

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIVIAN T. JAMISON and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

*Docket No. 01-900; Submitted on the Record;
Issued April 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

On March 25, 1982 appellant, then a 39-year-old equipment cleaner, was bending over wiping a floor area when a metal plate fell, striking her in the back and the lower part of her head. She fell against the floor, damaging several teeth. Appellant stopped working on March 30, 1982 and received continuation of pay from March 30 to April 16, 1982. She returned to light-duty work and subsequently returned to her former position. The Office accepted her claim for muscle spasms of the back, traumatic headaches, damage to four teeth and thorocolumbar strain. Appellant lost intermittent time from work thereafter, for which she received compensation or authorization to buy back leave.

On April 25, 1985 appellant filed a claim for back pain she experienced while getting up from a chair. She related the pain to her March 25, 1982 employment injury. Appellant received continuation of pay from April 26 through May 28, 1985. The Office accepted the claim for lumbosacral spasm with sciatica.

On July 24, 1986 appellant developed back and neck pain while squeezing into tight places to clean and wipe. The Office accepted appellant's claim for low back strain.

On September 5, 1986 appellant was cleaning the inside of the sail on a submarine which required climbing and squeezing into tight places. She developed pain in her neck and back. Appellant stopped working on October 6, 1986 and did not return thereafter. The Office

accepted appellant's claim for lumbosacral strain and began payment of temporary total disability, effective October 6, 1986.¹

Appellant submitted numerous progress reports from Dr. Oscar J. Jackson, a Board-certified surgeon, who indicated in most of the reports that appellant was totally disabled for work. He diagnosed chronic dorsolumbar strain and lumbar radiculitis. An August 19, 1992 report of a magnetic resonance imaging (MRI) scan of the lumbar spine showed degenerative changes at L5-S1 with osteophytic formation and a mild to moderate annular bulge with mild bilateral foraminal encroachment. In a September 30, 1992 report, Dr. Benjamin Ligot, a neurologist, stated that an electromyogram (EMG) showed reinnervation activity which was indicative of a prior L5 nerve root injury on the left side.

The Officer referred appellant, together with a statement of accepted facts and the case record, to Dr. Giles C. Floyd, a Board-certified orthopedic surgeon, for an examination and second opinion. In an October 23, 1995 report, Dr. Floyd noted that appellant complained of pain in the thoracolumbar region. He indicated that x-rays of the dorsal spine showed a normal kyphosis with no scoliosis or rotary deformity. X-rays of the lumbar spine showed a normal lordosis with no scoliosis or rotary deformity. Dr. Floyd reported that light touch palpation in both the dorsal and lumbar regions produced a bizarre, exaggerated withdrawal response with vehement complaints of intense pain inappropriate to the examination, with no spasm or tightness detected. He indicated that examination of the legs showed no atrophy, instability or sensory, or motor loss. Dr. Floyd reported that the straight-leg-raising test was negative at 90 degrees bilaterally. He noted that x-rays showed mild to moderate degenerative changes at L5-S1 with degenerative disc narrowing. Dr. Floyd stated that his examination failed to reveal any demonstrable surgical lesion. He commented that the treatment appellant received had failed to produce any significant change in her symptoms. Dr. Floyd therefore questioned whether appellant's symptoms showed a specific pathological condition. He stated that appellant's original spinal symptoms arose from a thoracolumbar contusion and subsequent muscular strain. He indicated that the condition would have been expected to resolve within several weeks. Dr. Floyd commented that there was a serious question on whether appellant's somatic symptoms represented a true primarily musculoskeletal disorder or psychological factors affecting her physical condition. He noted that appellant's somatic complaints had remained unchanged and were entirely refractory to orthopedic treatment. Dr. Floyd concluded that this lent credence to the probability that her somatic complaints were not based on a specific musculoskeletal pathology. He stated that it was difficult to explain the perpetuation of appellant's somatic complaints as resulting from the March 25, 1982 employment injury.² Dr. Floyd indicated that appellant had inconstant ranges of motion of the spine under direct and indirect observation. He suggested that appellant had engaged in voluntary restriction of attempts at motion. Dr. Floyd noted appellant had no associated spasm or tightness. He stated

¹ Appellant also contended that she was sexually harassed by supervisors who requested dates and then retaliated when appellant refused. The Office did not accept that appellant sustained an emotional condition due to harassment at work. Appellant filed a separate claim for the emotional condition. The record submitted on appeal does not contain any indication on whether the Office issued a final decision on appellant's claim for an emotional condition.

² The Board notes that Dr. Floyd inadvertently gave the date of injury as March 25, 1987.

that the diagnostic studies showed no surgical lesion. Dr. Floyd reported appellant had no neurologic abnormalities on clinical examination and no evidence of muscular weakness or atrophy in the legs. He stated that there were no objective findings to support appellant's chronic complaints. Dr. Floyd commented that there were no objective findings that would prevent appellant from returning to her former employment although he noted that appellant's continued subjective complaints may reduce her work capabilities on a nonorthopedic basis. He concluded that he could not find any objective residuals from appellant's employment injury which would adequately explain the perpetuation of her subjective complaints. Dr. Floyd stated that appellant's subjective complaints were markedly disproportionate to her clinical orthopedic findings.

In a March 30, 1998 report, Dr. Jackson expressed his disagreement with Dr. Floyd's report. He noted that appellant's condition waxed and waned but stated that, overall she had experienced severe, incapacitating pain involving the mid and lower back with objective findings of positive straight leg raising tests on the left and associated motion limitations. Dr. Jackson indicated that the MRI scan showed degenerative changes at L5 and S1 with moderate posterior annular bulges with bilateral foraminal encroachment. He reported that the EMG was compatible with activity that showed nerve root impingement at the L5 level on the left. Dr. Jackson concluded that appellant was totally disabled due to radiculitis, a lumbar disc with nerve root impingement and her mental status.

The Office concluded that there existed a conflict in the medical evidence. It therefore referred appellant, together with a statement of accepted facts and the case record, to Dr. Howard Sturtz, a Board-certified orthopedic surgeon, for an examination followed by an opinion on whether appellant's condition remained causally related to her employment injuries. In an April 16, 1999 report, Dr. Sturtz stated that, after examination and an extensive review of appellant's medical history, her ongoing symptoms were not medically reasonable and were disproportionate to the original or any subsequent employment injury. He noted that appellant originally was diagnosed with only strain type of injuries. Dr. Sturtz commented that full and complete recovery would have been expected within a matter of weeks, with or without treatment. He indicated that appellant persisted with ongoing symptomatology which was not corroborated by objective physical findings. Dr. Sturtz noted that with appellant's subsequent injuries produced the same pattern of ongoing symptomatology without objective corroboration. Dr. Sturtz criticized Dr. Jackson's reports as showing absent or less than complete examination, no description of any objective findings, and changes in appellant's areas of symptoms and Dr. Jackson's findings. Dr. Sturtz declared that Dr. Jackson never gave a diagnosis that explained appellant's prolonged period of symptomatology and "disability." (Quotes in Dr. Sturtz' original report.) He stated that the MRI findings were unremarkable and commonplace in asymptomatic patients. Dr. Sturtz commented that Dr. Ligot's evaluation, despite the positive EMG findings, was negative. He concluded that appellant originally sustained a thoracic strain from which she fully recovered. Dr. Sturtz stated that there was no evidence that appellant did not recover from the employment injury except for her uncorroborated, ongoing symptomatology. He indicated that the subsequent injuries of 1985 and 1986 were lumbosacral strains from which she also fully recovered. Dr. Sturtz declared that there were no objective factors of disability, despite appellant's ongoing complaints. He stated that appellant's disability from the employment injuries should not have exceeded two to four weeks.

In a May 20, 1999 letter, the Office informed appellant that it proposed to terminate her temporary total disability compensation. Appellant submitted statements from several witnesses who stated that they saw appellant experiencing back pain as she tried to move.

In a June 23, 1999 decision, the Office terminated appellant's compensation, effective July 18, 1999, on the grounds that the evidence of record failed to establish that she continued to suffer from residuals causally related to her employment injuries.

Appellant requested a hearing before an Office hearing representative. At the November 18, 1999 decision, Dr. Jackson testified that the medical evidence showed appellant had an L5-S1 disc bulge that impinged on the L5 nerve, causing appellant's radiculitis in the left leg. He stated that appellant's degenerative disc disease could be related to the employment injuries because of repeated insults to the same region.

In a February 16, 2000 decision, the Office hearing representative found that the weight of the medical evidence rested with the report of Dr. Sturtz. He therefore affirmed the Office's June 23, 1999 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.³

The reports of Drs. Jackson and Floyd created a conflict in the medical evidence on whether appellant was disabled. The Office therefore referred appellant to Dr. Sturtz to resolve the conflict in the medical evidence. In an extensive report, Dr. Sturtz indicated that appellant's employment injuries caused strains which should have resolved within a matter of weeks. He stated that there were no objective findings that supported appellant's ongoing symptoms and disability. Dr. Sturtz concluded that appellant had fully recovered from the effects of the employment injuries. In situations when there exist 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.⁴ In this case, Dr. Sturtz' report was well rationalized and based on an accurate history. His report therefore, in the circumstances of this case, represents the weight of the medical evidence. His report satisfied the Office's burden of proof to terminate appellant's compensation.

Dr. Jackson contended that the MRI scan and EMG findings represented objective evidence of degenerative disc disease which caused an impingement on the L5 nerve root which produced the lumbar radiculitis in appellant's left leg. The Office, however, never accepted that

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *James P. Roberts*, 31 ECAB 1010 (1980).

appellant's degenerative disc disease and radiculitis were causally related to the employment injuries. Appellant, therefore, has the burden of establishing by reliable, probative and substantial evidence that his medical condition was causally related to a specific employment incident or to specific conditions of employment.⁵ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁶ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁷ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁸ Dr. Jackson stated in his testimony at the hearing that the degenerative disc disease could have been caused by the repeated insults to appellant's spine arising from the employment injuries. His opinion, however, is equivocal and speculative as he discussed only the possibility that the employment injuries caused appellant's degenerative disc disease, without other discussions of appellant's medical history. Dr. Jackson's opinion, therefore, has limited probative value and is insufficient to overcome the weight of Dr. Sturtz's report.

The decision of the Office of Workers' Compensation Programs dated February 16, 2000 is hereby affirmed.

Dated, Washington, DC
April 11, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

⁵ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁶ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁷ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁸ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).