U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEATRICE BAXTER and DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Philadelphia, PA

Docket No. 98-402; Submitted on the Record;
Issued February 4, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation effective July 21, 1996; and (2) whether appellant established that she suffered a left knee injury causally related to the December 23, 1988 work incident.

On December 30, 1988 appellant, then a 47-year-old supply clerk, filed a notice of traumatic injury alleging that on December 23, 1988 she slipped on some ice in the course of her federal employment and injured her back, buttocks and stomach. The Office accepted the claim for a lumbar strain on February 7 and 13, 1989 and awarded appropriate compensation.

On August 18, 1992 Dr. John J. Bowden, appellant's treating physician and an osteopath, stated that appellant continued to complain of pain and stiffness in the neck, both shoulders and the lower back. Dr. Bowden diagnosed chronic cervical and lumbar strain and sprain, a herniated nucleus pulposus (HNP) at C5-6, L4-5 and L5-S1, left lumbosacral radiculopathy, and chronic pain syndrome. He stated that appellant remained totally disabled.

On October 8, 1992 Dr. Max Karpin, an attending physician and a neurological surgeon, examined appellant for her post-traumatic cephalgia and noted that she continued to have difficulties with her cervical and lumbar area. Dr. Karpin also noted problems with her left knee. He subsequently repeated his conclusions in numerous reports as he continued to treat appellant.

On October 30, 1992 Dr. Kenneth L. Izzo, an attending physician Board-certified in physical medicine and rehabilitation, noted the history of appellant's injury on December 23, 1988 and stated that she continued to have severe pain in her neck and lower back. Dr. Izzo performed a complete examination and diagnosed an unresolved severe cervical and lumbosacral sprain and strain, a herniated cervical and lumbar nucleus pulpusus, right cervical radiculopathy, left lumbar radiculopathy and probable tendinitis and/or sprain of the left knee joint. He

continued to treat appellant and restated his conclusions with the clarification that appellant had an internal derangement of her left knee.

On November 14, 1992 Dr. Joel D. Swartz, a Board-certified radiologist, interpreted a magnetic resonance imaging (MRI) scan of appellant's left knee and found it consistent with a tear of the posterior horn of the medial meniscus and medial collateral ligament sprain.

On March 25 and February 8, 1993 Dr. Srinivas Aravbhumi recorded the history of appellant's injury on December 23, 1988 and performed a physical examination. Dr. Aravbhumi diagnosed chronic pain syndrome, left lumbar radiculopathy, right cervical radiculopathy, chronic cervical and lumbosacral strain and sprain, an HNP at C5-6, disc protrusions at L4-5 and L5-S1 and an internal derangement of the left knee.

On April 5, 1993 Dr. Corey K. Ruth, an orthopedic surgeon, indicated that appellant presented with symptoms of left knee pain, cervical spine pain with radicular bilateral arm pain, and lumbosacral spine pain with radicular left leg pain. Dr. Ruth stated that appellant sustained these injuries at work on December 23, 1988. Following an examination, he diagnosed right and left radiculopathy with C4-5 and L5-S1 HNP and left knee strain.

On May 7, 1993 Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, provided a second opinion examination for the Office. Dr. Mattei indicated that appellant complained of pain in her neck, shoulder, low back, legs and knees. He recorded the history of appellant's injury and the treatment received. Dr. Mattei also performed a thorough physical examination and reviewed the medical evidence of record. He opined that appellant had degenerative arthritic changes in the lumbosacral area and cervical spine. Dr. Mattei indicated that this was a preexisting condition and that the treatment appellant received for her soft tissue injuries merely reflected her anxiety. He concluded that appellant was no longer totally disabled.

On May 19, 1993 the Office found that a conflict existed in the medical evidence between the opinion of Dr. Mattei and the opinions of appellant's attending physicians.

Appellant's treating physicians, Drs. Bowden, Izzo and Karpin continued to treat appellant and repeated their previous diagnoses and findings.

On June 3, 1993 Dr. Amelia Tabuena, a physician specializing in physical medicine and rehabilitation, noted appellant's history of injury and performed a physical examination. Dr. Tabuena diagnosed unresolved cervical and lumbar strain and sprain with injury to myoligamentous structures, chronic pain syndrome, herniated disc of the cervical spine, multiple disc protrusions of the lumbar spine, and internal derangement of the left knee. She repeated these diagnoses in subsequent reports.

On September 7, 1993 Dr. Mark D. Avart, an osteopath, evaluated appellant for pain in her left knee. Dr. Avart recorded that appellant was originally injured in December 1988 and that she had experienced a worsening of pain. Following an MRI scan, he diagnosed a torn meniscus and synovitis of the left knee.

On December 3, 1993 the Office referred appellant to Dr. John T. Williams, a Board-certified orthopedic surgeon, for a referee examination. On September 14, 1994 Dr. Williams noted that appellant complained of pain in her neck, shoulder and lower back. He also noted pain radiating into her right hand with numbness in both hands and pain radiating into her left leg. Dr. Williams recorded appellant's history of both appellant's work injury and her nonwork injuries. On examination, he found that appellant's pelvis was level and that her leg measurements were symmetrical. Dr. Williams noted that the lumbosacral spine had flexion to 30 degrees, extension to 15 degrees and lateral bending to 15 degrees. He noted an excellent reversal of the lumbosacral curve. Dr. Williams found no paraspinal muscle spasm. He stated that Mose's Homan's, Oppenheim, Chaddock and Babinski tests were all negative. Dr. Williams found that the heel to knee test was normal. His cervical spine examination revealed that appellant could shrug her shoulders in all directions without complaints. Dr. Williams recorded flexion to 50 degrees, extension to 50 degrees and lateral bending to 40 degrees. He found no tenderness over the occipital ridge, occipital foramina, auricular nerves, cervical spine or para cervical muscle mass. Dr. Williams found no paraspinal muscle spasm and no evidence of muscle atrophy. He opined that appellant incurred a lumbosacral sprain/strain, a cervical sprain/strain and sprain/strain of both shoulder girdles due to her December 23, 1988 incident. Dr. Williams explained that because there were no positive objective findings on examination that all of these conditions had resolved. On October 23, 1994 he reviewed all the medical evidence of record and again concluded that the absence of any objective findings on physical examination caused him to conclude that appellant's conditions had resolved.

On December 16, 1994 Dr. Barry L. Getzoff, an attending physician and an osteopath, reviewed appellant's history of injury and conducted a physical examination. Dr. Getzoff diagnosed secondary fibromyalgia in association with chronic refractory cervical and lumbar sprain and strain. On January 13, 1995 he diagnosed limited abduction and internal rotation and pain over the subacromial bursa.

On March 7, 1995 the Office issued a proposed notice of termination. The Office noted that the weight of the medical evidence as represented by the opinion of Dr. Williams, the referee examiner, established that the residuals from appellant's December 23, 1988 injury had ceased. Appellant was given 30 days to submit additional argument or evidence.

Appellant's treating physicians Drs. Bowden, Karpin, Tabuena, Getzoff, and Aravbhumi continued to submit reports restating their earlier opinions.

On June 14, 1995 Dr. Williams reviewed additional medical evidence and again concluded that in the absence of any objective findings on his physical examination that it was his opinion that appellant fully recovered from her accepted employment injury.

By decision dated June 28, 1996, the Office terminated appellant's compensation effective July 21, 1996 because the medical evidence established that appellant's disability resulting from the injury of December 23, 1988 had ceased. In an accompanying memorandum, the Office noted that the opinion of Dr. Williams, the referee examiner, constituted the weight of the medical evidence. The Office further noted that appellant's knee condition could not be related to her December 23, 1988 work injury because it did not appear until a November 14, 1992 MRI scan.

Appellant's treating physician's Drs. Bowden, Karpin, Aravbhumi and Getzoff continued to submit medical reports restating their previous conclusions.

Pursuant to appellant's request, a hearing was held on May 21, 1997.

By decision dated July 31, 1997, the Office hearing representative found that the Office met its burden to terminate appellant's benefits. In reaching this determination, the Office relied on the "rationalized" opinion of Dr. Williams, the referee examiner, who opined that all the residuals from appellant's December 23, 1988 injury had ceased. The Office also found that appellant failed to establish that she suffered a left knee injury causally related to the December 23, 1988 work incident because the record failed to contain any rationalized medical evidence related the left knee injury to the incident.

The Board finds that the Office met its burden to terminate appellant's compensation effective June 21, 1996.

Once the Office has accepted a claim and pays compensation, it has the burden or proof of justifying termination or modification of compensation benefits. 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.[1] Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.[2] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires further medical treatment.[3]

In the present case, the Office accepted appellant's claim for a lumbar strain and authorized appropriate compensation benefits. Appellant's attending physicians, Drs. Bowden, Karpin, Izzo and Aravbhumi subsequently indicated that she continued to suffer residuals from her December 23, 1988 employment injury. In contrast, Dr. Mattei, the second opinion examiner and a Board-certified orthopedic surgeon, opined that the residuals from appellant's employment injury had resolved. Because of the conflict between the reports of appellant's attending physicians and the second opinion examiner, the Office properly referred appellant to Dr. Williams, a Board-certified orthopedic surgeon, for an impartial medical examination pursuant to section 8123 of the Federal Employees' Compensation Act.[4]

In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial specialist, the opinion of such specialist will be given special weight if the opinion is based on a proper factual background and is well rationalized.[5] In this

[1] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[2] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[3] *Id.*

[4] 5 U.S.C. § 8128 *et seq.*

[5] *See Jack R. Smith*, 41 ECAB 691 (1990)

case, Dr. Williams, the referee examiner, reviewed appellant's history and all the medical evidence of record. He also conducted a complete physical examination. Dr. Williams found appellant had a level pelvis and symmetrical hip measurements. He reviewed the motion of appellant's lumbar and cervical spine and noted an excellent reversal of the lumbosacral curve. Dr. Williams found no paraspinal muscle spasm in either the lumbosacral or cervical spine. His Mose's, Homan's, Oppenheim, Chaddock, Babinski, and heel to knee tests were all negative. He found that appellant could shrug her shoulders in all directions without complaint and that there was no tenderness over the occipital ridge, occipital foramina, auricular nerves, cervical spine or para cervical muscle mass. Finally, he found no muscle atrophy. Based on the absence of any positive findings from his physical examination, Dr. Williams opined that appellant's accepted conditions had resolved. Because Dr. Williams' opinion was based on a proper factual background and medical rationale, his opinion, as the opinion of the impartial medical specialist, constitutes the weight of the evidence. The Board, therefore, finds that the Office met its burden to terminate appellant's compensation benefits.

Appellant subsequently submitted medical reports from her attending physicians who were on one side of the conflict. This evidence is insufficient to overcome the weight accorded the impartial medical specialist.[6]

The Board further finds that appellant failed to establish that she suffered a left knee injury causally related to the December 23, 1988 work incident.

In this case, the Office accepted that the December 23, 1988 work incident occurred as alleged. Appellant, however, has not submitted sufficient medical evidence to establish that she incurred an employment-related left knee injury on that date. Appellant's left knee condition was first noted in Dr. Karpin's October 8, 1992 report, nearly three years and ten months after the December 23, 1988 work incident. Subsequently, Drs. Bowden, Karpin, Izzo, Swartz, Aravbhumi, Ruth, Tabuena, Avart and Getzoff documented appellant's left knee problems, but failed to provide any reasoned opinion explaining how her left knee condition, which first appeared in October 1992, was related to the December 23, 1988 work incident. Inasmuch as appellant failed to submit any rationalized medical evidence connecting her left knee condition to the work incident of December 23, 1988, appellant has failed to meet her burden of proof in establishing that the condition is employment related.

[6] *Virginia Davis-Banks*, 44 ECAB 389 (1993).

The decision of the Office of Workers' Compensation Programs dated July 31, 1997 is affirmed.

Dated, Washington, D.C.
February 4, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member