

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA G. GRISSOM and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Stockton, CA

*Docket No. 00-2427; Submitted on the Record;
Issued March 1, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation for wage loss effective August 25, 1999.

Appellant filed a claim that she sustained injury to her neck, shoulder and lower back when she lifted a tray at work on December 22, 1992. The Office accepted the claim for lumbar, cervical and trapezius strains, permanent aggravation of degenerative disc disease, and major depression.

In a letter dated July 15, 1999, the Office notified appellant that it proposed to terminate her compensation for wage loss on the grounds that the medical evidence established that her employment-related disability had ceased. By decision dated August 25, 1999, the Office terminated compensation for wage loss. In a decision dated September 16, 1999, the Office determined that the evidence was not sufficient to warrant a merit review. In a decision dated November 3, 1999, the Office reviewed the case on its merits and denied modification.

The Board finds that the Office met its burden of proof to terminate compensation for wage loss.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

With respect to a continuing employment-related orthopedic condition, the Office found a conflict in the medical evidence. An attending physician, Dr. Randall Yee, an internist, had indicated that appellant was permanently disabled. A second opinion referral physician,

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

Dr. Charles Miller, an orthopedic surgeon, had opined in a September 5, 1996 report that appellant was capable of returning to work with no restrictions. Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.²

To resolve the conflict, appellant was referred to Dr. Aubrey Swartz, a Board-certified orthopedic surgeon. In a report dated October 3, 1996, Dr. Swartz provided a history and results on examination. He reported a normal orthopedic and musculoskeletal examination, and found no physical limitations resulting from the work-related condition. Dr. Swartz concluded that appellant was capable of returning to her date-of-injury position.

The Board finds that Dr. Swartz submitted a reasoned medical opinion, based on a complete background, that appellant's orthopedic employment-related condition was no longer disabling. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³ The Board finds that Dr. Swartz represents the weight of the evidence with respect to a continuing employment-related disability.

With respect to an employment-related psychiatric condition, the Office also found that a conflict existed. An attending clinical psychologist, Dr. Niki Amsden, indicated that appellant continued to have an employment-related psychiatric disability. In a report dated July 24, 1996, a second opinion referral psychiatrist, Dr. Mark Young, opined that appellant had no psychiatric impairment that precluded her return to work at her usual occupation.

The Office referred appellant to Dr. Samuel Appel, a Board-certified psychiatrist. In a report dated September 7, 1997, Dr. Appel provided results on examination and reviewed medical records. His diagnoses included major depression, recurrent, panic disorder, anxiety disorder and somatoform pain disorder. He did not provide a fully reasoned opinion on employment-related disability. In a supplemental report dated March 3, 1998, Dr. Appel indicated that, although appellant was disabled, the disability was not causally related to the December 22, 1992 employment injury. Dr. Appel explained that appellant had a preexisting psychiatric condition, and that her disability was causally related to the preexisting condition, and not to her federal employment.

The Board finds that Dr. Appel's opinion is entitled to special weight and constitutes the weight of the evidence in this case. He provided a reasoned opinion, based on a complete background, which resolves the psychiatric issues presented.

It is noted that the Office has not accepted the condition of fibromyalgia as causally related to the employment injury. Appellant has the burden of proof to establish that a specific

² *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

³ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

condition for which compensation is claimed is causally related to the employment injury.⁴ In a report dated August 2, 1999, Dr. Kanwal Khanna, an internist, diagnosed fibromyalgia syndrome. The record also contains treatment notes from Dr. Khanna diagnosing fibromyalgia. None of these reports, however, provide a reasoned medical opinion on causal relationship, addressing the December 22, 1992 employment injury. In a report dated September 27, 1999, Dr. Yee also diagnosed fibromyalgia “most likely attributed to her injury on December 22, 1992.” Dr. Yee does not provide additional medical rationale or explanation to support his opinion, and therefore it is of diminished probative value. The Board finds that appellant has not met her burden of proof to establish fibromyalgia as an employment-related condition.

The decisions of the Office of Workers’ Compensation Programs dated November 3 and August 25, 1999 are affirmed.

Dated, Washington, DC
March 1, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).