U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHIA HUFF and DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Atlanta, GA

Docket No. 99-387; Submitted on the Record;
Issued January 29, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation; and (2) whether appellant's seizure disorder or degenerative spine condition is causally related to her employment injury of April 23, 1995.

On April 23, 1995 appellant, an air traffic controller, sustained an injury while in the performance of her duties when she fell down a stairway. The Office accepted her claim for the conditions of lumbar and cervical sprain and for concussion with post-concussion syndrome. Appellant received compensation for temporary total disability on the periodic rolls.

In a report dated December 4, 1995, Dr. Melvin Greer, a neurologist, and Office referral physician, stated that appellant continued to complain of blackouts and increasingly frequent and severe migraine headaches. Appellant related that she had migraines about once a year before her fall but now has them as often as five times a week. She showed Dr. Greer a photograph of herself with periorbital swelling. She stated that the pain in her head was accompanied by nausea, which would last for hours. Vomiting could occur at any time. Blackouts existed since she came home from the hospital and could also occur at any time. Appellant would "go right down on her face" and sometimes urinate involuntarily. She reported that the duration of time she was "out of contact" was seconds to one minute, after which she sometime felt exhausted. Her last episode was two weeks before examination.

Dr. Greer reported that there was no other evidence of any kind of neurological impairment. He gave his impression as follows:

> "No indication of any structural abnormality that persists that can be correlated with the event of [April 23, 1995]. There is no evidence of excess use of pain medication by history. The patient did not acknowledge any preexisting psychiatric pathology or personality disorder. All of this information was elicited

from the records. There is likelihood that the patient's conditions are based on principles of secondary gain. I cannot rule out conversion reaction."

Appellant's attending neurologist, Dr. Luis E. Bello, reported on September 13, 1996 that appellant had a complex clinical picture characterized by a severe post-concussion syndrome associated with severe lumbosacral sprain and fibromyalgias that had resulted in tremendous unreliable functional capability.

The Office referred appellant to Dr. Fred L. Cohen, a neurosurgeon. In a report dated December 23, 1996, Dr. Cohen stated that appellant reported migraines three to five times per week, coming in clusters and lasting several days. Her migraines produced nausea and vomiting. She experienced intense pain in the head and eyes when putting her head down. The migraines involved her whole head, but usually only one eye or the other and caused her to lose vision. Appellant mentioned that she was unconscious during her seizures but had no seizures in more than three months. She complained about memory loss. Appellant stated that she forgets her trend of thought.

After reviewing radiographic studies and medical records, Dr. Cohen diagnosed: (1) no neurologic or neurosurgical disease; (2) seizures versus pseudo seizures (parenthetically adding, "I strongly favor pseudo seizures."); (3) somatoform paid disorder and probable inadequate personality; and (4) possible malingering. Reporting that he was not certain there was any true disease here, Dr. Cohen stated that he did not really believe appellant was treatable. He stated that he was not really sure how much, if any, of this was work related: "I doubt any of the things she describes could conceivably be scientifically related to the incident she describes on April 23, 1995. Even if she has all the things wrong with her that she says, I strongly reject any implication that these are in any way related to falling down five stairs a year and a half ago."

Dr. Cohen noted that appellant's subjective complaints were not supported by objective findings and stated:

"This woman, like many with similar problems and circumstances, has a very strong belief system and is looking for people who will 'buy into' her belief system. Those are the people she will 'like' and temporarily identify with. Anyone disagreeing with her will be condemned."

On January 17, 1997 Dr. Bello reported the following:

"This is a lady who has a very complex clinical picture, who has a history of gait difficulty related to lumbosacral pain that does not have objective signs. As I mentioned in a letter that I dictated a couple of days after the evaluation of Dr. Fred Cohen, it is very difficult to quantify or to determine whether this lady indeed, has somatic complaints that could be precipitating these symptoms. There are no clear objective signs to suggest neurological disease. However, patients who have lumbosacral strain or history of low back injury to the soft tissues may not have any real objective signs except the gait difficulties. Her problems that appear so severe have been going on for a long period of time and seem to be compounded by the presence of underlying psychiatric disorder, as has been

> documented in the past. On top of that, this lady has fallen twice with two recent seizures, which had never been documented on electrophysiological testing. It is very difficult to differentiate between pseudo seizures and seizures in a patient who has a definite psychiatric component. Nonetheless, the possibility that there may be some neuroprotective effect of the anticonvulsant and should be continued, [sic] especially when the setting is quite equivocal."

On April 24, 1997 the Office issued a notice of proposed termination of compensation. The Office noted that numerous neurological evaluations and testing revealed no objective findings to support appellant's ongoing complaints of severe pain. The Office found that the accepted physical condition had ceased and that any remaining disability was, therefore, due to appellant's underlying nonwork-related condition.

In a decision dated May 28, 1997, the Office terminated appellant's compensation effective June 21, 1997 on the grounds that she recovered from her April 23, 1995 employment injury.

In a report dated May 7, 1997, but received by the Office on June 20, 1997, Dr. Bello stated that appellant remained with the same complex clinical picture otherwise accentuated by recent seizures. He reported: "Although a lot of the complaints are very subjective, this lady has complaints that are quite legitimate in patients that are seen when they have post-concussion syndrome, lumbar or cervical sprains."

In a report dated October 29, 1997, Dr. Hal M. Tobias diagnosed post-traumatic headaches and seizure disorder, lumbar strain and radiculopathy, cervical strain and radiculopathy and possible thoracic outlet syndrome bilaterally. He reported: "It is my professional medical opinion that the above symptoms are directly related to her workers comp[ensation] injury from April 23, 1995. At this point I feel the patient is totally disabled from any occupation." On December 9, 1997 Dr. Tobias diagnosed cervical strain, cervicogenic headaches, cervical bulging disc, paresthesias of the left upper extremity which may be compatible with thoracic outlet syndrome and lumbar strain with lumbar radiculopathy, no surgical lesion on computerized tomography scan, rule out pyriformis syndrome.

On December 18, 1997 Dr. Michael D. Paul reported that a diagnostic study of appellant's cervical spine revealed multiple level degenerative changes with a prominent bulging disc at C6-7 with disc degeneration most severe at this level. There was also loss of cervical lordosis. A diagnostic study of appellant's lumbar spine revealed mild multi-level degenerative changes. Dr. Paul noted that appellant was suffering from symptoms of chronic neck and lower back pain. He recommended conservative management.

In a decision dated October 13, 1998, an Office hearing representative affirmed the termination of appellant's compensation but remanded the case for additional development of

whether there was a continuing work-related psychiatric condition.[1] The hearing representative found that the Office had met its burden of proof to terminate benefits for a physical injury. He found that the opinions of Drs. Greer and Cohen were detailed and well rationalized, were supported in the absence of objective test findings and represented the weight of the medical evidence. Although Dr. Bello continued to support the presence of residuals of the accepted injury, the hearing representative found that he failed to provide an adequate explanation of his opinion in light of multiple negative medical reports, negative diagnostic studies and his own initial impression that appellant had experienced only a soft tissue injury. The hearing representative further found that appellant had failed to establish her seizure disorder to be work related.

The Board finds that the Office has not met its burden of proof to justify the termination of appellant's compensation.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[2] In this case the Office bears the burden of proof to establish that appellant no longer suffers residuals of the accepted lumbar sprain, cervical sprain, concussion or post-concussion syndrome.

Appellant's attending physician, Dr. Bello, reported that appellant had a complex clinical picture characterized by a severe post-concussion syndrome associated with severe lumbosacral sprain and fibromyalgias. He explained that appellant's complaints, although very subjective, were quite legitimate in patients with post-concussion syndrome. He also explained that although there were no clear objective signs to suggest neurological disease, patients who have lumbosacral strain or history of low back injury to the soft tissues may not have any real objective signs except gait difficulties.

The Office referral physicians, Dr. Greer and Dr. Cohen, expressed a different view. Dr. Greer, noting no indication of any structural abnormality that could be correlated with the event of April 23, 1995, reported likelihood that appellant's conditions were based on principles of secondary gain. He stated that he could not rule out conversion reaction. Dr. Cohen doubted that any of the things that appellant described could conceivably be scientifically related to the incident that occurred on April 23, 1995. Even if she had all the things wrong with her that she said, he strongly rejected any implication that these were in any way related to falling down five stairs a year and a half earlier.

These physicians examined appellant and reached different conclusions with respect to the genuineness of her complaints and with respect to the presence of residuals of the accepted lumbar sprain and post-concussion syndrome. Given the conflict in medical opinion between the Office referral physicians and appellant's attending physician, the Board finds that the Office has not met its burden of proof to justify, by the weight of the medical evidence, its termination of appellant's compensation benefits.

[1] *See* 20 C.F.R. § 501.2(c) (there shall be no appeal with respect to any interlocutory matter disposed of by the Office during the pendency of a case).

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

The Board also finds that the medical evidence is insufficient to establish that appellant's seizure disorder or degenerative spine condition is causally related to her employment injury of April 23, 1995.

A claimant seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[4] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[5]

Because the Office accepted that appellant sustained an injury in the performance of duty on April 23, 1995, it remains for appellant to establish that her seizure disorder or degenerative spine condition is causally related to that employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her claimed condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the claimed condition is related to the injury.[6]

The record in this case lacks any such medical opinion. Dr. Bello acknowledged that it was difficult to differentiate between pseudo seizures and seizures in a patient who has a definite psychiatric component. He speculated that there was a possibility of some neuroprotective effect from appellant's anticonvulsant medication but the setting, he observed, was quite equivocal. This opinion lacks probative value to establish that appellant has a seizure disorder causally related to her accepted employment injury.[7]

Dr. Tobias was more definite in his opinion. He diagnosed post-traumatic headaches and seizure disorder, lumbar strain and radiculopathy, cervical strain and radiculopathy and possible thoracic outlet syndrome bilaterally. He reported: "It is my professional medical opinion that the above symptoms are directly related her workers compensation injury from April 23, 1995. At this point I feel the patient is totally disabled from any occupation." Although this opinion is clearly supportive of a causal relationship between appellant's seizure disorder and the injury of

[3] 5 U.S.C. §§ 8101-8193.

[4] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

[7] *See Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

April 23, 1995, medical opinions unsupported by medical rationale are of little probative value.[8] Dr. Tobias offered no rational whatsoever to explain why appellant's seizure disorder resulted from falling down some steps.

The October 13, 1998 decision of the Office of Workers' Compensation Programs is reversed on the issue of termination and is otherwise hereby affirmed.

Dated, Washington, DC
January 29, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[8] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).