United States Department of Labor
Employees' Compensation Appeals Board

P.B., Appellant	)	
and	)	**Docket No. 10-1127**
	)	**Issued: March 28, 2011**
DEPARTMENT OF AGRICULTURE, VETERINARY SERVICES, Raleigh, NC, Employer	)	

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

Oral Argument February 1, 2011

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2010 appellant filed a timely appeal from a January 29, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective November 3, 2009 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 9, 2008 appellant, then a 55-year-old laboratory technician, filed a traumatic injury claim alleging that on that date she injured her neck, shoulders and head and sustained bruises to her right knee and left forearm after her foot got caught on the lip of the cooler and she fell forward into the walk-in cooler. The Office accepted the claim for thoracic and lumbar sprains and cervical subluxation at C1 and C6. Appellant stopped work and has not returned to work.[2] By letter dated October 29, 2008, the Office placed her on the periodic rolls for temporary total disability effective September 29, 2008.

The record contains a May 13, 2009 statement of accepted facts (SOAF) noting appellant's condition had been accepted for the conditions of thoracic back sprain, lumbar back sprain and cervical vertebra subluxation and nonaccepted condition of heart disease. It also noted "while stepping into the walk-in cooler, her foot was caught causing her to fall forward into the cooler hitting the top of her head pushing the head into the neck and shoulders." The Office also noted appellant stopped work on June 30, 2008 and had not returned and provided a description of her job duties and responsibilities.

On June 30, 2009 Dr. Richard T. Sheridan, a second opinion Board-certified orthopedic surgeon, conducted a review of the medical evidence and SOAF and performed a physical examination of appellant. He concluded she no longer had any residuals or disability due to her accepted June 9, 2008 employment injury and that her accepted work-related injuries had resolved as of December 2008. Dr. Sheridan provided physical findings for the cervical, lumbar and thoracic region. He noted magnetic resonance imaging (MRI) scans for the right shoulder were within normal limits while the x-ray interpretation of the cervical spine showed slight narrowing at C5-6 and C6-7. A review of a lumbar spine x-ray interpretation showed slight narrowing at L5-S1.

On September 10, 2009 the Office issued a notice proposing to terminate appellant's compensation based on Dr. Sheridan's June 30, 2009 report which found that her accepted condition had resolved.

Following the Office's proposal, it received additional evidence including a September 9, 2009 report from Dr. Vance N. True, a treating chiropractor, who provided physical findings and diagnosed cervical subluxations by use of x-rays from his original examination of June 18, 2008 and right cervical tenderness on palpation. Dr. True diagnosed cervical nerve root compression based on positive hyperextension and maximum cervical compression tests. He reported appellant had positive Milgram's test and double leg test, which were indicative of a herniated spinal disc and lumbosacral joint involvement. In concluding, Dr. True opined that she continued to be totally disabled due to her accepted June 9, 2008 employment injury.

On November 19, 2009 the Office referred appellant to Dr. Daniel Primm, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on the extent and degree of her employment-related conditions. On October 22, 2009 it prepared a medical

[2] Appellant was approved for disability retirement for her nonemployment-related cardiac condition by the Office of Personnel Management effective January 3, 2009.

memorandum to be given to the impartial medical examiner. This document contained a list of questions and noted the conflict in the medical evidence was between Dr. Sheridan and Dr. True.

In a December 18, 2009 report, Dr. Primm, based upon a review of the medical evidence and physical examination, reported that a June 9, 2008 slip and fall injury occurred at work with a history of cervical and lumbar strains, lower extremity neuropathy, significant coronary artery disease and probable symptom magnification versus psychological overlay. A physical examination revealed normal cervical spine with full flexion and extension. Dr. Primm reported x-ray interpretations of the thoracic and lumbar spines were normal.[3] He agreed with Dr. Sheridan's conclusion that appellant's injuries had resolved. Dr. Primm related that he felt appellant's condition had resolved from an objective standpoint and that he really did not know of any "way to explain her continued global complaints on the basis of her one slip and fall injury" that occurred on June 9, 2008. He also reported that she required no further medical treatment for her injuries. Dr. Primm related he "really [does] not feel that [appellant] shows any objective residuals from the [accepted employment-related] injury." In concluding, he stated that he felt no work restrictions were required that were not in place prior to her June 9, 2008 injury.

By decision dated January 29, 2010, the Office finalized the termination of her wage-loss and medical compensation benefits effective February 14, 2010. It found the weight of the medical evidence rested with the opinion of Dr. Primm, the impartial medical examiner, who found that appellant no longer had any residuals or disability due to her accepted June 9, 2008 employment injury.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[4] After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is 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]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[7] To terminate authorization for medical treatment, the Office must

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[3] Appellant at the oral argument before the Board stated that no x-rays were taken by Dr. Primm at the time of her visit as his x-ray machine was broken.

[4] *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[5] *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[6] *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988). *See I.R.*, Docket No. 09-1229 (issued February 24, 2010).

[7] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[8]

Section 8123(a) of the Act provides in pertinent part: "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."[9] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.[10]

ANALYSIS

The Office accepted that appellant sustained thoracic and lumbar sprains and cervical subluxation at C1, C6. In a January 29, 2010 decision, it terminated her disability compensation on the grounds that she had no disability due to her accepted employment injuries after February 14, 2010. The Office based its termination on the opinion of Dr. Primm, a Board-certified orthopedic surgeon, who served as an impartial medical examiner. Dr. Primm determined that appellant's disability and residuals from her accepted employment injury had resolved.

The Board finds that the Office properly found a conflict in the medical opinion between Dr. Sheridan, a Board-certified orthopedic surgeon acting as an Office referral physician, and Dr. True, an attending chiropractor, regarding whether appellant's accepted employment conditions had resolved with no residuals. The Board further finds, however, that the impartial medical specialist was insufficient to resolve the conflict of medical opinion.

The Board first notes that the record is not clear as to whether Dr. Primm received the SOAF. Although the record does contain a SOAF associated with the referral to Dr. Sheridan dated May 13, 2009, there is no copy of the SOAF in the record surrounding the appointment of Dr. Primm as the impartial medical specialist.

In his report, Dr. Primm stated that he evaluated appellant as well as the available medical records and diagnosed: "(1) slip and fall injury occurring at work on [June 9, 2008] with [a] history of cervical and lumbar strains; (2) probable symptom magnification versus psychological overlay; (3) significant chronic coronary artery disease with chronic angina; (4) neuropathy both lower extremities by history." He opined that her injuries had resolved and no further medical treatment was required for her work injuries. Dr. Primm further indicated that appellant required no work restrictions other than the ones in place prior to the June 9, 2008 employment injury.

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[8] *Kathryn E. Demarsh*, *supra* note 7; *James F. Weikel*, 54 ECAB 660 (2003); *B.K.*, Docket No. 08-2002 (issued June 16, 2009).

[9] 5 U.S.C. § 8123(a); *see also R.H.*, 59 ECAB 720 (2008); *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[10] *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

The SOAF designated the accepted conditions, however, as thoracic and lumbar sprains and cervical subluxation at C1, C6 and described the employment injury in more detail than a "slip and fall." There is no evidence in Dr. Primm's report that he was aware of the accepted conditions. It is well established that medical opinions based on an incomplete or inaccurate history are of diminished probative value.[11] Dr. Primm's opinion is, therefore, not based on a proper factual history.

Furthermore, Dr. Primm's conclusions that he "believed" appellant's injuries had resolved and that he did not "feel" that she would not need any additional restrictions are couched in speculative terms and thus are of diminished probative value.[12] The Board finds that his opinion is not based on an accurate history and is not sufficiently rationalized to resolve the conflict on whether appellant's accepted conditions of thoracic and lumbar sprains and cervical subluxation at C1 and C6 had resolved.

For these reasons, the Office failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's wage-loss and medical compensation benefits effective February 14, 2010 on the grounds that her accepted conditions had resolved such that she no longer had any disability or residuals from the accepted conditions.

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[11] *M.W.*, 57 ECAB 710 (2006); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[12] *L.R. (E.R.)*, 58 ECAB 369 (2007); *D.D.*, 57 ECAB 734 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004); *S.E.*, 60 Docket No. 08-2214 (issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2010 is reversed.

Issued: March 28, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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