgia was also diagnosed. On May 5, 1995 he opined that appellant was totally and permanently disabled. On August 19, 1996 Dr. Tan diagnosed cervical strain, nerve root irritation, muscle strain, no median carpal tunnel syndrome and no neuropathy or brachial plexopathy.

On July 24, 1995 Dr. Thomas E. Baier, a Board-certified orthopedic surgeon, noted that appellant had bilateral shoulder bursitis as well as adhesive capsulitis of the right shoulder, for

which she received cortisone injections and physical therapy. Dr. Baier performed a diagnostic arthroscopy of the left shoulder with an arthroscopic acromioplasty and arthroscopic bursectomy of the left shoulder on July 10, 1996.

By report dated July 15, 1996, Dr. Peter S. Chhabria, a Board-certified neurologist, indicated that appellant's symptoms started after she was attacked by the psychiatric patient, that her complaints of neck and right arm pain, but that she had full range of motion.

The Office referred appellant, a statement of accepted facts, questions to be addressed and the relevant case record to Dr. Hilliard Slavick, a Board-certified neurologist, for a second opinion evaluation. By report dated September 18, 1997, Dr. Slavick reviewed appellant's factual and medical history, noted that her multiple hospitalizations for neck, face and low back pain and noted that she developed depression due to her pain and anger over the incident. He noted that appellant was diagnosed with breast cancer in 1985 and her present complaint of neck and bilateral shoulder pain and headache. He opined that appellant had previously suffered from right trigeminal neuralgia involving pain in the right side of her face. Dr. Slavick noted that April 16, 1997 cervical x-rays were unremarkable, lumbar films showed mild left scoliosis and a bone scan from July 1997 suggested lumbar degenerative osteoarthritis. He noted a normal computerized tomography scan of the brain in March 1997 and normal left shoulder films from April 1995. On physical examination Dr. Slavick noted, that testing of strength, sensation, coordination, gait, autonomic, neck motion, Adson's sign and straight leg raising were all negative. He stated: "It is my impression she has multiple subjective complaints but no objective findings to support her complaints of chronic pain ... I found no evidence to support her complaints of chronic cervical or lumbar strain. She is not currently suffering from trigeminal neuralgia. I feel that she is able to return to work at the current time in her previous job position without restrictions."

By report dated September 24, 1997, Dr. Tan noted that appellant's right arm was very swollen due to lymphedema and he diagnosed cervical and lumbosacral strain with radiculopathy, sciatica and chronic pain syndrome. Dr. Tan recommended physical therapy.

In a November 15, 1997 report, Dr. Slavick concluded that the work-related conditions had resolved completely, based upon neurological examination and he noted that appellant was "not suffering any residuals of the July 4, 1978 work injury."

By report dated April 23, 1998, Dr. Tan indicated that appellant's complaints of persistent headaches and neck pain radiating to the right arm and he noted tenderness and limited neck motion.

The Office referred appellant for a psychiatric second opinion evaluation to Dr. Dixon F. Spivy, a Board-certified psychiatrist. By report dated May 21, 1998, Dr. Spivy reviewed appellant's factual and medical history and provided the results of his evaluation interview. He noted that she exhibited no psychotic symptomatology, was oriented and alert, but exhibited signs of depressed mood. Dr. Spivy noted that it was "difficult to connect her present mood with the work injuries because so long a time has passed and as far as one can tell she does not suffer any continuing major physical work injury." He attributed appellant's "ongoing almost unending emotional misery" to her underlying personality structure, not the employment

injury. Dr. Spivy observed that "essentially, allowing her to 'retire' early at a generous salary for doing nothing allowed an obvious and extreme 'secondary gain.'" He indicated that appellant was able to return to her date-of-injury job.

In response to a request for clarification, Dr. Spivy noted that appellant's accepted emotional condition of "major depressive disorder" had resolved and that her current dysthymic disorder was unrelated to the employment injury. On June 19, 1998 he stated that appellant's major depressive disorder had resolved and that her diagnosis was "dysthymic disorder" which was coincidental with her work injury but was not caused by the work injury.

By report dated April 23, 1998, Dr. Tan diagnosed cervical strain with radiculopathy and chronic pain syndrome; he indicated that appellant had persistent neck pain and headaches radiating pain down her right upper extremity and lymphedema.

By report dated July 15, 1998, Dr. William Lee, a clinical psychologist, noted that appellant had only recently reinitiated treatment after an absence from May 1995 to April 13, 1998. He noted: "I agree that it appears that her physical work-related conditions have essentially resolved but she continues to have other health problems." Dr. Lee noted that appellant remained anxious and depressed and that the depression had evolved into a dysthymic disorder, with anxiety reactions when discussing returning to work with the employing establishment. He noted that appellant was capable of reemployment but not with the employing establishment and stated "Her current emotional status remains problematic but after some 20 years after the trauma, her present mental status and treatment goals evolve around other issues and she is no longer strongly reactive to the assault occurring in July 1978."

On September 28, 1998 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical evidence, as represented by Drs. Spivy, Slavick and Lee demonstrated that appellant had no further injury-related disability for work or injury-related residuals requiring further medical treatment.

Appellant disagreed with the proposed action and submitted additional medical evidence. By report dated October 12, 1998, Dr. Chhabria noted that appellant had normal mental functions, difficulty with heel and toe walking, normal cranial nerves, normal strength, no atrophy, normal reflexes and a normal sensory examination. He noted that appellant was "medically disabled from working because of shoulder injuries as well as psychological affect." Dr. Chhabria diagnosed acute vertigo, bilateral adhesive capsulitis and chronic cervical and lumbar sprain. On November 9, 1998 he opined that appellant was disabled because of neck, back and shoulder pain. On November 12, 1998 Dr. Chhabria noted that appellant continued to have right-sided neck ache, intra-scapular pains and lumbar discomfort.

By letter dated October 15, 1998, Dr. Tan reiterated that appellant was totally and permanently disabled due to chronic migraine headaches, cervical and lumbosacral spondylosis with radiculopathy and neck and low back pain. He opined that appellant's disability was as a result of her work-related injury.

By report dated October 27, 1998, Dr. Tan noted that appellant "has been disabled for the last 20 years and has been suffering from chronic migraine headaches, cervical and lumbosacral

spondylosis with radiculopathy, neck and low back pain." He noted that appellant suffered depression, pancreatitis, irritable bowel syndrome, neck and right arm pain, right arm lymphedema, lymph node dissection for breast carcinoma, fibrocyctic disease of both breasts, sciatica and right brachial plexus "injury." Dr. Tan contested the reports of Drs. Slavick and Spivy, claiming that appellant was permanently and totally disabled resulting from the work-related injury.

On October 27, 1998 Dr. Tan noted examination findings of right arm swelling and tenderness and limited motion of the neck.

By decision dated January 12, 1999, the Office finalized the termination of appellant's compensation benefits finding that the weight of the medical evidence, as represented by Drs. Spivy and Slavick, demonstrated that she had no further injury-related disability for work or residuals requiring further medical treatment.

Appellant disagreed with the decision and on February 9, 1999 she requested an oral hearing. A hearing was held on June 16, 1999, at which appellant testified.

Additional medical evidence was submitted, including treatment records from the 1980s and early 1990s relative to her back, neck and shoulders, headaches and breast cancer.

By report dated June 8, 1999, Dr. Tan noted that, although appellant had left hemiparesis after a recent stroke, she continued with disability related to neck and back injuries from 20 years ago. In addition to the left hemiparesis, he noted tenderness and limited motion of the neck and right arm swelling due to lymphedema following breast cancer surgery. Dr. Tan diagnosed "cervical lumbosacral spondylosis with common migraine headaches associated to a work injury, right middle cerebral artery thrombosis with left hemiparesis, recent onset, hypertensive cardiovascular disease, status postcarcinoma in situ and right upper extremity lymphedema, swelling and pain."

By report dated September 30, 1999, Dr. Tan reviewed appellant's history and complaints and he diagnosed "Reactive depression, status post stroke with left hemiparesis, severe cervical/lumbosacral spondylosis with radiculopathy, right shoulder joint bursitis, bicipital tendinitis and right upper extremity lymphedema, post axillary dissection associated with comedo carcinoma of the breast." Dr. Tan opined that appellant was medically disabled and required a variety of further medical therapy and that she was disabled due to work-related injuries 20 years earlier.

By decision dated October 28, 1999, the hearing representative affirmed the January 12, 1999 decision, finding that the weight of the medical evidence opinion evidence rested with Drs. Spivy and Slavick. The Office found that Dr. Tan indicated that appellant was disabled due to unaccepted conditions and that his opinion was not supported by objective evidence and lacked any medical rationale relating it to the accepted employment injuries.

By letter date stamped November 29, 1999, appellant requested reconsideration and in support she submitted a November 30, 1999 report from Dr. Tan. He took issue with the report conclusions of Drs. Slavick and Spivy. Appellant also submitted duplicate reports of those previously submitted to the record and considered by the Office.

By decision dated January 10, 2000, the Office denied modification of the October 28, 1999 decision.

The Board finds that the Office properly found that appellant's employment-related disability ceased.

Once the Office accepts a claim, it has the burden of justifying 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] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[3] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[4]

In this case, the Office properly terminated appellant's wage-loss compensation and medical benefits based upon the complete and well-rationalized reports of Drs. Slavick and Spivy.

To support her ongoing injury-related disability, appellant submitted multiple reports from her treating physician, Dr. Tan, dating from January 5, 1995 through September 30, 1999. He opined that appellant remained totally disabled due to multiple conditions diagnosed as cervical radiculopathy, cervical spondylosis, bilateral shoulder bursitis, right shoulder adhesive capsulitis, right arm lymphadenopathy, right arm lymphedema, nerve root irritation, sciatica, lumbar spondylosis, lumbosacral strain, migraine headaches, depression -- postmastectomy, irritable bowel syndrome, fibrocyctic disease of both breasts, right brachial plexus "injury," chronic pancreatitis, low back pain, trigeminal neuralgia, left hemiparesis, hypertensive cardiovascular disease, reactive depression -- post stroke, right middle cerebral artery thrombosis, bicipital tendinitis, comedo carcinoma of the breast and chronic pain syndrome. However, none of these diagnosed conditions was accepted by the Office as being employment incident related. Therefore, absent a detailed, well-rationalized medical opinion supporting a causal relationship between any of these conditions and the accepted work injuries, appellant's disability due to one or more of them is not compensable under the Federal Employees' Compensation Act.[5] In this case, no such detailed and well-rationalized medical opinion was forthcoming.

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

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

[3] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[4] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

[5] 5 U.S.C. § 8108 *et seq.*

In this case, the Office accepted that on July 4, 1978 appellant was attacked by a patient and sustained contusions involving the face, nose and jaw, loss of consciousness, cervical strain, left knee strain and a major depressive disorder.

In reports dated August 19, 1996, September 24, 1997 and April 23, 1998, Dr. Tan did note the diagnosis of cervical strain, which was an accepted condition, but he failed to provide any analysis or medical rationale as to how such a soft tissue muscular strain injury from 1978 persisted for 20 years. Dr. Tan did not explain why the cervical strain remained active for 20 years or how an ongoing cervical strain caused disability. Merely listing cervical spine strain as one of a myriad of diagnoses that currently affected appellant's ability to work, is not sufficient to support a continuing causal relationship between the July 4, 1978 cervical strain injury and cervical strain 20 years later. The opinion of a physician supporting causal relation must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background.[6]

The Board has held that rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment injuries. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment injury identified by appellant.[7] The weight of medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the opinion.[8] In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by the reliability of the medical report; its probative value; its convincing quality; the care of analysis manifested; and the medical rationale expressed in support of the physician's opinion.[9]

In this case, Dr. Tan provided insufficient rationale to explain how appellant's accepted cervical spine strain continued to cause disability for work. Dr. Tan merely concluded that appellant remained totally disabled but failed to provide rationale to support his opinion. Therefore, his opinion is of reduced probative value.

On July 24, 1995 appellant's physician Dr. Baier, diagnosed bilateral shoulder bursitis as well as adhesive capsulitis of the right shoulder but did not discuss the causal relationship of these conditions to any factor of appellant's employment or their relationship to her accepted conditions. Neither of these conditions were accepted as being employment related. Therefore,

[6] *Connie Johns*, 44 ECAB 560 (1993).

[7] *See Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler* 28 ECAB 125 (1976).

[8] *Anna C. Leanza*, 48 ECAB 115 (1996).

[9] *John A. Ceresoli, Sr.*,40 ECAB 305 (1988).

this report does not support continued disability due to appellant's July 4, 1978 employment injuries.

On July 15, 1996 Dr. Chhabria merely noted that appellant's symptoms started when she was attacked by a psychiatric patient. By reports dated October 12 and November 9, 1998, he noted some objective testing results when appellant tried to heel and toe walk, but noted that appellant was medically disabled from work because of shoulder injuries as well as psychological problems. He also diagnosed acute vertigo, bilateral adhesive capsulitis and chronic cervical and lumbar strain. The shoulder injuries and lumbar strain were not accepted as being employment related or arising from the accepted injuries in this case. With regard to a chronic cervical strain, Dr. Chhabria did not provide sufficient medical rationale to explain how a soft tissue muscular strain sustained on July 4, 1978 persisted and became a chronic condition over the succeeding 20 years. As Dr. Chhabria's opinions are not fully rationalized, they are of diminished probative value.

On May 22, 1986 Dr. Smith reported that appellant had no residuals of her accepted cervical strain injury. On September 18, 1997 Dr. Slavick reviewed appellant's factual and medical record, reported his objective physical examination results and opined that appellant had no objective findings to support her complaints of chronic pain. Dr. Slavick found no evidence to support appellant's complaint of chronic cervical or lumbar muscular strain and concluded that she could return to work to her date-of-injury job without restrictions. Dr. Slavick found that appellant's work-related conditions had resolved completely and that she was not suffering any residuals of the July 4, 1978 work injury. As Dr. Slavick's opinion is one of reasonable medical certainty and supported by reference to a complete medical evaluation it is entitled to greater weight in determining probative value.

As appellant also had major depression accepted as being employment related, the Office properly referred her for an evaluation on whether she still had disability for work or residuals requiring further medical treatment.

Dr. Spivy reviewed appellant's factual and medical background and conducted a comprehensive psychiatric examination with diagnostic testing. He provided a well-rationalized psychiatric report, which indicated that appellant had no psychotic symptomatology, was oriented and alert, but exhibited signs of depressed mood which he said were due to her underlying personality structure and not the employment injury. Dr. Spivy found that appellant's major depressive disorder had resolved and that her present diagnosis was a dysthymic disorder, which was coincidental to but not caused by the work injuries. He opined that appellant, from a psychiatric perspective, was able to return to her date-of-injury job. Dr. Spivy's opinion is one of reasonable medical certainty explained by medical rationale and based on a complete and accurate factual and medical background. His opinion is entitled to greater weight in determining probative value.

Further, Dr. Lee, a clinical psychologist, noted that appellant had only recently initiated psychological treatment from May 1995 to April 13, 1998 and he agreed that her work-related conditions had essentially resolved. Dr. Lee also opined that appellant was capable of reemployment, but not with the employing establishment. He noted that appellant's current emotional status remained problematic, but that it revolved around other issues, as she was no

longer reactive to the 1978 assault. Dr. Lee's report is based upon his examination and testing, is well rationalized and supported by a proper factual and medical background. His opinion is entitled to greater weight.

The Office properly found that the well-rationalized and comprehensive reports of Drs. Slavick, Spivy and Lee were of great or probative value, supported that appellant had no further disability for work or residuals requiring further medical treatment and that she could return to her date-of-injury job.

Consequently, the weight of the medical opinion evidence of record establishes that appellant's July 4, 1978 injuries have resolved.

The January 10, 2000 and October 28, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 22, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member