United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 09-1982**
	)	**Issued: July 6, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Redlands, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 29, 2009 appellant filed a timely appeal from a February 10, 2009 merit decision of the Office of Workers' Compensation Programs affirming the termination of her wage-loss compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly terminated appellant's wage-loss compensation benefits effective March 16, 2008.

On appeal, appellant contends that the statement of accepted facts was incorrect and misleading as to the actual mechanism of her October 27, 2006 employment injury. She claims that she actually fell over the nutting truck, as opposed to merely bumping into it as listed in the statement of accepted facts.

FACTUAL HISTORY

On November 3, 2006 appellant, then a 49-year-old clerk filed a traumatic injury claim (Form CA-1) alleging that on October 27, 2006 she fell over a nutting truck at work and jarred her right arm. The Office accepted the claim for left ankle sprain of the deltoid ligament and contusion, left shoulder sprain at the acromioclavicular joint and cervical, thoracic and lumbar back sprains.[1] Appellant stopped work on the day of injury. She returned to modified duty on November 2, 2006.

In an October 31, 2006 statement, Mark Mazec, a supervisor, stated that on October 27, 2006 he and Steve Szychulda, another supervisor, observed appellant walking very slowly while looking at papers she held. Appellant apparently bumped into a nutting truck with her shins and had dirt marks on the front of her slacks. She kept her balance and put one foot on top of the nutting truck to balance herself, remained motionless for approximately 5 to 10 seconds and then brought her foot down to the floor. Mr. Mazec stated that the nutting truck did not move, even though it did not have breaks applied or anything obstructing its path.

On November 30, 2006 Dr. Hamid Rahman, an orthopedic surgeon, opined that appellant was totally disabled due to neck, shoulder and back conditions related to the October 27, 2006 employment injury and was unable to perform modified duty.

On January 9, 2007 appellant filed a claim for wage-loss compensation (Form CA-7) for disability commencing December 14, 2006. On February 14, 2007 the Office placed her on the periodic rolls.

The Office subsequently referred appellant to Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding residuals or disability due to her October 27, 2006 employment injury.

In March 7 and April 29, 2007 medical reports, Dr. Dorsey diagnosed resolved left ankle sprain, resolved left lower extremity contusion and resolved cervical, lumbar and thoracic musculoligamentous sprains. He further diagnosed bilateral anatomic shoulder impingement syndrome based on an MRI scan, radiographic changes of the lumbar spine consistent with age and mild left lower extremity radiculopathy. Dr. Dorsey found that appellant did not continue to experience ongoing residuals causally related to the October 27, 2006 injury, which consisted of minor sprains and contusions. He stated that the diagnostic findings were of a preexisting, degenerative nature and there was no evidence that these conditions were aggravated by the October 27, 2006 employment injury. Dr. Dorsey opined that appellant's disability ended on November 1, 2006 and that she could return to her date-of-injury position.

On May 3 and June 28, 2007 Dr. Rahman stated that he disagreed with Dr. Dorsey's finding that appellant's current shoulder condition was unrelated to her October 27, 2006

[1] Appellant previously filed claims for a February 1996 lower back condition under Office file number xxxxxx378, which was accepted for a lumbar strain, and an October 3, 1997 lifting injury under Office file number xxxxxx425, which was accepted for left rotator cuff tear and repair. She had been working modified duty due to these prior injuries at the time of her October 27, 2006 injury.

employment injury. He opined that appellant's previous employment-related injuries did not have any relationship to her present shoulder condition and that appellant was able to work modified duty prior to the October 27, 2006 injury. Dr. Rahman stated that appellant sustained a bilateral shoulder impingement due to the October 27, 2006 employment injury and that she was temporary totally disabled as a result of the injury.

On April 5, 2007 appellant underwent bilateral L4 and L5 epidural steroid injections. She underwent a right shoulder arthroscopy and subacromial decompression on August 21, 2007.[2]

The Office found a conflict in medical opinion between Dr. Rahman and Dr. Dorsey regarding the residuals of appellant's October 27, 2006 employment injury and continuing disability. It referred her to Dr. J. Yogaratnam, a Board-certified orthopedic surgeon.[3] The Office provided a June 8, 2007 statement of accepted facts, which stated that on October 27, 2006, appellant bumped into a nutting truck with her shins. Appellant placed one foot on the nutting truck for balance, remained motionless for about 5 to 10 seconds and brought her foot down to the floor, all the time keeping her balance. The Office also advised that it accepted her claim for left lower leg contusion, left ankle sprain, left shoulder sprain and cervical and thoracic sprains.

In a December 28, 2007 medical report, Dr. Yogaratnam described appellant's occupational and medical history. Physical examination revealed limited range of motion in the cervical, thoracic and lumbar spine and shoulders bilaterally and tenderness on palpation. Appellant was unable to perform a heal-to-toe gait and was only able to squat up to two-thirds the normal amount. Dr. Yogaratnam diagnosed headaches, neck, back and bilateral shoulder pain, resolved left leg contusion and resolved left ankle sprain. He opined that appellant did not continue to experience any residuals from her October 27, 2006 injury with total disability ceasing on October 29, 2007 and partial disability ceasing on October 31, 2007. Dr. Yogaratnam opined that, due to the description of the injury, appellant only sustained a bruised left shin and a mild sprain of her left ankle, which were quickly resolved without any permanent disability. He stated that appellant's neck, left shoulder and thoracic spine conditions could not have been related to the October 27, 2006 employment injury. Dr. Yogaratnam found that appellant was not credible and that she provided false information and misled her treating physician. He opined that appellant's present neck and back pain were preexisting conditions associated with degenerative cervical and lumbar disc disease. Further, appellant's symptoms in her upper and lower extremities were not consistent with the mechanism of injury. Dr. Yogaratnam stated that appellant did not incur any permanent disability to her neck, shoulders, back or lower extremities due to the October 27, 2006 injury and that she could return to her duties at the time of injury.

On February 8, 2008 the Office notified appellant of its proposal to terminate her wage-loss benefits based on Dr. Yogaratnam's findings that she was no longer disabled due to the October 27, 2006 injury. It provided her 30 days to submit additional evidence.

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[2] The record reveals that appellant retired in October 2007.

[3] Dr. Yogaratnam's name is incorrectly spelled in the American Board of Medical Specialties Online Directory as Dr. Jayaraja Yogarathnam.

Appellant submitted a March 5, 2008 statement claiming that on October 27, 2006 she fell over a nutting truck and placed her right arm out in front of her to break her fall. The impact of the fall jarred her right arm and she further twisted her body, which was straddled halfway over the truck until two supervisors helped her up. Appellant also criticized the thoroughness of Dr. Yogaratnam's physical examination and findings.

By decision dated March 14, 2008, the Office terminated appellant's wage-loss benefits effective March 16, 2008 on the grounds that she did not submit sufficient medical evidence to alter the recommendation to terminate her compensation.

On April 8, 2008 appellant filed a request for an oral hearing before an Office hearing representative.

An oral hearing before an Office hearing representative was held on August 26, 2008, where appellant testified regarding the details of the October 27, 2006 employment injury. Appellant claimed that she actually fell over the nutting truck, as opposed to simply bumping into it, as provided in the statements of accepted facts and that no one had witnessed the injury.

By decision dated February 10, 2009, the Office hearing representative affirmed the March 14, 2008 Office decision on the grounds that the weight of the medical evidence rested with Dr. Yogaratnam, who found that appellant was no longer disabled due to her employment injury. She noted that the statement of accepted facts included a proper account of the October 27, 2006 employment injury, thus, Dr. Yogaratnam's opinion was based on an accurate history.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[4] The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[5] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

Section 8123(a) of the Federal Employees' Compensation Act provides that if there is a 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.[7] When the case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical evidence, the opinion of such specialist will be given special

[4] *I.J.,* 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga,* 13 ECAB 102, 104 (1961).

[5] *J.M.,* 58 ECAB 478 (2007); *Anna M. Blaine,* 26 ECAB 351 (1975).

[6] *T.P.,* 58 ECAB 524 (2007); *Larry Warner,* 43 ECAB 1027 (1992).

[7] 5 U.S.C. § 8123(a). *See Elsie L. Price*, 54 ECAB 734 (2003); *Raymond J. Brown*, 52 ECAB 192 (2001).

weight when based on a proper factual and medical background and sufficiently well rationalized on the issue presented.[8]

ANALYSIS

The Office accepted that on October 27, 2006 appellant bumped into a nutting truck and sustained a left ankle sprain of the deltoid ligament, contusion of the left lower leg, shoulder sprain at the acromioclavicular joint and cervical, thoracic and lumbar sprains. Appellant stopped working on November 30, 2006 and was placed on the periodic rolls on February 14, 2007. The issue is whether the Office properly terminated appellant's wage-loss compensation on March 16, 2008 on the grounds that she was no longer disabled due to her October 27, 2006 employment injury.

The Office found that a conflict of medical opinion existed between Dr. Dorsey, a second opinion physician who found that appellant was no longer disabled due to her October 27, 2006 employment injury, and Dr. Rahman, who continued to find appellant totally disabled. It properly referred appellant to Dr. Yogaratnam for an impartial evaluation to resolve the conflict in medical opinion regarding her ongoing disability due to the October 27, 2006 employment injury.[9] In an accompanying statement of facts, the Office advised that on October 27, 2006 appellant bumped into a nutting truck and that her claim had been accepted for left lower leg contusion, left ankle sprain, left shoulder sprain and cervical and thoracic sprain.[10]

Dr. Yogaratnam provided a December 28, 2007 opinion that appellant was no longer disabled due to her employment injury and that her total disability had ceased on October 29, 2007 and her partial disability had ceased on October 31, 2007. He found that, based on the description of the injury, appellant only sustained a bruised left shin and mild sprain of the left ankle, which were quickly resolved without any permanent disability. Dr. Yogaratnam further opined that appellant's neck, left shoulder and thoracic spine conditions could not have been related to the October 27, 2006 injury and that appellant was not credible and had misled her treating physician.

The Board finds that Dr. Yogaratnam's medical opinion is of diminished probative value as his opinion regarding appellant's disability was outside the framework of the statement of accepted facts and based on an improper background. To assure that a report of a medical specialist is based on a proper factual background, the Office provides information to the physician through the preparation of a statement of accepted facts. The Office procedure manual provides that when a medical specialist renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts

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[8] *See Bernadine P. Taylor*, 54 ECAB 342 (2003); *Anna M. Delaney*, 53 ECAB 384 (2002).

[9] *See J.M.*, 58 ECAB 478 (2007).

[10] The Board notes that the statement of accepted facts omitted lumbar sprain, which is an accepted condition.

as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[11]

Dr. Yogaratnam premised his opinion of disability on the fact that appellant only sustained a bruised shin and mild sprain of the left ankle. He found that the October 27, 2006 employment injury could not have caused a shoulder, neck or back condition; yet the Office had accepted appellant's claim for shoulder, neck and back sprains as a result of that injury. Dr. Yogaratnam was notified of these accepted conditions in the statement of accepted facts, which he was required to accept as correct.[12] Instead of providing an opinion as to whether appellant experienced disability due to her employment injury, he found that the conditions accepted by the Office were not employment related. As Dr. Yogaratnam's opinion is outside the framework of the accepted facts, it is insufficient to meet the Office's burden of proof on the relevant issue of whether appellant has an ongoing disability due to her employment injury.[13]

The Board notes appellant's contention on appeal that the statement of accepted facts was incorrect as to the mechanism of her injury. She claims that she actually fell over the nutting truck as opposed to merely bumping into it. The description of the injury in the statement of accepted facts is consistent with the evidence of record and specifically the witness statement provided by Mr. Mazec. Appellant did not submit sufficient evidence to establish that the October 27, 2006 employment injury occurred other than as provided in the statement. Thus, the description of the October 27, 2006 employment injury is in accordance with the evidence of record.[14]

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's wage-loss compensation benefits effective March 16, 2008.

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[11] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). *See also Willa M. Frazier*, 55 ECAB 379 (2004); *Joseph A. Picca*, 36 ECAB 318 (1984).

[12] *Id*.

[13] The Office did not address whether it was attempting to rescind acceptance of appellant's claim based on Dr. Yogaratnam's report. It did not inform appellant that it was contemplating rescission or actually rescinding acceptance of her neck, shoulder and back injuries in its termination decision. The Office must inform a claimant correctly and accurately of the grounds on which a rejection rests so as to afford the claimant an opportunity to meet, if possible, any defect appearing therein. It may not, therefore, find that residuals of an accepted injury have ceased by a particular date when the evidence upon which the decision rests tends to support that, in fact, the injury never occurred. *See Willa M. Frazier*, *id*.; *John M. Pittman*, 7 ECAB 514 (1955).

[14] The Office procedure manual provides that, in preparing the statement of accepted facts, the claims examiner must determine the facts in a case by weighing the evidence which has been developed and drawing conclusions based on that evidence. Evidence can be classified as direct or indirect. Because direct evidence represents a first-hand account (such as a witness statement), it is ordinarily assigned greater weight than indirect evidence, or second-hand knowledge of an event. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.3 (September 2009).

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 6, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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