

In 2005, the Office found a conflict in medical opinion between appellant's physicians -- Dr. Suja Thrasybule, a specialist in rehabilitative medicine, and Dr. William Dorn, a Board-certified orthopedic surgeon -- and an Office referral physician, Dr. Robert Smith, a Board-certified orthopedic surgeon, on whether appellant continued to have residuals of her June 17, 1994 employment. The Office referred the case to an impartial medical specialist, Dr. David Dorin, a Board-certified orthopedic surgeon, to resolve the issue.¹ On August 12, 2005 Dr. Dorin found that the radiculopathy of the left lower extremity, low back symptoms, spinal stenosis, multiple bulging of the lumbar discs and spondylolisthesis at two different levels were not causally related to the June 17, 1994 injury, "which was a simple sprain and, according to the documents, healed a few weeks following the initial examination." He concluded that the only residual effect from the June 17, 1994 injury was a persistent peroneal nerve neuropathy resulting from the surgical exploration of the posterior aspect of the left knee:

"In reference to the left lower extremity, the patient's symptoms along the lateral aspect of the leg and foot appear to be related to chronic peroneal nerve neuropathy which might be entrapment scar tissue as a result of the original operation by Doctor Mondino when he explored the popliteal space in 1995. I doubt that the multiple intravenous vitamin injections of Vitamin B and local injections of steroids in the area of the peroneal nerve would produce any change in the symptoms. The patient could elect to consult a good surgeon who can explore the nerve and hopefully provide some degree of improvement in her symptoms."

In a decision dated August 21, 2006, the Office terminated appellant's compensation for the accepted conditions. The Office found that, the opinion of the impartial medical specialist, Dr. Dorin, represented the weight of the evidence and established that the accepted conditions had resolved.

On July 20, 2007 appellant requested reconsideration. She submitted two medical reports. On May 24, 2007 Dr. Mahesh Chandra, a rheumatologist, evaluated appellant and described her symptoms, complaints and history. He related his findings on physical examination and reviewed available radiological studies of the left knee and lumbosacral spine. Dr. Chandra offered the following comments:

"All in all we are dealing with chronic low back syndrome with possibility of lumbar radiculopathy, status post epidural shot, some degree of spinal stenosis related to spondylosis [and] ganglion cyst left knee. Clinically, I did not see signs of inflammatory arthropathy or spondyloarthropathy. Other metabolic conditions such as hypertension, dyslipidemia, overweight, diabetes mellitus are as mentioned in discussion.

"At this point in addition to back precautions, weight loss and water exercises I am also taking the liberty of ordering additional serologies to make sure there is no other unusual inflammatory or atypical arthropathy which I doubt. [Specified]

¹ If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a).

serologies are advised. Follow up in one month is advised. Meanwhile she will continue on current medications. Pending further she is to call us with any additional concerns or problems.”

On May 25, 2007 Dr. Philip B. Bovell, an orthopedic surgeon, related appellant’s history, medical care and complaints. On examination he noted the presence of a large posterior cyst, a large mass in the posterior knee together with an old scar that was very sensitive. Dr. Bovell diagnosed status post-surgery for a baker’s cyst of the left knee, peroneal nerve damage of the left leg and status post failed back surgery syndrome. He suggested radiographic studies and medication.

In a decision dated August 27, 2007, the Office reviewed the merits of appellant’s case and found that the evidence submitted did not provide a medical opinion with rationale on whether her current medical conditions or disability were causally related to the June 17, 1994 employment injury.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² A claimant seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,³ including that she sustained an injury in the performance of duty as alleged and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴

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 current 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 current condition is related to the injury.⁵

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁶ Where the Office meets its burden of proof to justify

² 5 U.S.C. § 8102(a).

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ *Harold S. McGough*, 36 ECAB 332 (1984).

termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.⁷

Disability resulting from surgery or treatment authorized by the Office is compensable.⁸

ANALYSIS

With her request for reconsideration, appellant submitted a report from her rheumatologist, Dr. Chandra, who diagnosed chronic low back syndrome with possibility of lumbar radiculopathy, status post epidural shot and some degree of spinal stenosis related to spondylosis. The Office did not accept these conditions, so it is appellant's burden of proof to establish that they are causally related to her June 17, 1994 employment injury. Because Dr. Chandra offered no opinion on causal relationship, his report has no probative value and cannot discharge appellant's burden of proof.

Appellant also submitted a report from Dr. Bovell, an orthopedic surgeon, who diagnosed status post failed back surgery syndrome. The Office did not accept that this was causally related to the June 17, 1994 employment injury, so appellant again bears the burden of proof. Dr. Bovell offered no opinion. On the issue of appellant's back condition, the Office has determined that the weight of the medical evidence rests with Dr. Dorin, the impartial medical specialist, who reported that radiculopathy of the left lower extremity, low back symptoms, spinal stenosis, multiple bulging of the lumbar discs and spondylolisthesis at two different levels were not causally related to the June 17, 1994 employment injury.

Dr. Bovell also diagnosed peroneal nerve damage of the left leg. Although he offered no opinion on whether this peroneal nerve damage was causally related to the June 17, 1994 employment injury, there is support for causal relationship in the medical record. Dr. Dorin, the impartial medical specialist, reported that appellant's symptoms along the lateral aspect of her left lower extremity and foot appeared to be related to chronic peroneal nerve neuropathy "which might be entrapment scar tissue as a result of the original operation by [Dr.] Mondino when he explored the popliteal space in 1995." He also reported that this was the only residual of the June 17, 1994 employment injury.

The Office authorized the surgical exploration of the popliteal space and any medical condition or disability established as resulting from this authorized surgery would be compensable. The Office did find that Dr. Dorin's opinion represented the weight of the medical evidence. The Board finds that the evidence is sufficiently supportive to require further development of the medical evidence. The Board will set aside the Office's August 27, 2007 decision and remand the case for further development. The Office should request that Dr. Dorin review the report of Dr. Bovell and address whether appellant's peroneal nerve neuropathy is

⁷ *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity); *Maurice E. King*, 6 ECAB 35 (1953).

⁸ *Carmen Dickerson*, 36 ECAB 409 (1985) (this is so even though the surgery or treatment was not for an employment-related condition).

causally related to the authorized surgical exploration on April 20, 1995 and if so, whether this condition caused disability for work.

CONCLUSION

The Board finds that this case is not in posture for decision. Further, development of the evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: May 15, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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