United States Department of Labor
Employees' Compensation Appeals Board

I.J., Appellant	)	
and	)	
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, WESTERN REGIONAL OFFICE, San Francisco, CA, Employer	)	**Docket No. 06-1292** **Issued: January 31, 2007**

Appearances:
Hank Royal, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 12, 2006 appellant filed a timely appeal from a February 16, 2006 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective May 24, 2005 on the grounds that her accepted cervical and lumbar strains had resolved; (2) whether she met her burden of proof to establish that she had a consequential emotional condition caused by her accepted conditions; and (3) whether appellant established that she had any continuing employment-related disability after May 24, 2005.

FACTUAL HISTORY

On July 31, 1991 appellant, then a 50-year-old accounting technician, sustained employment-related cervical and lumbar strains when she was injured by a door while on travel status in Washington, DC. She returned to work intermittently until December 3, 1991. Appellant stopped work and was placed on the periodic rolls. An April 22, 1992 cervical spine magnetic resonance imaging (MRI) scan demonstrated incipient cervical spondylosis at C6-7 and was otherwise normal. Lumbar spine MRI scan demonstrated minimal incipient degeneration of the lumbosacral disc with a minimal bulge without compression. By decision dated May 18, 1992, appellant's request for an attendant allowance was denied. On July 9, 1993 she was terminated by the employing establishment.

By report dated March 19, 1997, Dr. Norman M. Harris, Board-certified in orthopedic surgery, reported that her MRI scans were unchanged. On March 22, 1997 appellant sustained an injury when she tripped and fell at a grocery store. In April 1997, she came under the care of Dr. Fred Blackwell, a Board-certified orthopedic, surgeon, who noted her complaints of diffuse pain involving multiple body parts including both hips, both shoulders, both elbows, neck and back. Dr. Blackwell diagnosed chronic lumbosacral strain and sprain with fibromyalgia and probable functional overlay. In 2001, appellant had left knee surgery and, in 2003, underwent triple bypass surgery. In July 2004, she moved to Texas.

On December 8, 2004 the Office[1] referred appellant to Dr. Robert M. Chouteau, a Board-certified osteopath specializing in orthopedic surgery. By report dated January 11, 2005, Dr. Chouteau noted the history of injury, his review of the record and appellant's complaints of cervical, thoracic, lumbar, left arm and leg pain, dysesthesias and weakness. Cervical, thoracic and lumbar spine examination demonstrated point tenderness with full range of motion. Tinel's, Phalen's and straight leg raising tests were negative bilaterally. Thoracic and lumbar spine x-rays were normal. Cervical spine x-ray demonstrated paraspinal musculature spasms. He diagnosed traumatic cervical, thoracic, lumbar myositis/strain with no neurocirculatory deficit of the upper or lower extremities. Dr. Chouteau opined that, although appellant's cervical and lumbar strains had not completely resolved, they were much improved and she could return to work as an accounting technician with a 10-pound lifting restriction. Electromyography and nerve conduction studies of the upper and lower extremities were performed at his request and demonstrated mild left peroneal motor neuropathy. In a functional capacity evaluation, Dr. Chouteau noted that appellant did not exert full effort and advised that she could return to her previous sedentary position.

By letter dated February 3, 2005, the Office informed appellant that it proposed to terminate her wage-loss compensation on the grounds that she had no continuing employment-related disability from work.

[1] In March 1992, the Office referred appellant to Dr. Michael R. Bartos, a Board-certified psychiatrist, Dr. Alan C. Roth, a Board-certified physiatrist, and Dr. Steven J. Holtz, a Board-certified neurologist, for second opinion evaluations and to Dr. James R. Cole, Ph.D., for neuropsychological testing. In July 1992, she underwent pain management.

Appellant disagreed with the proposed termination. She submitted a January 31, 2005 report from Dr. Richard Espey, a Board-certified physiatrist, who noted the history of injury and appellant's complaints of severe pain. Physical examination demonstrated tenderness in the cervical and lumbar regions. Cervical spine x-ray was unremarkable and lumbar spine x-ray demonstrated mild spondylosis with mild disc space narrowing at L5-S1. He diagnosed status post employment injury with chronic cervical and lumbar pain with possible fibromyalgia.

By decision dated March 8, 2005, the Office terminated appellant's wage-loss compensation, finding that the weight of the medical evidence rested with the opinion of Dr. Chouteau.

Appellant thereafter submitted a February 23, 2005 report in which Dr. Espey advised that she should not work due to her severe pain, limited mobility, limited sitting and limited ability to write, type or do other desk-type activity. On March 30, 2005 the Office vacated the March 8, 2005 decision and returned appellant to the compensation rolls. The Office found that a conflict in medical evidence had been created between Drs. Espey and Chouteau regarding appellant's disability and work capabilities.

On April 18, 2005 the Office referred appellant to Dr. Robert E. Holladay, Board-certified in orthopedic surgery, for an impartial medical evaluation.[2] In reports dated May 6, 2005, Dr. Holladay noted the history of injury, his review of medical records beginning in 1993 and appellant's ongoing chronic pain symptoms involving multiple areas. Appellant stated that she was unable to sit for any length of time without experiencing excruciating pain. Examination of the cervical spine demonstrated tenderness to palpation with inconsistent motion testing. Range of motion of the shoulders, wrists, elbows, hands, fingers, hips, knees and ankles was normal bilaterally. Sensory examination of the upper and lower extremities was normal. Tinel's and Phalen's tests were negative bilaterally. Straight leg raising in the sitting and supine positions was negative to 90 degrees with complaints of low back pain in all positions. Dr. Holladay advised that when appellant reported for a functional capacity evaluation her blood pressure was uncontrolled and testing was limited to two minutes. The test was invalid due to inappropriate effort. Dr. Holladay opined that both her cervical and lumbar strains had resolved with no objective documentation of structural damage to her body. Appellant's current complaints were not related to the 1991 employment injury, noting that they did not have an anatomic or physiological basis. Dr. Holladay concluded that appellant could return to her regular job as an accounting technician with no restrictions.

By decision dated May 24, 2005, the Office terminated appellant's compensation benefits, effective that day.

In June 2005, appellant returned to California and on June 21, 2005 requested a hearing. On November 3, 2005 she requested that her claim be expanded to include depression, stress and anxiety caused by the 1991 injury. Appellant's representative argued that the statement of accepted facts should have included a psychological component. He also noted that

[2] Dr. Holladay was furnished with the medical record, a statement of accepted facts that included a position description and a set of questions. The statement of accepted facts indicated that the accepted conditions were cervical and lumbar strains.

Dr. Holladay had not reviewed the 1992 medical reports of the Office referral physicians. In an October 25, 2005 report, Dr. David C. Roberts, Ph.D., a clinical psychologist, noted the history of injury, a review of limited medical evidence and appellant's complaint of depression, anxiety, worry and pain which had worsened since her injury. He performed psychological testing and advised that appellant's clinical presentation of depression was consistent with testing and suggestive of moderate to severe anxiety which was potentially disruptive of her ability to function. Dr. Roberts diagnosed major depressive disorder, moderate, chronic. He opined that her pain was not fabricated but was perceived as exquisite and chronic and was disruptive to her daily life. Dr. Roberts concluded that her condition hampered her ability to concentrate adequately or to sustain the requisite cognitive focus demanded of a full-time employee.

At the hearing held on December 20, 2005, appellant testified about her ongoing medical condition and that she had received no medical care from December 2003 until January 2005. She submitted reports dated January 13 and 19, 2006 from Dr. Jeffrey K. Teraoka, Board-certified in internal medicine and physiatry. Dr. Teraoka noted that she had chronic pain complaints since the July 1991 employment injury and had been seen in his clinic since 1993 with diagnoses of fibromyalgia, fibromyositis and myofascial pain. Musculoskeletal examination demonstrated normal range of motion of the cervical spine and Spurling, Hoffman and straight leg raising tests were negative with bilateral 5 out of 5 strength in her upper and lower extremities and bilateral intact upper extremity sensation, which was slightly diminished in the left lateral aspect of the left lower extremity. Dr. Teraoka advised that she needed continued management of pain and further psychological-psychiatric evaluation secondary to pain.

In reports dated January 19 and 24, 2006, Dr. Michael E. Hebrard, a Board-certified physiatrist, noted the history of injury and appellant's treatment course and complaints of chronic pain. Physical examination demonstrated voluntary muscle guarding in the cervical and lumbar areas with painful decreased active range of motion and diffuse weakness in the upper and lower extremities. Dr. Herbrard diagnosed cervical and lumbar discogenic pain and provided physical restrictions that appellant sit and stand at will with no repetitive bending or twisting at the waist or turning of the head and neck. He opined that there was a causal relationship between the employment injury and her current complaints, noting that appellant showed signs of progressive deterioration and advised that she needed ongoing treatment to help reduce her pain and level of anxiety.

By decision dated February 16, 2006, an Office hearing representative found that, even though it was not clear whether Dr. Holladay reviewed the 1992 second opinion evaluations, he discussed appellant's medical condition and treatment in detail. Therefore, he had sufficient information on which to base his opinion that appellant's accepted conditions had resolved and that she could return to her previous position as an accounting technician. The hearing representative further noted that the more recent examinations were more relevant to appellant's condition in 2005 than those rendered in 1992. As Dr. Holladay's report was well reasoned and thorough, it represented the special weight of medical opinion. The hearing representative found that the Office properly terminated appellant's compensation benefits and that appellant had not established that she sustained a consequential emotional condition.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

Section 8123(a) of the Federal Employees' Compensation Act[5] provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[6] When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[7]

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on May 24, 2005. The Office determined that a conflict in the medical evidence had been created between the opinions of Dr. Chouteau who provided a second opinion evaluation for the Office and Dr. Espey, an attending physiatrist, regarding appellant's work capabilities. The Office then properly referred appellant to Dr. Holladay, Board-certified in orthopedic surgery, for an impartial evaluation.[8] In comprehensive reports dated May 6, 2005, Dr. Holladay noted the history of injury, his review of medical records beginning in 1993 and appellant's ongoing chronic pain symptoms involving multiple areas and her report that she was unable to sit for any length of time without experiencing excruciating pain. Physical findings included cervical spine tenderness to palpation with inconsistent motion testing. Range of motion of the shoulders, wrists, elbows, hands, fingers, hips, knees and ankles was normal bilaterally and sensory examination of the upper and lower extremities was normal. Tinel's and Phalen's tests were negative bilaterally. Straight leg raising in the sitting and supine positions was negative to 90 degrees with complaints of low back pain in all positions. He reported that functional capacity evaluation was invalid due to inappropriate effort. Dr. Holladay opined that both cervical and lumbar strains had resolved, noting that they did not have an anatomic or physiological basis with no objective documentation of structural damage to her body and that

[3] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[4] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[5] 5 U.S.C. §§ 8101-8193.

[6] 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

[7] *Manuel Gill*, 52 ECAB 282 (2001).

[8] *Supra* note 6.

her current complaints were not related to the 1991 employment injury. He concluded that she could return to her regular job as an accounting technician with no restrictions.

The Board notes that, while it is unclear whether Dr. Holladay reviewed the 1992 medical reports secured by the Office, this does not reduce the probative value of his opinion as the relevant medical evidence would be that most contemporaneous with the termination of benefits in 2005, 13 years later.[9] Dr. Holladay provided a well-rationalized evaluation in which he clearly advised that any residuals of appellant's July 1991 cervical and lumbar strains had resolved. The Board finds it is entitled to special weight as a referee opinion.[10] The Office met its burden of proof to terminate appellant's compensation benefits on May 24, 2005.[11]

LEGAL PRECEDENT -- ISSUE 2

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[12]

ANALYSIS -- ISSUE 2

Subsequent to the May 24, 2005 termination of compensation benefits, appellant requested that her claim be expanded to include depression, stress and anxiety. The Board finds that appellant submitted insufficient medical evidence to establish a consequential relationship between these conditions and the accepted cervical and lumbar strains. The evidence relevant to her claimed emotional condition consists of an October 25, 2005 report from Dr. Roberts who noted complaints of depression, anxiety, worry and pain, which had worsened since appellant's injury. He reported that psychological testing was suggestive of moderate to severe anxiety which, along with her chronic pain, was disruptive to her daily life and hampered her ability to concentrate adequately or to sustain the requisite cognitive focus demanded of a full-time employee. Dr. Roberts, however, did not address the cause of the diagnosed depression. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13] Dr. Teraoka merely advised that appellant needed further psychological-psychiatric evaluation. Dr. Hebrard diagnosed cervical and lumbar discogenic pain and opined that there was a causal relationship between the employment injury and appellant's current complaints. He noted that

[9] *See generally Lan Thi Do*, 46 ECAB 366 (1994).

[10] *Manuel Gill, supra* note 7.

[11] *Id*.

[12] Larson, *The Law of Workers' Compensation* § 1300; *see Charles W. Downey*, 54 ECAB 421 (2003).

[13] *Willie M. Miller*, 53 ECAB 697 (2002).

appellant showed signs of progressive deterioration and advised that she needed ongoing treatment to help reduce her pain and level of anxiety. However, he did not provide adequate medical rationale to explain how appellant's accepted cervical and lumbar strains caused or contributed to her anxiety other than attributing this to her pain complaints. Appellant bears the burden of proof as no psychiatric disorder has been accepted as employment related. The Board finds that the medical evidence of record is insufficient to discharge appellant's burden of proof to establish that her depression, stress and anxiety are consequences of the accepted July 19, 1991 cervical and lumbar strains.[14]

LEGAL PRECEDENT -- ISSUE 3

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any continuing disability causally related to his accepted injuries.[15] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[16] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[17] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant.[18]

Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[19] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[20]

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[14] *See Debra L. Dillworth*, 57 ECAB ____ (Docket No. 05-159, issued March 17, 2006).

[15] *Manuel Gill, supra* note 7.

[16] *Id.*

[17] *Donna L. Mims*, 53 ECAB 730 (2002).

[18] *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[19] *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[20] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS -- ISSUE 3

The Board finds that appellant submitted insufficient medical evidence to establish that she continued to be disabled from the accepted cervical and lumbar strains after May 24, 2005. While Dr. Roberts advised that appellant was totally disabled due to chronic pain and depression, he did not provide any opinion or explanation regarding the accepted conditions or how her disability was due to the accepted conditions. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[21]

In reports dated January 13 and 19, 2006, Dr. Teraoka noted that appellant had had chronic pain complaints since the July 1991 employment injury. On physical examination he found a negative straight leg raising test and 5/5 strength in both upper and lower extremities and diagnosed fibromyalgia, fibromyositis and myofascial pain. These conditions, however, have not been accepted as employment related and Dr. Teraoka did not provide an opinion regarding appellant's ability to work. Dr. Hebrard noted diffuse bilateral weakness in appellant's upper and lower extremities, a finding in contrast to that found by Dr. Teraoka who had examined appellant earlier in January 2006. Dr. Hebrard diagnosed cervical and lumbar discogenic pain and provided physical restrictions that appellant sit and stand at will with no repetitive bending or twisting at the waist or turning of the head and neck. He opined that there was a causal relationship between the employment injury and appellant's current complaints, noting that she showed signs of progressive deterioration and advised that she needed ongoing treatment to help reduce her pain and level of anxiety. The Board, however, finds his opinion of diminished probative value as he provided insufficient rationale for his stated conclusions. Dr. Hebrard physical findings appear inconsistent with those found at approximately the same time by Dr. Teraoka. The Board finds that appellant submitted insufficient medical evidence to establish that he had any continuing disability after May 24, 2005 causally related to the July 31, 1991 employment injury.[22]

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective May 24, 2005. The Board further finds that appellant failed to meet her burden of proof to establish that she sustained a consequential emotional condition or that she had any disability after May 24, 2005 causally related to her accepted conditions.

[21] *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

[22] *Leslie C. Moore*, *supra* note 18.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 16, 2006 be affirmed.

Issued: January 31, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board