U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS ROMANDO and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, PHILADELPHIA SERVICE CENTER, Bensalem, PA

Docket No. 00-1350; Submitted on the Record;
Issued November 21, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT, PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective January 5, 1999.

On March 11, 1987 appellant, then a 51-year-old tax examiner, slipped on the sidewalk outside the employing establishment and fell. She initially reported that she sustained a cut around her right eye, bruises of the hands, arms and legs and broke her eyeglasses. She stopped working that day and received continuation of pay for the period March 12 through April 25, 1987. Appellant returned to work on May 26, 1987 but stopped again that day and filed a claim for recurrence of disability due to headaches and pain in the neck, arms and back.

In a March 25, 1987 report, Dr. Warren Wolfe, an osteopath, indicated that appellant had a laceration of the right periorbital area, contusion to the shoulders, abrasion on the face near the mouth and cervical strain and sprain. In a May 28, 1987 report, Dr. Donald A. Barone, a Board-certified neurologist, indicated that appellant complained of neck pain, headaches and left arm numbness. He noted that appellant's complaints of pain and stiffness in the neck began approximately two weeks after the employment injury with periods of numbness in the left arm. Dr. Barone reported appellant had good motor strength in the arms and legs with no atrophy, fasciculations or arm drift. He indicated that the sensory examination was normal. Dr. Barone diagnosed post-traumatic cervical strain and sprain with post-traumatic tension vascular headaches. He recommended further tests due to the numbness of appellant's arm. A June 15, 1987 magnetic resonance imaging (MRI) scan of the cervical spine was normal with mild scalloping of the posterior aspect of the thecal sac from C5-7, consistent with mild spondylosis. In a July 2, 1987 note, Dr. Wolfe stated that appellant had emotional trauma due to pain and possible facial disfigurement, causing depression.

The Office accepted appellant's claim for the laceration of the right periorbital area, contusion to the shoulders, abrasion near the mouth and cervical strain. It began payment of temporary total disability effective July 5, 1987. It subsequently authorized leave buy back for

the period April 29 through July 4, 1987. The Office subsequently accepted appellant's claim for post-traumatic depression.

In a February 10, 1988 report, Dr. Barone stated that appellant had some decreased sensation in the C5-6-8 and possibly the T1 dermatomes. He noted that the most recent MRI scan was suggestive of a cervical disc herniation. Dr. Barone commented that appellant had a multitude of findings but a lack of complete evidence of any focal neurological problem, noting a normal electromyogram (EMG). He indicated that appellant could have some problem with peripheral swelling or numbness due to arthritis or diabetes which would explain her peripheral sensory loss.

The Office referred appellant to Dr. Herbert Stein, a Board-certified orthopedic surgeon, for an examination and second opinion. In a March 21, 1988 report, Dr. Stein diagnosed contusion and laceration of the face and acute cervical spine sprain with disc degenerative disease at C5-6 and C6-7. He stated that although appellant had radicular symptoms in both arms, her clinical symptoms were not in keeping with root type symptoms. Dr. Stein commented that the global type of numbness that appellant seemed to have going into the neck was not on an anatomical basis and could not be explained by cervical root compression, particularly in light of the negative EMG. He indicated that the impingement seen on the MRI scan did not appear sufficient to show cervical cord compression that could cause the global sensory loss, particularly since the defect was at C5-6 and could not account for decreased sensation in the shoulders and neck. Dr. Stein suggested that appellant had a significant degree of overreaction to the employment injury. He noted appellant did have some disc degenerative disease, which could account for symptoms and commented that she might have sustained an aggravation of her underlying disc degenerative disease as a result of her fall. Dr. Stein indicated that he could not explain the degree of appellant's complaints based on his findings.

In a November 11, 1988 report, Dr. Jennifer Chu, a Board-certified physiatrist, stated that EMG findings showed a slow recent onset of denervation in the distribution of the left C4-6 nerve roots and the right C5-7 nerve roots. She commented that these findings indicated that there was continued inflammation of the nerve roots due to low-grade irritation related to the presence of herniated discs at the C5-6 level. Dr. Chu noted that low-grade ongoing involvement was seen along the other cervical nerve roots indicating the presence of an underlying degenerative cervical spine disease. She stated that this was further confirmed by the mild chronic reinnervation changes at C5-8 bilaterally.

In a May 9, 1989 report, Dr. Donald Myers, a Board-certified neurosurgeon, stated that appellant had significant limitation in cervical motion and massive paracervical spasm. He found evidence of hypothesia in the left arm and C5-6 hypothesia in the right arm. Dr. Myers noted that deep tendon reflexes were hypoactive throughout the arm. He reported that an MRI scan showed a herniated disc at C6-7 with a slight bulge at C5-6. Dr. Myers indicated that the EMG showed significant changes at the C5-6 level.

In a June 22, 1989 report, Dr. John H.F. Hawkins, a Board-certified psychiatrist, diagnosed a chronic pain syndrome of unknown origin. He stated that appellant's complaints seemed out of proportion to her injury as she described it. Dr. Hawkins commented that appellant still had emotional effects from the employment injury and indicated that he could not

find any preexisting condition which would explain why she had an emotional reaction to her injury. He concluded that appellant was disabled for any reasonable occupation, which he attributed for the most part to appellant's psychological condition.

In a January 24, 1990 report, Dr. Bong S. Lee, a Board-certified orthopedic surgeon, stated that appellant had a full range of motion in the arms. He noted that the neurological examination of both arms demonstrated no sensory deficit, muscle atrophy, or motor weakness. Dr. Lee found all deep tendon reflexes to be present and symmetrical. He found minimal interspace narrowing between the C5-6 and C6-7 levels. Dr. Lee commented that appellant might have some degree of cervical radiculopathy based on the EMG. He stated, however, that appellant did not demonstrate any neurologic deficits in the arm.

In an October 31, 1990 report Dr. Steven Mandel, a Board-certified neurologist, stated that an EMG showed acute and chronic partial denervation in a C6-7 distribution. He found no evidence of peripheral nerve disease.

The Office referred appellant to Dr. Nathan Didizian, a Board-certified orthopedic surgeon, for an examination and second opinion. In a June 4, 1992 report, he noted that a November 3, 1990 MRI scan showed no evidence of focal herniation in the cervical spine but did show osteophytic defects at C6-7. Dr. Didizian indicated that appellant had normal ranges of motion in all joints of the arms. He commented that the sensory examination was equal bilaterally and the motor strength was intact in the extrinsic and intrinsic muscles of the hands and arm.

Dr. Didizian concluded that appellant had excessive subjective complaints. He indicated that the MRI study would not explain appellant's bilateral complaints. Dr. Didizian found the motor, sensory and reflex systems to be intact. He stated that appellant's subjective complaints could not be explained on an objective neurological basis. Dr. Didizian suggested appellant had a significant amount of overlay. He diagnosed excessive subjective complaints without objective substantiation. Dr. Didizian commented that some of appellant's complaints could be on the basis of degenerative disease, which was present prior to the employment injury as shown by x-rays. He stated that if these were exacerbated at the time of the employment injury, the complaints would have subsided and leveled off after so many years. Dr. Didizian noted that the maturation of an exacerbation was from five to six months. He concluded that appellant's subjective complaints were on the basis of excessive functional overlay as well as preexisting degenerative disease. Dr. Didizian estimated that the effects of the employment injury lasted five to six months. He stated that appellant was not disabled and could return to work in her preinjury position.

In an October 6, 1992 report, Dr. Wolfe disagreed with Dr. Didizian's conclusion that appellant was suffering from an excessive functional overlay. He stated appellant had post-traumatic stress syndrome. Dr. Wolfe commented that appellant had aggravated a preexisting condition which had caused her increased pain. He indicated that appellant had pain before the employment injury but it had increased since the injury, causing emotional stress.

The Office referred appellant to Dr. Jon Bjornson, a Board-certified psychiatrist for a psychiatric evaluation. In an August 4, 1993 report, Dr. Bjornson noted that appellant's

symptoms had increased progressively over time. He diagnosed a somatoform pain disorder. On the issue of causal relationship, Dr. Bjornson stated that while appellant may have cervical degenerative arthritis causing some difficulties, the large majority of her symptoms were psychologically based. He expressed doubt that appellant was malingering in the large majority of her symptoms but noted she had made it clear her symptoms would not improve. Dr. Bjornson indicated that somatoform pain disorder was not disabling and recommended that appellant return to work on a gradual basis.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence on whether appellant had any continuing disability due to the employment injury. In a March 25, 1994 report, he stated appellant had degenerative cervical arthritis, which would entitle her to intermittent symptoms. Dr. Klinghoffer commented that appellant probably sustained bruises and sprains when she fell in March 1987 and, considering her age and arthritis, found it reasonable to presume that some of her symptoms would have lasted longer than it would have lasted in a younger, thinner person. He stated, however, that the symptoms would not have lasted seven years. Dr. Klinghoffer indicated that some intermittent symptoms due to arthritis seemed to be reasonable but he could not explain appellant's constant pain or many of her other symptoms. He concluded that the physical symptoms of the employing establishment had cleared up. Dr. Klinghoffer commented that there was no reason why appellant could not return to her previous work on a full-time basis.

The Office also referred appellant to Dr. Stephen C. Padnes, a Board-certified psychiatrist. In a June 22, 1996 report, Dr. Padnes diagnosed a cervical sprain/strain with abrasions and a small facial laceration. He stated that all physical symptoms from the trauma had completely resolved. Dr. Padnes indicated that appellant had no psychiatric diagnosis referable to the employment injury but stated that she had a preexisting histrionic personality, which accounted for the currently nonanatomic distribution of her symptoms, along with their magnification. He concurred in Dr. Klinghoffer's opinion that appellant's preexisting degenerative cervical arthritis could not possibly account for the constant pain she complained of. Dr. Padnes stated that there was no physical reason why appellant should not be able to return to work on a full-time basis. He commented that no matter whether appellant's psychiatric condition was diagnosed as malingering, somatoform pain disorder, psychologically based pain disorder, or minor physical problems magnified by a histrionic personality disorder, none of the diagnoses were the result of the employment injury. Dr. Padnes concluded that appellant had fully recovered from the minor physical trauma caused by the employment injury and had no remaining disability.

In a July 20, 1996 letter, the Office informed appellant that it was proposing to terminate her compensation. The Office gave appellant 30 days to submit additional evidence if she disagreed with the proposal to terminate her compensation.

Appellant submitted an August 19, 1996 report from Dr. Victoria M. Handfield, a psychologist, who stated that appellant did not show any evidence of severely distorted or pathological personality. She indicated that appellant showed some personality traits that were somewhat histrionic in nature. Dr. Handfield commented that a personality style was very different from a personality disorder and none of the reports she had reviewed showed objective

or subjective evidence to support a diagnosis of a personality disorder. She concluded that appellant was a relatively psychologically healthy person. Dr. Handfield stated that appellant was not consciously or subconsciously looking for a way to avoid work. She noted appellant had continually voiced the desire to return to work and function more independently in her life.

Appellant also submitted an August 21, 1996 report from Dr. Myers, who stated that physical examination continued to show evidence of cervical paravertebral spasm and limitation of motion. He indicated that sensory testing showed C5-7 hypothesia in the left arm and C5-6 hypothesia in the right arm. Dr. Myers noted continued slight weakness of the triceps muscle on the left. He stated that the MRI scans dated June 12, 1987, February 4, 1989 and September 3, 1990 all revealed evidence of a herniated disc at C6-7 with bulging and collapse at the C5-6 level. Dr. Myers reported that EMG changes in the past were positive at C5-6 for acute denervation. He found no improvement in appellant's condition in the seven years since he had examined her previously. Dr. Myers diagnosed an intervertebral disc injury at C6-7 and stated that appellant was disabled from the date of the employment injury to the present. He indicated that there was no other condition which would have led to her disability and related her disability solely to the employment injury.

The Office determined that Dr. Myers' report created a new conflict in the medical evidence. The Office, therefore, referred appellant, together with a statement of accepted facts and the case record, to Dr. Martin A. Blaker, a Board-certified orthopedic surgeon, for an examination to resolve the conflict in the medical evidence. In a January 24, 1997 report, he commented that the objective findings in examination were generally negative throughout. Dr. Blaker noted that the x-rays, including the MRI scans, showed evidence of minor arthritic change, representing cervical spondylosis entirely consistent with appellant's age, which preexisted the employment injury. He found no indication of a cervical herniated disc. Dr. Blaker stated that there was no indication of any impingement on nerve elements in the cervical spine. He indicated that there were no clinical findings on examination suggestive or indicative of disc herniation. Dr. Blaker noted that appellant had a history of contusion of the face with laceration near the right eye, which healed without a scar and a history of contusions of both hands and knees, which healed without visible scars. He diagnosed mild cervical spondylosis, which existed prior to the employment injury, mild depression, which he found unrelated to the employment injury and marked functional overlay. Dr. Blaker commented that his clinical findings did not indicate or suggest herniated cervical disc syndrome. He stated that the pattern of subjective complaints were too widespread and diffuse to be considered as originating in the cervical region. Dr. Blaker indicated that a marked functional overlay was present. He concluded that appellant's multiple complaints, extending almost from head to foot, were not related to the employment injury. Dr. Blaker stated that appellant did not need any additional treatment due to the employment injury as appellant had no residual disability. He commented that appellant was able to maintain a large house and large garden. Dr. Blaker indicated that appellant was able to return to her normal work duties.

In a February 10, 1997 report, Dr. Allen Zechowy, a Board-certified neurologist, indicated that appellant continued to have headaches after the employment injury. He related that appellant's neck was in constant pain. Dr. Zechowy found appellant had full range of motion in the neck and had no abnormal movements, tremors, atrophy, or fasciculations. He found diffuse diminution of pin deficit. Dr. Zechowy noted the MRI evidence of a cervical disc

at C6-7 and degenerative disc disease at C5-6, which could be attributed to the fall. He stated that appellant had a residual left arm radiculopathy. Dr. Zechowy stated that appellant's lower back pain, which seemed to be of a more recent origin could not be attributed to the employment injury but could be due to a herniated disc. In a July 28, 1997 report, Dr. Zechowy, stated that an EMG showed appellant had C5-6 and C8-T1 radiculopathy. He indicated that appellant remained symptomatic with neck and lower back pain and hand pain. Dr. Zechowy commented that appellant's condition was a chronic problem. In an October 31, 1997 report, Dr. Zechowy stated that appellant continued to have complaints of diffuse pain in the neck and upper part of her back. He noted that she had left arm pain, lower back pain and tingling in the posterior aspect of the left foot. Dr. Zechowy stated that appellant had a chronic pain syndrome with evidence of a C6-7 disc and degeneration at C5-6, which could be attributed to her previous fall. Dr. Zechowy indicated that the spread of pain to appellant's back and other areas suggested a post-traumatic neurofibromyalgia.

In a January 30, 1998 report, Dr. Blaker reviewed Dr. Zechowy's reports, noting that his neurologic examination of appellant was negative. He pointed out that Dr. Zechowy reported a diffuse diminution of pain deficit, which was not consistent with the result of his neurologic findings. Dr. Blaker reviewed the EMG findings and commented that he did not take into account the various medications appellant had been taking nor her diabetes. He stated that the additional medical evidence did not change his opinion that appellant had no residual disability due to the March 11, 1987 employment injury. Dr. Blaker commented that the widespread nature of her subjective complaints, which were not associated with any objective findings, was mainly suggestive of a psychogenic disorder rather than one related to trauma 10 years previously. He stated that the mechanism of the alleged injury did not admit of a continuing series of diffuse complaints lasting for 10 years.

The Office referred appellant to Dr. Maurie Pressman, a Board-certified psychiatrist, for an examination. In an April 7, 1998 report, he diagnosed somatization disorder and dependent personality. Dr. Pressman indicated that the somatization disorder was characterlogical in origin but stated that the employment injury precipitated the somatization disorder. He declared that she should have recovered from the condition long ago. The Office requested clarification. In a July 7, 1998 note, Dr. Pressman stated that appellant still suffered from the somatization disorder residual to the employment injury but indicated that she was not precluded from resuming her former position.

In an August 24, 1998 report, Dr. Handfield expressed her disagreement with Dr. Pressman's diagnosis. She indicated that the criteria for diagnosis of somatization disorder and dependent personality disorder specified a history of symptoms being in adolescence or early adulthood. Dr. Handfield stated that appellant did not have any of her difficulties until her employment injury. He commented that, frequently, people are diagnosed with somatization disorder when medical explanations could not be found for their conditions or when someone had a vested interest in not finding a medical basis for a patient's complaints.

In a September 24, 1998 letter, the Office again informed appellant that it proposed to terminate her compensation. In response, appellant submitted an October 12, 1998 report from Dr. Myers, who stated that appellant remained disabled due to the employment injury.

In a December 14, 1998 decision, the Office terminated appellant's compensation, effective January 3, 1999 on the grounds that her employment-related disability had ceased.

Appellant requested a hearing before an Office hearing representative. She submitted a March 1, 1999 report from Dr. Zechowy, who indicated that she had a chronic migratory pain syndrome affecting many parts of her body in various degrees at unpredictable times with pain always being present. Dr. Zechowy diagnosed fibromyalgia and commented that fibromyalgia can masquerade at a somatization disorder as well as other psychiatric disorders. He stated that fibromyalgia, however, was a distinct syndrome that caused inescapable, uncontrolled pain to various degrees as well as affecting cognitive and physical energy. Dr. Zechowy concluded that the severity of the condition would not allow appellant to be employed.

At the July 28, 1999 hearing, appellant described her employment injury and the treatment she received for it. She indicated that she had chronic pain and was receiving Social Security disability payments. Appellant testified that she was unable to garden and take care of her house, contrary to the statements Dr. Blaker made in his report.

In a November 9, 1999 decision, the Office hearing representative found that Dr. Blaker's report, given in his role as an impartial medical specialist, established that appellant had no remaining physical disability due to the employment injury. He indicated that Dr. Pressman had stated that appellant was able to return to work psychologically while Dr. Handfield had not given an opinion on appellant's ability to return to work. She, therefore, affirmed the Office's December 14, 1998 decision.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden 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]

Several medical opinions, particularly those of Drs. Chu, Myers, Zechowy and Wolfe, indicated that appellant had physical findings of radiculopathy and a herniated cervical disc which caused her disability. Other physicians, however, including Drs. Barone, Stein, Lee, Didizian and Klinghoffer, found that appellant had only sustained lacerations and a cervical strain or sprain due to the employment injury. Several physicians stated that the physical effects of the employment injury had ceased and indicated that appellant's subjective complaints exceeded the objective findings. Some found that appellant had normal sensory examinations with no signs of weakness, which contradicted other reports that found appellant had radiculopathy of the left arm. The Office never accepted that appellant had sustained a herniated cervical disc due to the employment injury. To resolve the conflict in the medical opinion evidence, the Office referred appellant to Dr. Blaker. In his report, he stated that appellant's physical findings did not support a diagnosis of a herniated cervical disc. He indicated that the diffuse pattern of subjective complaints could not be attributed to the cervical spine. Dr. Blaker

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

indicated that appellant had a marked functional overlay. He noted that the objective examination of appellant was negative. Dr. Blaker, therefore, concluded that appellant had no disability remaining due to the employment injury and was able to return to work.[2] In situations when there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[3] In this case, Dr. Blaker gave a complete and accurate history of appellant's injury and treatment and presented a well-rationalized report finding that appellant was no longer disabled due to the employment injury. His report, therefore, is entitled to special weight and, in the circumstance of this case constitutes the weight of the medical evidence.

Dr. Zechowy subsequently stated appellant had fibromyalgia. However, he did not explain how appellant's employment injury would have caused the fibromyalgia and led to her continued disability 12 years after the employment injury. His report, therefore, has little probative value and is insufficient to overcome the probative weight of Dr. Blaker's report.

In regard to appellant's psychiatric condition, Dr. Hawkins stated that appellant's complaints of pain were out of proportion to the physical findings. He attributed appellant's psychiatric condition to the employment injury. Dr. Bjornson indicated that appellant had a somatiform disorder but concluded that she could return to work. Dr. Padnes diagnosed a histrionic personality disorder and stated that appellant had recovered from the employment injury. Dr. Pressman diagnosed a somatization disorder and stated that appellant was able to return to work. Dr. Handfield disagreed with the reports of Drs. Padnes and Pressman, contending that appellant did not meet the criteria of the diagnoses set forth by Drs. Pressman and Padnes. She, however, did not specifically state that appellant was disabled for work. Dr. Handfield's reports, therefore, are not sufficient to contradict the reports of Drs. Bjorson, Padnes and Pressman that appellant was able to return to work.

[2] Dr. Blaker stated that appellant was able to take care of a large house and garden, which appellant denied in the hearing. Dr. Blaker's statement, while potentially in error, was over a minor point that was not essential to his finding that appellant was no longer disabled due to the employment injury.

[3] *James P. Roberts*, 31 ECAB 1010 (1980).

The decision of the Office of Workers' Compensation Programs, dated November 9, 1999, is hereby affirmed.

Dated, Washington, DC
November 21, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member