U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE M. COOK and GOVERNMENT PRINTING OFFICE, Washington, DC

Docket No. 03-414; Submitted on the Record;
Issued June 16, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation benefits effective January 20, 1996.

On December 14, 1994 appellant, then a 41-year-old keyboard operator, filed a claim alleging that she bent over to pick up paper and experienced pain in her neck and back. She stopped work on December 17, 1994 and worked intermittently from January 27, 1995 forward. The Office accepted the claim for lumbar strain and thoracic strain.

Appellant submitted treatment notes from Dr. David P. Sniezek, a family practitioner, dated December 1994 to April 1995 and a magnetic resonance imaging (MRI) scan dated March 30, 1995. Dr. Sniezek's reports noted a history of appellant's work-related condition and subsequent treatment for a neck and back strain caused by repetitive sitting, lifting and twisting. He indicated that appellant could return to work part time in February 1995. The MRI scan revealed mild anterior disc protrusion and spondylolisthesis.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians.

On August 24, 1995 the Office referred appellant for a second opinion to Dr. Lawrence Manning, a Board-certified orthopedist. The Office provided Dr. Manning 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 September 6, 1995, Dr. Manning 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. Manning diagnosed appellant with cervical strain, lumbar strain, cervical spondylolisthesis preexisting and preexisting fibromyalgia by history. He noted that appellant sustained a trivial work injury which resolved itself within several days to three weeks. Dr. Manning noted that appellant's prolonged symptomatology would be attributed to her

preexisting pathology than to the strain which occurred while sitting in a chair. He noted that appellant could return to work part time for one month and then within two weeks increase to six hours and then eight hours a day.

In a supplemental report dated September 27, 1995, Dr. Manning indicated that appellant's lumbar strain sustained at the workplace was not responsible for her current symptoms. He noted that this injury should have resolved itself long ago and any residual problem was related to her preexisting condition of fibromyalgia.

Thereafter, appellant submitted a report from Dr. Sniezek dated October 16, 1995. Dr. Sniezek indicated that appellant's work-related injury resulted in a strain of the lumbar and cervical spine and aggravated her preexisting fibromyalgia condition. He noted that appellant was totally disabled from her work as a keyboard operator and could not tolerate part-time work.

The Office determined that a conflict of medical opinion was created between Dr. Sniezek, appellant's treating physician, who indicated that appellant was totally disabled and experiencing residuals of her work-related injury and could not work and Dr. Manning, who determined that appellant's work-related injury had resolved and that she could return to work part time initially and within a month full-time work.

To resolve the conflict appellant was referred to an impartial specialist, Dr. Alvaro A. Sanchez, a Board-certified orthopedic surgeon. In a report dated November 22, 1995, Dr. Sanchez 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. Sanchez diagnosed appellant with a mild muscular strain by history. He noted that there were no objective complaints and no definite abnormality. Dr. Sanchez indicated that the nature and the anatomic distribution of appellant's complaints consisted of pain in the entire left half of the body from the neck to the left lower extremity, which did not fit any medical diagnosis. He noted that in his opinion there was no evidence that the accident in December 1994 caused any temporary or permanent aggravation of a preexisting condition. Dr. Sanchez indicated that appellant would have reached maximum medical improvement within a week of her injury. He noted that there was absolutely no reason for this patient not to be able to perform her full duties as a computer keyboard operator and work eight hours a day. Dr. Sanchez further noted that there was no need for further treatment or testing.

On December 18, 1995 the Office issued a notice of proposed termination of all compensation benefits on the grounds that Dr. Sanchez's report dated November 22, 1995 established no continuing disability as a result of the December 7, 1994 employment injury.

Subsequently, appellant submitted a narrative statement and a prescription slip from Dr. F. George Leon, a Board-certified family practitioner, dated December 4, 1995. Dr. Leon diagnosed appellant with back spasms and suggested a treatment plan.

By decision dated January 22, 1996, the Office terminated appellant's benefits effective January 20, 1996 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her December 7, 1994 employment injury.

Appellant requested reconsideration on nine separate occasions and she submitted numerous additional medical reports. In each instance, the Office reviewed appellant's claim on the merits and denied modification. The Office issued its most recent merit decision on November 22, 2002.

The Board finds that the Office has met its burden of proof to terminate benefits effective January 20, 1996.

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

In this case, the Office accepted appellant's claim for lumbar strain and thoracic strain and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Sniezek, who disagreed with Dr. Manning, the Office referral physician, concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Sanchez to resolve the conflict.

Dr. Sanchez reviewed appellant's history, reported findings and diagnosed appellant with a mild muscular strain by history. He noted that there were no objective complaints and no definite abnormality. Dr. Sanchez indicated that the nature and the anatomic distribution of appellant's complaints consisted of pain in the entire left half of the body from the neck to the left lower extremity did not fit any medical diagnosis. He noted that in his opinion there was no evidence that an accident in December 1994 caused any temporary or permanent aggravation of a preexisting condition. Dr. Sanchez indicated that appellant would have reached maximum medical improvement within a week of her injury. He noted that there was "absolutely no contraindication for this patient not to be able to perform her full duties as a computer keyboard operator and work eight hours a day." Dr. Sanchez noted that there was no need for further treatment or testing.

The Board finds that the Office properly relied on Dr. Sanchez's November 22, 1995 opinion as the basis for terminating benefits. Dr. Sanchez's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but

[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] *Furman G. Peake*, 41 ECAB 361, 364 (990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[4] *Calvin S. Mays*, 39 ECAB 993 (1988).

also reviewed appellant's medical records. Dr. Sanchez also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiners November 22, 1995 findings.[5]

Appellant submitted a prescription slip from Dr. Leon which diagnosed appellant with back spasms and suggested a treatment plan. However, this note did not contain new findings or rationale upon which a new conflict might be based. Therefore, this report is insufficient to overcome that of Dr. Sanchez or to create a new medical conflict.[6]

The Board finds that the opinion of Dr. Sanchez is sufficiently well rationalized and based upon a proper factual background such that it is 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.[7] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship.[8] The fact that the etiology of a disease or condition is unknown or obscured neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof of the Office to disprove an employment relationship.[9]

However, medical evidence submitted by appellant after termination of benefits either did not specifically address how any continuing condition was due to the December 7, 1994 work injury or other incidents or was duplicated evidence previously considered by the Office.

Appellant submitted several reports from Dr. Sniezek January 15, 1996 to January 21, 1997. Dr. Sniezek indicated that appellant had a preexisting condition of fibromyalgia. He diagnosed appellant with chronic left-sided sprain/strain of the cervicothoracic and lumbar spine with myospasm complicated by aggravation of the preexisting fibromyalgia. Dr. Sniezek indicated that he was not optimistic about appellant's ability to return to work as the nature of fibromyalgia was chronic, recurrent and exacerbated by certain activities. His report dated January 21, 1997 indicated that "it is his opinion that her injuries are causally related to the on[-]the[-]job injury." Although Dr. Sniezek's opinion somewhat supports causal relationship in

[5] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[6] *See Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

[7] 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 6.

[8] *Alice J. Tysinger*, 51 ECAB 638 (2000).

[9] *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

a conclusory statement, he provided no medical reasoning or rationale to support his opinion.[10] These reports are similar to Dr. Sniezek's previous reports and provide no new medical reasoning or rationale in support of his position. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.[11] Additionally, Dr. Sniezek seemed somewhat equivocal with regard to the actual cause of appellant's symptoms and also attributed them to her preexisting fibromyalgia condition, a nonwork-related ailment.[12]

Dr. Cupps report of June 7, 1995 and Dr. Snyder's reports of January 29 and March 12, 1996 diagnosed appellant with symptoms consistent with fibromyalgia and recommended a treatment plan to manage her pain. However, the Office never accepted that appellant sustained fibromyalgia as a result of her December 1994 work injury and there is no medical rationalized evidence to support such a conclusion.[13] The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[14]

Dr. Jackson's report dated May 2, 1996 indicated that appellant's injury sustained at work on December 7, 1994 "may or may not have aggravated her preexisting condition…." This opinion was speculative in nature and the Board has held that speculative and equivocal opinions have little probative value.[15]

Dr. Leon report of September 25, 1996 noted treating appellant since 1990 for fibromyalgia. He indicated that appellant's underlying fibromyalgia predisposed appellant to acute exacerbation's of pain syndromes from relatively minor injuries as well as prolonged inappropriate posture during work. Dr. Leon noted "her ongoing spasm and pain to the left paravertebral area is directly the result of her injury." Although his opinion somewhat supports causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support his opinion.[16] Rather, Dr. Leon indicated that the extent to which the December 1994 injury contributed to her ongoing symptoms would best be determined by the physician who initially treated her following her sprain. Moreover, his opinion was speculative in nature indicating that appellant's prolonged recovery may be attributable to her underlying fibromyalgia. The Board has held that speculative and equivocal opinions have little probative value.[17]

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[10] *See Theron J. Barham,* 34 ECAB 1070 (1983) (where the Board has found that vague and unrationalized medical opinions on causal relationship have little probative value).

[11] *See Daniel Deparini,* 44 ECAB 657 (1993).

[12] *See Alberta S. Williamson,* 47 ECAB 569 (1996) (where the Board has held that speculative and equivocal opinions have little probative value).

[13] *See Alice J. Tysinger, supra* note 8.

[14] *See Theron J. Barham, supra* note 10.

[15] *See Alberta S. Williamson, supra* note 12.

[16] *See Theron J. Barham, supra* note 10.

[17] *See Alberta S. Williamson, supra* note 12.

Dr. Dawson's reports of October 29, 1997 and November 2, 1999 indicated that appellant retired on medical disability in August 1996. He diagnosed appellant with mild cervical discopathy; cervical myofasciitis; thoracic lumbar myofasciitis which was chronic in nature; radiculopathy; rotator cuff impingement; and L5 radiculitis present on the left side. Dr. Dawson noted that appellant was not expected to improve from the baseline status and would not be able to return to the workplace at this time or the foreseeable future. As noted above, the Office never accepted that appellant sustained a mild cervical discopathy, cervical myofasciitis, thoracic lumbar myofasciitis, radiculopathy, rotator cuff impingement and L5 radiculitis as a result of the December 1994 work injury and there is no medical rationalized evidence to support such a conclusion.[18] The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[19] Additionally, Dr. Dawson did not note a history of appellant's work-related injury.[20]

Dr. Mills report of May 5, 1997 and November 6, 1998 provided inconsistent opinions with regard to the causation of appellant's continued symptomatology. He initially noted that appellant's symptoms persisted and it was "uncontrovertable" that appellant was suffering from fibromyalgia in association with radiculopathy involving the cervical and lumbar regions and that the fibromyalgia played a significant role in her ongoing symptomatology. Dr. Mills' report dated November 6, 1998 noted that after reviewing a consultant's report he determined that the fibromyalgia played virtually no significant role in appellant's ongoing symptomatology. He indicated that "her cervical radiculopathy, neck pain and lower back symptoms are primarily the affect of the work-related injury." However, Dr. Mills did not submit a copy of Dr. Johnson's consultant's report or the diagnostic tests Dr. Johnson performed to support his position. The Board has held that equivocal opinions have little probative value.[21]

Dr. Henein's report of February 28, 2000 and Dr. Selya's report of December 3, 2001 diagnosed appellant with musculoligamentous sprain/strain of the cervical and thoracic-lumbar spines and left shoulder precipitated by her work-related injury; discogenic low back pain, degenerative disease at L4-5 with herniation of the nucleus pulposus at L4-5; and degenerative cervical spine disease at C5-6. As noted above, the Office never accepted that appellant sustained the above mentioned injuries and there is no medical rationalized evidence to support such a conclusion.[22] Dr. Selya noted that appellant's condition was related to the incident at work on December 7, 1994 because appellant did not have any other significant traumatic events prior to this time. Although, he related appellant's current back condition to the employment injury, his only rationale for doing so was that appellant had no back problems prior to the employment injury. The Board has held that an opinion that a condition is causally related to an

[18] *See Alice J. Tysinger, supra* note 8.

[19] *See Theron J. Barham, supra* note 10.

[20] *See Cowan Mullins,* 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[21] *See Alberta S. Williamson, supra* note 12.

[22] *See Alice J. Tysinger, supra* note 8.

employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.[23]

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related injury of February 10, 1999.[24] The Board has found that vague and unrationalized medical opinion on causal relationship have little probative value. Therefore, the reports from Drs. Sniezek, Snyder, Jackson, Cupps, Leon, Selya, Dawson, Henein and Mills are insufficient to overcome that of Dr. Sanchez or to create a new medical conflict.[25]

Other medical records submitted by appellant did not specifically address how any continuing condition was causally related to the December 7, 1994 employment injury.

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

The decision of the Office of Workers' Compensation Programs dated November 22, 2001 is hereby affirmed.

Dated, Washington, DC
June 16, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[23] *Kimper Lee*, 45 ECAB 565 (1994).

[24] *See Theron J. Barham, supra* note 10.

[25] *See Howard Y. Miyashiro, supra* note 6; *Dorothy Sidwell*, *supra* note 6. The Board notes that Drs. Sniezek, Snyder, Jackson, Cupps, Leon, Selya, Dawson, Henein and Mills reports do not contain new findings or rationale upon which a new conflict might be based.