United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 07-91**
	)	**Issued: April 9, 2007**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Holtsville, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 4, 2006 appellant, through her representative, filed an appeal of a September 14, 2006 decision of the Office of Workers' Compensation Programs denying modification of its determination that appellant had no disability or continuing residuals subsequent to July 10, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant has established any continuing residuals on or after July 10, 2004 causally related to her accepted employment injury of December 10, 2001.

FACTUAL HISTORY

This case is before the Board for the second time. In a decision dated February 4, 2005, the Board affirmed the Office's July 1, 2004 decision terminating appellant's medical and compensation benefits due to her accepted lumbar subluxation, sustained on July 10, 2004, on

the grounds that the condition had resolved and related residuals had ceased. The Board found that the Office met its burden of proof to terminate appellant's compensation based on the report of Dr. Edmunde Stewart, a Board-certified orthopedic surgeon and impartial medical specialist, whose opinion represented the special weight of the medical evidence. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.[1]

On December 15, 2005 appellant, through her representative, requested reconsideration. The representative contended that the Board improperly terminated appellant's medical and wage-loss benefits effective July 10, 2004 and that appellant continued to suffer residuals from her December 1, 2001 work injury. In support of her request for reconsideration, appellant submitted reports from Dr. Marc Chernoff, a Board-certified orthopedic surgeon, and Dr. Elias Kotsovolos, a chiropractor.

In a report dated February 21, 2005, Dr. Chernoff noted appellant's complaints of upper and lower back pain, muscle pain and numbness in the feet and hands, which began after an injury at work. His examination revealed that appellant was able to toe and heel walk and was able to perform lumbar flexion with two feet to the floor. Hyperextension was 10 degrees past neutral; deep tendon reflexes were 12+ at the knees, bilaterally symmetric and 2+ at the ankles. Sensation was intact in the lower extremities to light touch, bilaterally symmetric. Power testing revealed 5/5 strength in the hip flexors, quadriceps, hamstrings tibialis anterior, extensor hallucis longus and plantar flexors. Straight leg raising elicited back pain and posterior thigh pain bilaterally. Dr. Chernoff found a negative bowstring sign bilaterally. He provided an impression of lumbar and cervical disc disease with fibromyalgia.

In physical ability evaluations dated August 30, October 29 and December 27, 2004, Dr. Kotsovolos stated that appellant had been disabled since December 10, 2001. In a report dated January 3, 2005, he described appellant's history of injury, indicating that she had first sought treatment from him on January 16, 2002, after injuring herself at work on December 10, 2001 while moving boxes. Appellant's current complaints included lower back pain and neck pain, with intermittent hand numbness, leg pain and foot numbness bilaterally. Examination of the cervical spine showed tight and tender cervical musculature with trigger points in the levator scapulae scalene, trapezius and rhomboin musculature. Active range of motion was restricted, at end range, with pain. Range of motion was increased during passive range of motion. Compressions produced pain in extension. Examination of the lumbar spine revealed tight and tender quadratus lumborum and pyriformis musculature. Range of motion was mildly restricted, with pain at all end ranges. Adam's and bilateral Kemp were positive. Dr. Kotsovolos provided diagnoses of lumbar spine subluxation complex with lumbar IVD syndrome; cervical spine subluxation complex with cervical IVD syndrome; headaches; and fibromyalgia. He stated that appellant was capable of performing intermittent tasks, but would have difficulty completing a consistent work schedule.

On March 26, 2005 Dr. Kotsovolos reiterated his January 3, 2005 diagnoses. On examination of the cervical spine, he found that lateral translator pressure of the transverse processes (TP's) created pain at the right C1-3 TP's and bilateral C4-6 TP's. Motion palpation revealed intersegmental hypomobility-loss of range of motion (aka vertebral

[1] Docket No. 04-2012 (issued February 4, 2005).

subluxation/dislocation complex) of the right C1-2 and left C4-7 motor units. On examination of the lumbar spine, he found that posteroanterior pressure of the lumbar spinous processes (SP's) and TP's created pain at the L4-5 SP's and bilateral L4-5 TP's. Motion palpation revealed intersegmental hypomobility-loss of range of motion (aka vertebral subluxation/dislocation complex) of the left L4-5 motor unit, with a right posterior inominate.

In an April 11, 2005 report, Dr. Kotsovolos stated that appellant's objective and subjective findings, related to her lower back and neck injury, had been persistent for over two years and had been complicated by fibromyalgia. He further stated that her condition was chronic and permanent and that she was disabled. On April 26, 2005 Dr. Kotsovolos stated that he had initially used an incorrect diagnosis code to identify the subluxation/dislocation complex diagnosis code for appellant's lumbar spine. In a letter dated May 28, 2005, he again stated that appellant was disabled. On July 15, 2005 Dr. Kotsovolos amended his March 26, 2005 report. He stated that appellant's subluxation complexion of the lumbar spine was diagnosed by x-rays taken on January 16, 2002 in his office.

By decision dated September 14, 2006, the Office denied modification of its prior decision. The Office found that the medical evidence submitted failed to establish a causal relationship between appellant's current condition and the accepted December 1, 2001 work injury.

LEGAL PRECEDENT

When the Office meets its burden of proof in justifying termination of compensation benefits, the burden of proof shifts back to the claimant to establish that she had any continuing disability causally related to her accepted injuries.[2] Causal relationship is a medical issue and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[3]

ANALYSIS

As the Board found in its February 4, 2005 decision, the Office met its burden of proof in terminating compensation effective July 10, 2004. Therefore, the burden of proof shifted back to

[2] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

[3] *See John F. Glynn*, 53 ECAB 562 (2002).

appellant to establish that she had continuing employment-related residuals after that date.[4] The Board finds that the medical evidence submitted was insufficient to meet her burden of proof.

In his February 21, 2005 report, Dr. Chernoff related appellant's complaints of upper and lower back pain, muscle pain and numbness in the feet and hands, which he stated began after an injury at work. He reported findings on examination and diagnosed lumbar and cervical disc disease with fibromyalgia. However, Dr. Chernoff did not offer an opinion on whether there was a causal relationship between appellant's diagnosed condition and the established work injury. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[5]

Appellant submitted numerous reports from her chiropractor, Dr. Kotsovolos. These reports are insufficient to establish that she had any continuing residuals on or after July 10, 2004 causally related to her accepted employment injury. A chiropractor is only considered a physician for purposes of the Federal Employees' Compensation Act where he diagnoses subluxation by x-ray.[6] In its February 4, 2005 decision, the Board found that the reports submitted by Dr. Kotsovolos as of that date lacked probative value, noting that there was no evidence of record reflecting that he had based his diagnosis of lumbar and cervical spine subluxation on the results of an x-ray. The Board also found the fact that Dr. Kotsovolos rendered his subluxation diagnosis more than two years after he began treating appellant for her injury, cast serious doubt on its credibility. On March 26, 2005 he provided diagnoses of lumbar spine subluxation complex with lumbar IVD syndrome, cervical spine subluxation complex with cervical IVD syndrome, headaches and fibromyalgia. On July 15, 2005 Dr. Kotsovolos amended his March 26, 2005 report to reflect that appellant's subluxation complexion of the lumbar spine was diagnosed by x-rays taken on January 16, 2002 in his office. However, he did not provide a copy of the x-ray report, nor did Dr. Kotsovolos explain why he waited more than three years to report the basis of his diagnosis, again diminishing the probative value of his opinion.

Moreover, Dr. Kotsovolos did not address the relevant issue of whether appellant remained disabled after July 10, 2004 due to her accepted employment injuries. On April 11, 2005 he stated that appellant's objective and subjective findings, related to her lower back and neck injury, had been persistent for over two years and had been complicated by fibromyalgia. Dr. Kotsovolos further stated that her condition was chronic and permanent and that she was disabled. However, he failed to address the report of Dr. Stewart, a Board-certified orthopedic surgeon and impartial medical specialist, whose opinion represented the special weight of the medical evidence. All of his reports merely repeated his opinion that appellant had been disabled since her December 10, 2001 employment injury. None of Dr. Stewart's reports explained how appellant's current diagnosed conditions were causally related to the accepted injury. As

[4] *Id.*

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

[6] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

Dr. Kotsovolos failed to provide any medical rationale which supports that appellant suffered residuals after July 10, 2004 due to her accepted employment injuries, his reports are of diminished probative value.[7] The Board notes that Dr. Kotsovolos diagnosed headaches and fibromyalgia, as well as spinal subluxation. However, diagnosis and treatment of these conditions is outside the scope of his expertise as a chiropractor. As appellant has submitted no probative medical evidence establishing that she continues to suffer residuals from employment-related conditions, she has not met her burden of proof to establish entitlement to compensation after July 10, 2004, the date the Office terminated her compensation benefits.[8]

CONCLUSION

The Board finds that appellant has not established any continuing residuals on or after July 10, 2004 causally related to her accepted employment injury of December 10, 2001.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2006 is affirmed.

Issued: April 9, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[7] *Jean Culliton*, 47 ECAB 728 (1996).

[8] On appeal, her representative contended that the Board erred in terminating appellant's benefits. In the instant case, the Board resolved the issue of whether the Office properly terminated appellant's wage-loss and medical benefits effective July 10, 2004 on the grounds that the accepted condition of lumbar subluxation had resolved. A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d). Appellant did not seek reconsideration of the Board's decision pursuant to 20 C.F.R. § 501.7(a). Therefore, this issue is *res judicata*. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). *See also Hugo A. Mentink*, 9 ECAB 628, 629 (1958).