U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARLAINA JEFFRIES and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

Docket No. 02-2160; Submitted on the Record;
Issued August 1, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits; and (2) whether appellant has met her burden of proof to establish that she has any additional medical conditions causally related to or aggravated by her accepted employment injury.

This case is on appeal to the Board for a third time. On December 3, 1992 the Office accepted appellant's claim for right lateral epicondylitis and left medial epicondylitis related to her employment duties as a flat sorter machine operator. She was off work for intermittent periods until October 7, 1993, when she returned to limited-duty work, for four hours a day, as a modified clerk responding to telephone calls. On November 23, 1994, based on appellant's continuous employment for more than one year, the Office issued a decision, finding that this position represented appellant's wage-earning capacity and began paying appropriate compensation to reflect her loss in wage-earning capacity.[1] Subsequently, she stopped work from November 29, 1994 through January 3, 1995 and filed a claim for compensation for total disability for this period. On January 4, 1995 appellant returned to a limited-duty position as a scale monitor, as approved by her physician, but stopped work again on March 22, 1995 and filed a claim for a recurrence of total disability on that date.[2] In a decision dated August 1, 1995, the Office terminated appellant's entitlement to continuing disability compensation and medical benefits.[3] On October 29, 1996 she returned to work four hours a day as a scale monitor.

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[1] On prior appeal to the Board, appellant did not express any dissatisfaction with this decision, but rather specifically sought to appeal the Office's August 1, 1995 decision.

[2] Appellant's physician had recommended that she be provided with a lower desk and an adjustable chair with arms. On her claim for a recurrence of disability, appellant asserted that she had never been provided with this equipment.

[3] On June 28, 1995 the Office issued a notice of proposed termination.

In the first appeal, the Board reviewed the August 1, 1995 decision, in which the Office relied on the opinion of Dr. Emmett Altman, the Office second opinion physician, who opined that appellant had no objective findings of accepted right or left epicondylitis. In Docket No. 96-113 (issued April 27, 1998), the Board reversed the Office's decision, finding that Dr. Altman's narrative report and accompanying work capacity evaluation contained conflicting information and, therefore, the case should be remanded for the Office to obtain clarification from Dr. Altman as to whether appellant had any residuals of her employment-related injuries. The Board further found that, as appellant had submitted uncontradicted evidence that she had developed myofascial pain syndrome, with reactive depression as a result of her accepted employment injuries, on remand, the Office should obtain an opinion on this issue from Dr. Altman. Finally, as appellant had initially alleged that she could not perform her limited-duty job as she was not provided with a proper desk and chair, the Board requested that the Office seek clarification from the employing establishment as to the exact nature of appellant's duties and the possible necessity for a desk and chair.

On remand, in a decision dated March 26, 1999, the Office terminated benefits as of that date on the grounds that the weight of the medical evidence, represented by the supplemental reports of Dr. Altman, established that the accepted conditions had resolved.[4] The Office further found that appellant failed to establish that she had any additional medical conditions causally related to her employment or her employment injuries.

In the second appeal, the Board reviewed the March 26, 1999 decision. In Docket No. 99-1802 (issued November 7, 2001), the Board noted that Dr. Altman's supplemental reports were substantially similar to his prior reports, in that he continued to state that appellant has no objective evidence of her accepted employment-related conditions, yet he opined that she is only capable of working four hours a day. As Dr. Altman did not clarify whether the work limitation is due to appellant's employment-related condition, due to some undisclosed condition, or state that this is merely prophylactic, the Board found Dr. Altman's reports insufficiently rationalized to meet the Office's burden of proof to establish that appellant had no continuing disability or medical residuals after March 26, 1999. As the Office had made several unsuccessful attempts to obtain a complete, rationalized medical opinion from Dr. Altman, the Board found that the Office should have referred appellant, including the case file and the statement of accepted facts, to another appropriate specialist for a rationalized opinion on the issue of whether appellant had any disabling residuals of her accepted conditions after March 26, 1999.

The Board further found that the case was not in posture for a decision on the issue of whether appellant met her burden of proof to establish that she has any additional medical conditions causally related to or aggravated by her accepted employment injury. The Board noted that a conflict in medical opinion existed between the government's physician, Dr. Altman, and appellant's physicians, Drs. Balcomb, Bernstein and Klein, regarding whether the additional claimed condition of myofascial pain syndrome, which became her primary medical complaint and led to the onset of reactive depression, was causally related to or aggravated by her employment or her accepted employment injury. Consequently, the Board remanded the case for further medical development. The Board instructed the Office to prepare an updated statement

[4] On February 8, 1999 the Office issued a notice of proposed termination.

of accepted facts[5] and refer this and appellant, together with the complete medical record, to an impartial medical specialist to resolve the conflict in the medical opinion evidence.

On remand, in a decision dated June 3, 2002, the Office found that the weight of the medical evidence, represented by the opinion of the impartial medical examiner, established that the accepted conditions had resolved. The Office further found that appellant failed to establish that she had any additional medical conditions causally related to her employment-related injuries.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[6] 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 disabling condition has ceased or that it is no longer related to the employment.[7] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[8]

On remand, in accordance with the Board's instructions, the Office referred appellant to Dr. Robert L. McRoberts, a Board-certified orthopedic surgeon. In a narrative report dated May 7, 2002, he reviewed the statement of accepted facts and the medical evidence of record and performed a physical examination. In response to the Office's questions as to whether there is any evidence that any of appellant's accepted conditions were still active and causing disability to appellant and, if so, whether these conditions alone prevented her from returning to her date of injury job**,** Dr. McRoberts stated:

> "In my opinion, there is no objective evidence of either medial or lateral, right or left epicondylitis currently active or disabling to the claimant. Conceivably, although not presently active, these conditions could again become active if her date-of-injury job was not ergonomically modified. If [appellant's] date-of-injury job was satisfactorily modified, then I think she could return to work…. For completeness, a [f]unctional [c]apacities [e]valuation (FCE) should be administered prior to her returning to work to determine, more accurately, her work capabilities."

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809 (June 1995).

[6] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[7] *Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Samuel Theriault*, 45 ECAB 586 (1994).

[8] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

In response to the Office's question as to whether appellant's disability, if any, was due to her stress condition or any other nonwork-related condition like her knee condition, Dr. McRoberts responded: "There is no objective evidence that [appellant] is currently disabled. Therefore, I believe this question is moot."

The Office further noted that appellant had been working on a part-time basis as a scale monitor, 20 hours a week and inquired as to whether she was capable of performing this position eight hours a day. In response, Dr. McRoberts stated:

> "It is my understanding that [appellant] is not working, having last worked for the U.S. Postal Service on or about February 2, 1999. In addition, she is receiving disability compensation from the U.S. Department of Labor. Despite this information, I feel that [appellant] is capable of performing work for the U.S. Postal Service, working an 8-hour workday, 40-hour work week, in a modified work position. This view reflects the opinion of [Dr.] Teresa Balcomb, M.D., her long-time orthopedic physician at Lovelace Clinic, who stated in a report dated April 26, 1999, that [appellant] 'should be able to apply for some type of work that would not have repetitive lifting, nor activity that requires the use of her hands overhead, that would not require repetitive fine motor skills such as typing or any use of computers.' Dr. Balcomb goes on to say that: 'Throughout all of her medical records, I cannot find adequate documentation to support retirement with disability.'"

In response to the Office's final question as to whether appellant required treatment in order to help her return to a productive lifestyle, Dr. McRoberts stated:

> "As noted above, in my opinion, [appellant] is not totally disabled and, therefore, does not require treatment that would help her 'return to a productive lifestyle.'"

In an accompanying work capacity evaluation of the same date, Dr. McRoberts stated that, in his opinion, "there is no reason that [appellant] cannot work an eight-hour workday in a modified, ergonomically correct work environment." He further stated that, after appellant's work capabilities had been determined, she would be able to return to work at any time. In response to the portion of the form asking Dr. McRoberts to indicate appellant's physical limitations, he indicated that this would be determined following completion of the FCE. He concluded by saying: "In my opinion, the FCE is essential in determining [appellant's] work capabilities."

With respect to whether the Office met its burden of proof to terminate appellant's compensation benefits, the Board finds that Dr. McRoberts' opinion is contradictory, largely nonresponsive and insufficiently rationalized to meet the Office's burden of proof. In particular, with respect to the portion of the Office's question as to whether appellant's accepted conditions alone prevented her from performing her date-of-injury job, Dr. McRoberts initially stated that, if her date-of-injury job was satisfactorily modified, she could return to work. However, he did not explain whether the position needed to be modified due to her accepted conditions or due to some other cause. Dr. McRoberts then contradicted his statement that appellant could return to a modified position by saying that she needed an FCE to more accurately determine her work

capabilities and by later reiterating that appellant would be able to return to work only after her work capabilities had been determined. He did not attempt to answer the Office's second question at all, finding it moot. With respect to the Office's third question, which pertained to whether appellant was capable of performing the scale monitor position eight hours a day, Dr. McRoberts simply stated that appellant was capable of working an 8-hour workday, 40-hour work week, in a modified work position, but did not specifically address the scale monitor position as requested by the Office. Furthermore, he also failed to clarify this point on his accompanying work capacity evaluation also dated May 7, 2002. Here, Dr. McRoberts stated that, in his opinion, "there is no reason that [appellant] cannot work an eight-hour workday in a modified, ergonomically correct work environment," but declined to indicate [her] specific physical limitations stating that this would be determined following completion of the FCE, which he emphasized "is essential in determining [appellant's] work capabilities."

As Dr. McRoberts did not fully answer three of the Office's four questions, the Board finds that his report is incomplete and insufficient to resolve the conflict in medical opinion. As there remains an unresolved conflict in the medical opinion evidence, the Office failed to meet its burden of proof to terminate appellant's compensation benefits. Therefore, to the extent that the Office found, in its June 3, 2002 decision, that appellant's accepted conditions had resolved, the decision is reversed.

The Board further finds that this case is not in posture for a decision on the issue of whether appellant has met her burden of proof to establish that she has any additional medical conditions causally related to or aggravated by her accepted employment injury.

In its prior decision, the Board found that there was a conflict in medical opinion regarding this issue, necessitating referral to an impartial medical specialist. The Board notes that, while the Office did refer appellant to Dr. McRoberts to act as the impartial medical specialist, he confined his remarks to the issue of whether appellant's accepted employment-related condition had ceased, and never addressed the issue of whether her additional claimed condition of myofascial pain syndrome, which became appellant's primary medical complaint and led to the onset of reactive depression, was causally related to or aggravated by her employment or her accepted employment injury. Therefore, there also remains an unresolved conflict in medical opinion with respect to this issue. Where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion and the opinion requires further clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.[9] Consequently, this case must be remanded for further medical development. On remand the Office should prepare an updated statement of accepted facts[10] and refer this and appellant, together with the complete medical record, to Dr. McRoberts for a rationalized supplemental report in which he addresses the issue of whether appellant's additional claimed condition of myofascial pain syndrome, which became appellant's primary medical complaint and led to the onset of reactive depression, was causally related to or aggravated by appellant's employment or her accepted employment injury.

[9] *Margaret M. Gilmore*, 47 ECAB 718 (1996); *Talmadge Miller*, 47 ECAB 673 (1996).

[10] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

The decision of the Office of Workers' Compensation Programs dated June 3, 2002 is hereby reversed in part and set aside in part and the case is remanded to the Office for further action consistent with this decision.

Dated, Washington, DC
August 1, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member