U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE D. SCHULTZ and TENNESSE VALLEY AUTHORITY, BROWNS FERRY NUCLEAR PLANT, Decatur, Ala.

Docket No. 97-1995; Submitted on the Record;
Issued July 16, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective March 30, 1997.

On November 20, 1989 appellant, then a 53-year-old electrician, sustained a traumatic injury in the course of his employment when someone threw open an air lock door, hitting him in the upper arm and shoulder. The Office accepted the claim for cervical and left shoulder strain on April 27, 1990. The Office subsequently accepted the additional condition of depression as a consequential injury on August 2, 1994. Appellant received compensation for the periods of February 20, 1989 through March 19, 1990 and from August 24, 1990 until March 30, 1997, when his benefits were terminated.

The Office referred appellant for second opinion evaluations by Dr. Richard Tyler, a Board-certified orthopedic surgeon, and Dr. George C. Johnson, a Board-certified psychiatrist.[1]

In a report dated January 3, 1994, Dr. Johnson described appellant's November 30, 1989 work injury, noting that it resulted in chronic pain syndrome. He opined that appellant suffered from a major depressive disorder, but indicated that is was difficult to determine whether a major depressive disorder was present in a person with chronic pain syndrome since both conditions often present with the same symptoms.

In an April 4, 1994 report, Dr. Johnson diagnosed chronic pain syndrome and depression associated with appellant's work-related injury.

In a report dated February 24, 1994, Dr. Tyler noted appellant's history of injury and complaints of pain on the left side of the neck, but he reported normal clinical findings. Based

[1] In addition to the Office's development of the medical evidence, the employing establishment submitted medical records going back to appellant's October 12, 1989 initial employment examination.

on his review of a magnetic resonance imaging (MRI) scan of the cervical spine, he diagnosed degenerative arthritis. According to Dr. Tyler, appellant was capable of returning to the work he was performing when he was injured, although Dr. Tyler recommended a gradual resumption of full work duties. He diagnosed neck pain syndrome for which he recommended electro-diagnostic testing of a neurological nature because there were no objective findings to support appellant's complaints of pain. Dr. Tyler further stated that regardless of whether appellant's depression was present before his work injury or not, "it would certainly cause an aggravation and prolongation of the pain complained of [appellant]. This may very well explain why his pain resulting from the neck and shoulder injury has not resolved in more than three years." Dr. Tyler recommended further psychiatric treatment.

In a report dated June 24, 1994, Dr. Johnson stated that "[appellant] continues to have a psychiatric diagnosis which can still be attributed to his work[-]related injury. An impairment in him can continue to be work related, even over a period of [3½] years. I have no knowledge that [appellant's] work[-]related injury to the neck and shoulder has resolved ... I do n[o]t know when [appellant] can return to some type of employment." He concluded that appellant was very depressed, and in a lot of pain and noted the prognosis for recovery as guarded. The date of maximum medical improvement was "unclear."

In an August 22, 1994 report, Dr. John W. Garland, a Board-certified psychiatrist, indicated that he had been treating appellant for major clinical depression since September 1990, following a referral by appellant's treating physician, with therapy and anti-depressant medication. His diagnosis included cervical vertebral crush injury with subsequent chronic pain syndrome and chronic headache syndrome.

By letter dated January 19, 1996, the Office referred appellant for second opinion evaluations by Dr. James Malcolm Alday, Jr., a Board-certified orthopedic surgeon, and Dr. Davis J. Cadenhead, a Board-certified psychiatrist. The Office indicated that each physician was provided with a statement of accepted facts, a copy of the medical records, and a list of issues to be resolved.

In a February 6, 1996 report, Dr. Alday noted appellant's history of the November 1989 injury and his complaints of ongoing pain. He noted physical findings and indicated that he had reviewed a 1990 MRI of the cervical spine. According to Dr. Alday, appellant's current diagnoses include osteoarthritis of the cervical spine with related neck and shoulder pain, and depression by history. He acknowledged that since that he had no knowledge of appellant's preinjury baseline status and no objective measurement of appellant's preinjury baseline, such as films of the cervical spine or measurements of range of motion, he could not state whether appellant had returned to his preinjury baseline. Dr. Alday, however, recommended no further medical treatment for appellant, stating that "due to the length of time since the injury, and with no objective evidence of any injury except a soft tissue injury, [appellant] has reached maximum medical improvement."

In a report dated May 21, 1996, Dr. Cadenhead noted that appellant reported the onset of incapacitating depression after an injury to his neck and shoulder involving an airlock door which has caused chronic pain. He indicated that appellant has continued difficulty with maintenance attention, concentration, mood/effectual stability, pessimism, insomnia,

gastrointestinal disturbance, anhedonia, fatigue and passive suicidal ideation. Dr. Cadenhead diagnosed major depression, recurrent, severe without psychotic features, cervical spondylosis and neck pain syndrome. According to the physician, there was no historical information to support the presence of a preexisting depressive condition. Dr. Cadenhead opined:

> "[Appellant] is totally disabled, and, after this length of time, further progress and significant improvement seem unlikely, hence a guarded prognosis. Nothing has changed since his initial injury, there are no known depressive antecedents to [appellant's] current depression. Thereby it seems likely both from a historical and clinical perspective that [appellant's] depression is subsequent to, and a likely sequela of his work[-]related injury."

He concluded that appellant was probably at maximum medical improvement.

The Office issued a notice of proposed termination of compensation on February 10, 1997, advising appellant of his right to submit additional medical evidence.

In a decision dated March 19, 1997, the Office terminated appellant's compensation and authorization for medical treatment on the grounds that the weight of the medical evidence established that appellant's disability resulting from the November 20, 1989 injury had ceased. The effective date of the termination was March 30, 1997.

The Board finds that the Office failed to meet its burden of proof in terminating appellant's benefits effective March 30, 1997.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or 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.[3] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. 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]

In the instant case, the Office accepted that appellant sustained a cervical and shoulder strain on November 20, 1989 and that he suffered from depression due to onset of chronic pain related to the work injury. In terminating compensation, the Office relied on Dr. Alday's February 6, 1996 report opinion that appellant's cervical and shoulder sprain had resolved. The

[2] *Harold S. McGough*, 36 ECAB 332 (1984).

[3] *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

[4] *Mary Lou Barragy*, 46 ECAB 781 (1995).

Office concluded that if appellant's original orthopedic injury had resolved, leaving only the condition of osteoarthritis from aging, the consequential etiology of the appellant's depression has also ceased to be related to the November 20, 1989 work injury and must now be attributable to chronic pain related to osteoarthritis.

However, Dr. Alday's report contains little rationale and appears to be based on an incomplete history[5] as he indicated that he had no preinjury medical records from which to offer an opinion as to whether appellant had returned to his preinjury baseline. A reading of his report seems to indicate that no medical records were reviewed other than a 1990 MRI scan. Also, while Dr. Alday opined that appellant had reached maximum medical improvement, he did not specifically state whether all residuals of the accepted neck and shoulder strain had resolved. Thus, inasmuch as his opinion is not based on a complete review of the medical record and is not well rationalized, the Office has not met it's burden of proof in terminating compensation for the accepted conditions of neck and shoulder sprain.

Regarding the emotional condition, contrary to the Office's analysis, Dr. Alday did not state that appellant's depression is now related to pain from osteoarthritis. The Board notes that Dr. Cadenhead specifically opined that appellant's current condition of depression is "subsequent to and a likely sequela of his work-related injury." He gave no indication that appellant's accepted depression had resolved and was no longer work related. Thus, because the Office has not provided a rationalized medical opinion from a physician establishing either that appellant's work-related conditions have resolved and are no longer disabling, the Office erred in terminating compensation.[6]

[5] *See Leonard J. O'Keefe*, 14 ECAB 42 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

[6] *Mary Lou Barragy, supra* note 4.

The decision of the Office of Workers' Compensation Programs dated March 19, 1997 is reversed.

Dated, Washington, D.C.
July 16, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member