United States Department of Labor
Employees' Compensation Appeals Board

LYNN L. RODGERS, Appellant	)	
and	)	**Docket No. 04-749**
	)	**Issued: September 30, 2004**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Coatesville, PA, Employer	)	

Appearances
Lynn L. Rodgers, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 20, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 13, 2004, which terminated her medical benefits effective that day. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction to review the January 13, 2004 decision.

ISSUE

The issue on appeal is whether the Office properly terminated appellant's medical benefits effective January 13, 2004.

FACTUAL HISTORY

On May 7, 1989 appellant, then a 42-year-old licensed practical nurse, filed a traumatic injury claim (Form CA-1), alleging that on May 6, 1989 she slipped and sustained an injury in the performance of duty. She stopped work on May 7, 1989. On June 23, 1989 the Office

accepted the claim for lumbosacral strain.[1] The Office also accepted the claim for cervical and low back strain and a torn left rotator cuff with arthroplasty and an emotional overlay.[2] The Office placed appellant on the periodic rolls and paid appropriate compensation.

Appellant sought treatment with several physicians, including Dr. Earl Trievel, an osteopath, who continued to submit reports in which he advised that appellant had developed myofascial pain, fibromyalgia and rheumatic pain which exacerbated her depression for which she received treatment.[3]

An October 18, 2000 letter from the employing establishment advised the Office that appellant had returned to full-time duty on September 18, 2000, in a file clerk position with an annual salary of $27,205.00. In a November 20, 2000 decision, the Office determined that her actual earnings in the position of a file clerk fairly and reasonably represented her wage-earning capacity. Appellant was advised that she had been working as a file clerk and had increased her hours to full time with wages of $27,205.00 per annum effective September 18, 2000 and that her actual wages exceeded the wages of the job that she held when injured and no loss of wages had occurred. Appellant was advised that this decision did not affect the continued payment of her medical expenses.

In a July 3, 2003 report, Dr. Trievel advised that at the time of appellant's injury she was diagnosed with lumbosacral sprain and subsequently experienced pain in the cervical spine, right knee, right interscapula and had right shoulder discomfort along with depression due to chronic pain and the limitation of her physical activities. He advised that appellant had not been pain-free since her injury and could not do the activities she once was able to do. Dr. Trievel noted that appellant continued to work eight hours a day despite pain and depression.

By letter dated August 21, 2003, the Office advised Dr. Trievel that appellant's claim remained open for medical treatment due to the effects of the May 6, 1989 work injury, including medication for the accepted conditions of lumbosacral strain, torn rotator cuff and adjustment reaction.

In a September 2, 2003 report, Dr. Trievel indicated that appellant also had a cervical strain that was diagnosed and treated on the first day of injury and that she continued to need treatment for this condition along with the cervical pain.

By letter dated September 30, 2003, the Office advised Dr. Trievel that appellant's cervical strain was accepted.

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[1] The record reflects that appellant did not work for seven years. On April 8, 1996 she returned to work at a sedentary position for four hours per day, she increased to six hours per day on June 17, 1996 working as a file clerk. Appellant stopped work on April 6, 1998 and returned to four hours per day on June 22, 1998 and six hours per day two weeks later.

[2] The record reflects that appellant filed a notice of recurrence on February 12, 1998, commencing February 9, 1998 and on September 22, 1998 for the period March 26 to June 22, 1998. However, the record does not include a decision on this claim.

[3] The American Osteopathic Association directory indicates his primary specialty is as a family practitioner.

The Office continued to develop the claim. By letter dated October 3, 2003, it referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Anthony Salem, a Board-certified orthopedic surgeon, for a second opinion evaluation as to whether appellant had continuing residuals of her May 6, 1989 employment injury and, if so, recommendations for impairment and medical treatment.

In a report dated November 20, 2003, Dr. Salem noted appellant's history of injury and treatment and conducted a physical examination. He noted findings which indicated flexion of the cervical spine was 20 degrees and extension was 20 degrees with rotation of 50 degrees to the right and 40 degrees to the left. He indicated that appellant had no pain with palpation of the paracervical, trapezius, or levator scapulae muscles or anywhere and that she had equal measurement of her brachium and forearm bilaterally and her deep tendon reflexes in the upper extremities were +4, showing no atrophy, spasm or sensory loss. Dr. Salem noted otherwise normal findings and a negative vertical compression test, with the only positive finding being that of a purely functional finding, based on illness behavior of decreased range of motion of the neck. He also indicated that cervical spine x-rays were normal and the lumbosacral spine x-rays showed a "longstanding, burned out, collapsed disc at L5-S1 with minimal spurring of the anterior bodies of L1 and L2." Dr. Salem opined that appellant was normal neurologically, with no muscle atrophy and no evidence of muscle spasms, and no significant pain with palpation and the only positive findings were decreased range of motion of the neck and back. He concluded that appellant did not continue to have any residuals of the May 6, 1989 work injury. Dr. Salem added that appellant was not impaired in any way and that she had not done any exercises to stimulate motion, strength or comfort and that most of her symptoms were those of her underlying arthritis, deconditioning and illness behavior. He stated that appellant's cervical and lumbar arthritis were unrelated to the work injury. Dr. Salem submitted a work restriction form indicating that appellant could work an eight-hour day with no restrictions.

On December 11, 2003 the Office proposed to terminate appellant's medical benefits because the medical evidence established that appellant no longer had any residuals of her work-related disability.[4]

On December 30, 2003 appellant noted inconsistencies in Dr. Salem's report, including that she did not have a previous injury to her knee and shoulder. She stated that her right long finger was broken in 2000 while in the performance of duty. Appellant clarified Dr. Salem's finding that she did not do any exercises and indicated that, at that time, she was not doing exercises; however, she did not state that she "never did exercises." She also disagreed with Dr. Salem's comments that she was out of work for seven years and that she did not sustain real injuries. Appellant indicated that she experienced pain in her back, spine, knee and shoulder on a daily basis and was never pain free. She believed her myofascitis and fibromyalgia conditions were due to the work injury and depression and that she was concerned that her lumbosacral pain necessitated continued medication.

[4] A copy of the second opinion physician's report was sent to appellant's physician, Dr. Trievel, on December 11, 2003. The Office requested that Dr. Trievel state any disagreement, if he did not agree with the findings of Dr. Salem. No response was received from Dr. Trievel.

By decision dated January 13, 2004, the Office terminated appellant's medical benefits, effective that day, as the weight of the medical evidence established that her injury-related disabilities had ceased.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[5] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[6] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[7] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[8]

ANALYSIS

In this case, the Office accepted that appellant sustained a cervical and low back strain, torn left rotator cuff with arthroplasty and an emotional overlay and paid appropriate benefits. Appellant's physician, Dr. Trievel, an osteopath, submitted reports that indicated that appellant continued to have pain along with depression and that she continued to need treatment. In his July 3, 2003 report, Dr. Trievel indicated that appellant had continued pain in the cervical spine, right knee, right interscapula and had right shoulder discomfort along with depression due to her chronic pain and was limited with her physical activities. However, he did not provide any findings to support his conclusion. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[9] In his report dated September 2, 2003, he also indicated that appellant had a cervical strain, which had been diagnosed on the date of the injury and cervical pain which also required treatment. However, he did not provide any reasoning or opinion as to why appellant continued to suffer from this strain which he asserted was diagnosed in 1989, more than 14 years previously. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10] Additionally, he did not provide a rationalized opinion explaining

[5] *Curtis Hall*, 45 ECAB 316 (1994).

[6] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[7] *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[8] *John F. Glynn*, 53 ECAB ___ (Docket No. 01-1184, issued June 4, 2002); *Pamela K. Guesford*, 53 ECAB ___ (Docket No. 02-915, issued August 12, 2002); *Fred Simpson*, 53 ECAB ___ (Docket No. 02-802, issued August 27, 2002); *Calvin S. Mays*, 39 ECAB 993 (1988).

[9] *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

[10] *Michael E. Smith*, 50 ECAB 313 (1999).

why appellant continued to suffer residuals from her accepted employment injuries. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.[11]

The Office subsequently referred appellant to Dr. Salem, a Board-certified orthopedic surgeon, for a second opinion. Dr. Salem noted appellant's history of injury and treatment and conducted a physical examination, including making findings with regard to flexion and extension. He also indicated that palpation of the muscles did not cause pain, and that measurement of her brachium and forearm was equal, her deep tendon reflexes were +4, and there was no atrophy, spasm or sensory loss. Dr. Salem noted otherwise normal findings and indicated that the only positive finding that he found was that of a purely functional finding, which he explained was based on appellant's illness behavior of decreased range of motion of the neck. He also reviewed appellant's x-rays and noted that the cervical spine x-rays were normal, however, the lumbosacral spine x-rays showed that appellant had a preexisting collapsed disc at L5-S1 with minimal spurring of the anterior bodies of L1 and L2. Dr. Salem opined that appellant was normal neurologically, and did not have any muscle atrophy or evidence of muscle spasms. He also explained that there was no significant pain with palpation and the only positive findings he noted were decreased range of motion of the neck and back. Dr. Salem concluded that appellant did not suffer any residuals of the work injury that occurred on May 6, 1989 and that appellant was not impaired in any way. Further, he explained that appellant's behavior was due to her cervical and lumbar arthritis, which were unrelated to the work injury and opined that appellant could work an eight-hour day with no restrictions. The Board finds that Dr. Salem's report is sufficient to establish that appellant has no residuals from her employment-related orthopedic conditions as he provided a thorough, well-rationalized report based on his review of the record and examination findings.[12] Although Dr. Trievel indicated that appellant needed treatment, he did not provide a rationalized opinion to support his findings. The report of Dr. Trievel is of diminished probative value such that it does not create a conflict with that of Dr. Salem.[13]

However, the Board notes that appellant's claim was also accepted for an emotional overlay. Dr. Salem, a Board-certified orthopedic surgeon, indicated that appellant's prognosis was guarded with respect to her depression and that it was secondary to her illness behavior and personal problems. While he advised that appellant's emotional condition was not employment related, this portion of his report was inaccurate since the Office accepted emotional overlay. Therefore, Dr. Salem's report is insufficient for the Office to meet its burden to establish that appellant's emotional condition had resolved. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and must be based upon a

[11] *Annie L. Billingsley*, 50 ECAB 210 (1998); *Michael E. Smith*, *supra* note 10.

[12] Rationalized medical opinion evidence is medical evidence which 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 factors. Such an opinion of the physician 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 factors identified by the claimant. *Leslie C. Moore*, 52 ECAB 132 (2000).

[13] *Robert D. Reynolds*, 49 ECAB 561 (1998).

complete and accurate medical and factual background of the claimant.[14] Furthermore, Dr. Salem's specialty, orthopedic surgery, is not as germane to appellant's emotional condition as it is to her orthopedic conditions. The Board has held that opinions of physicians who have special training and knowledge in a specialized medical field have greater probative value in determining the causal relationship of a condition germane to that field than the opinions of nonspecialists or others who have no training in the particular field.[15] For these reasons, the Board finds that the Office did not meet its burden of proof to terminate medical benefits with respect to appellant's emotional condition.

CONCLUSION

The Board finds that the Office met its burden of proof with respect to appellant's orthopedic condition, however, it did not meet its burden of proof with respect to appellant's emotional condition in terminating appellant's medical benefits effective January 13, 2004.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part and reversed in part.

Issued: September 30, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *Bonnie Goodman*, 50 ECAB 139 (1998); *James H. Botts*, 50 ECAB 265 (1999); *Samuel Senkow*, 50 ECAB 370 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999).

[15] *Compare Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).