

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA ARNER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Butler, PA

*Docket No. 03-1666; Submitted on the Record;
Issued September 5, 2003*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective June 15, 2003.

On September 7, 1991 appellant, then a 49-year-old nurse, was injured at work when a trapeze bar struck her on the head. The Office accepted her claim for a laceration of the head and postconcussion syndrome. Appellant returned to work on September 10, 1991.

Appellant submitted reports from her treating physician, Dr. Stephen Sargent, Board-certified in internal medicine, who diagnosed minor head trauma with headaches. He later added that appellant had a possible cognitive loss.

In a May 19, 1992 magnetic resonance imaging (MRI) scan of the brain, Dr. Steven Baker, a radiologist, noted no significant abnormality.

Appellant filed a recurrence of disability claim on October 24, 1996, noting that she made errors in administering medication several months after her accepted injury.

In a November 4, 1996 report, Dr. Laura Smith-Seemiller, a neuropsychologist, indicated that appellant's performance on two tests were below average and consistent with a mild traumatic brain injury. She opined that they stemmed from the original brain injury. Further she added that it would not be unusual for the stress resulting from appellant's medication errors to further compromise appellant's already burdened cognitive functioning and eventually appear to dominate her presentation. In a February 5, 1997 report, Dr. George A. Small, a Board-certified psychiatrist and neurologist, noted his agreement with Dr. Smith-Seemiller.

In an August 25, 1997 report, Dr. Barbara Dappert, a Board-certified neurologist and an Office referral physician, indicated that appellant's mild head injury contributed to appellant's errors in the workplace. She advised that appellant should be able to participate in work that did not involve decision making that could affect a person's well being.

The Office approved appellant's claim for a recurrence effective October 18, 1996. On October 28, 1998 the Office adjusted her compensation, finding that her actual earnings in the position of a health technician fairly and reasonably represented her wage-earning capacity.

Dr. Sargent continued submitting reports indicating appellant's status and that her condition was due to the employment injury.

In a November 26, 2002 report, Dr. Edward L. Williamson, a Board-certified neurologist and an Office referral physician, noted that appellant alleged that she had symptoms of making mistakes, medication errors, needing lists and had trouble balancing her checkbook after her injury of September 7, 1991. He reported that no objective findings were discovered, as a result of the injury, although some impairments were felt to be discovered after neurological testing. Dr. Williamson explained that, although there was no evidence of any significant neurological injury, they were related to appellant's head injury because of appellant's opinion. He related that, although appellant had to concentrate on one thing at a time to avoid mistakes and needed to make lists, these were deficits from a normally functioning brain. Dr. Williamson indicated that he did not believe that appellant suffered any significant neurological head injury and that she was not disabled.

On March 19, 2003 the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Zahid Akram, a Board-certified neurologist, to resolve the conflict in medical evidence.

In an April 10, 2003 report, Dr. Akram reviewed appellant's history and noted that findings on neurological examination were normal. In reviewing records, he stated that the skull x-rays from the day of injury were negative and that an MRI scan of the brain performed in May 1992 was also negative. Dr. Akram opined that, although the previous physicians had based their opinions supporting ongoing causal relationship on the single neuropsychological examination conducted by Dr. Smith-Seemiller on November 4, 1996, it was more important to concentrate on the injury itself and define its characteristics rather than presuming its outcome on a single psychological examination five years after the event. Dr. Akram explained that, after the event, appellant had no loss of consciousness and was only dazed and did not require an emergency room observation. He noted that she stayed on duty and drove home by herself that day, a distance of at least five miles. Dr. Akram indicated that the medical evidence indicated that appellant sustained a Grade I or Grade II concussion and her only significant complaint in the next several weeks was a localized headache. He also noted that appellant stated that her symptoms started two to three months after her injury, occurred intermittently depending on her "stress level" and were generally progressive over the years. Dr. Akram explained that a significant traumatic brain injury or even a concussion would cause maximum symptoms at the onset of the injury with a gradual resolution of symptoms as time passed. He opined that appellant did not suffer any significant traumatic brain injury at the time of the accident, just a concussion with localized headaches, which resolved over a few months. Dr. Akram explained his opinion by noting that there was no loss of consciousness, anterograde or retrograde amnesia, nausea, vomiting or any observation required. He further explained why appellant did not have postconcussion syndrome since her deficits were not from a brain injury. Dr. Akram stated that anxiety and depression could be a symptom, but a postconcussion syndrome, which, even if it

did occur after a simple concussion, would usually be short-lived and last no longer than a few months or at the most, six months. He also noted that, before the injury, appellant made a medication error and had been advised to seek mental health counseling while in nursing school. Dr. Akram opined that he could not attribute any of her symptoms, except headaches, to the concussion and explained that the increase in her symptoms in the years after her minor injury and the fact that they persisted for more than 10 years, argued against any relationship. He concluded that there were no objective findings and no evidence of any active work-related condition.

By decision dated June 5, 2003, the Office terminated appellant's compensation as the weight of the medical evidence established that she no longer had any residuals of the September 7, 1991 employment injury.¹ The Office based its decision on the April 10, 2003 report of Dr. Akram, the impartial medical examiner.

The Board finds that the Office properly terminated appellant's wage-loss compensation and medical benefits effective June 15, 2003.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.²

The Office determined that a conflict of medical opinion existed between the opinions of Dr. Sargent, appellant's physician, and Dr. Williamson, an Office referral physician. Therefore, the Office properly referred appellant to an impartial medical examiner,³ Dr. Akram, a Board-certified neurologist.

Dr. Akram examined appellant, reviewed the record and concluded that appellant had no residuals from her accepted injury. He advised that a postconcussion syndrome, even if it occurred after a simple concussion, would usually be short-lived. Dr. Akram explained that the medical evidence most contemporaneous with the injury did not show any serious injury and that appellant's most serious complaints arose months and years after the injury. He noted that, for appellant's accepted condition of postconcussion syndrome, the symptoms are most severe immediately after the injury and tend to subside within six months. Dr. Akram found that the pattern of the onset of appellant's symptoms contradicted any continuing causal relationship. He

¹ On April 24, 2003 the Office issued a notice of proposed termination of compensation. The notice was addressed to appellant at her address of record. She did not submit a response within the time allotted in the notice. On appeal appellant asserts that she did not receive the notice. However, the Board has held that, it is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed. *Levi Drew, Jr.*, 52 ECAB 442 (2001). In this case, it appears from the record that the notice was properly addressed and duly mailed. There is no evidence to indicate that it was not mailed in the ordinary course of business.

² *Curtis Hall*, 45 ECAB 316 (1994).

³ The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

noted that, while Dr. Smith-Seemiller had indicated that appellant's errors in administering medication were likely the result of her accepted condition, appellant also had a history of making such errors prior to her employment injury. Additionally, Dr. Akram opined that, although appellant might have anxiety and depression, these symptoms were not attributable to the employment injury. He supported this opinion by referencing the lack of any objective evidence of a brain injury and also by noting that mental health counseling had been recommended to appellant prior to the employment injury. Based on his examination and review of the medical record, Dr. Akram found no basis on which to attribute any continuing condition or symptoms to the accepted 1991 employment injury. He provided a comprehensive report that explained the reasons for his conclusions.

The Board finds that the Office properly relied on the impartial medical examiner's April 10, 2003 report as a basis for terminating appellant's benefits. Dr. Akram's opinion is well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant had no continuing work-related condition or disability effective June 15, 2003.⁴ Accordingly, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.⁵

⁴ 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 a 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).

⁵ On appeal appellant also asserts that Dr. Akram was biased and that he was previously employed by the employing establishment. However, the Board finds that the record contains no evidence indicating that Dr. Akram was biased or that he was improperly selected to serve as an impartial medical examiner. *See Willie M. Miller*, 53 ECAB ____ (Docket No. 02-328, issued July 25, 2002) (an impartial medical specialist properly selected under the Office's rotational procedures will be presumed unbiased and the party seeking disqualification bears the substantial burden of proving otherwise; mere allegations are insufficient to establish bias).

The June 5, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 5, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member