U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA WILBURN and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 01-1424; Submitted on the Record;
Issued April 22, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective June 14, 1999 on the grounds that her work-related disability had ceased; and (2) whether appellant has established any continuing disability on or after June 14, 1999.

On Mach 2, 1995 appellant, then a 36-year-old letter carrier sprained her left ankle in the performance of duty. She did not stop work.[1]

The Office accepted appellant's claim for sprain of the left foot and the left ankle. Appellant provided numerous attending physicians' reports from Dr. Richard S. Glick, an osteopath Board-certified in obstetrics and gynecology, who stated his initial impression was severe post-traumatic sprain of the left foot and ankle. Dr. Glick checked the box "yes" in response to whether he believed appellant's condition was caused by an employment activity and advised that appellant return to work in a light-duty capacity.[2]

In a fitness-for-duty examination dated November 9, 1995, Dr. Samuel F. Broudo, a Board-certified orthopedic surgeon, noted appellant's history of injury and treatment. Dr. Broudo reviewed the March 2, 1995 x-ray of the left ankle, noting no evidence of fracture or dislocation. He also reviewed a May 10, 1995 magnetic resonance imaging (MRI) scan that showed "degenerative cartilaginous changes within the ankle mortise, otherwise negative MRI evaluation of the left ankle." Dr. Broudo also reviewed a functional capacity evaluation dated July 17, 1995. He examined appellant and stated that his impression was that appellant's left ankle injury had resolved. Dr. Broudo further stated that any restrictions were applicable to findings consistent with degenerative cartilaginous changes within the ankle mortise as

[1] The record reflects that she returned in a light-duty capacity.

[2] Appellant also treated with Dr. Ira C Sachs, an osteopath.

evidenced by the thinning of the hyaline cartilage overlying the talar dome and the tibial plafond. He opined that such changes were preexisting degenerative changes antedating the event of March 2, 1995 and were not causally related to the incident.

By letters dated March 4, 1996, the Office advised appellant of a medical examination with Dr. Kevin Mansmann, a Board-certified orthopedic surgeon to determine the cause and extent of impairment residual to the work-related injury or employment condition.

In an August 14, 1996 bone scan, Dr. Jean-Luc Urbain, Board-certified in nuclear medicine, made findings consistent with disuse of the left foot, with interval improvement since the prior examination of August 16, 1995. He stated that there was no evidence to suggest reflex sympathetic dystrophy (RSD) involving the left leg.

In an April 8, 1996 report, Dr. Mansmann noted appellant's history of injury and treatment. His diagnosis/impression was to rule out RSD of the left foot and ankle and to rule out traumatic synovitis of the left anterior ankle, post ankle sprain and strain. Dr. Mansmann stated that appellant's findings substantiated her subjective complaints. He indicated that he did not believe that appellant had reached a point of maximum medical improvement, and recommended contrast baths and physical therapy as an initial course of treatment for RSD. Dr. Mansmann opined that he did not feel that appellant had reached a point of maximum medical improvement. He also stated that appellant was capable of working full time in a light-duty capacity. Dr. Mansmann further indicated that appellant's current complaints appeared to be related to the work injury of March 2, 1995 and it was not uncommon to have persistent traumatic synovitis following an ankle sprain and arthroscopy would be appropriate. He further stated that "RSD should be ruled out before anything evasive was performed. Dr. Mansmann also noted that the preexisting of the talar dome cartilage did not have anything to do with her current condition as her ankle was moving smoothly on his examination.

In reports dated March 31, 1995 to May 23, 1997, Dr. Amelia L.A. Tabuena, appellant's physician and a specialist in physical medicine and rehabilitation, diagnosed chronic, recurrent left ankle sprain with synovitis. She recommended continued physical therapy treatments two to three times a week utilizing therapeutic modalities for the relief of the left ankle sprain, infrared to the left ankle, ultrasound, moist heat and electrical muscle stimulation to the left ankle, tens therapy to the left ankle, massage therapy to the left ankle, range-of-motion exercises to the left ankle, progressive resistance exercises to the left foot, therapeutic doses of nonsteroidal anti-inflammatory medications, elevation of the foot while at home and continued light duty at work.[3]

By letters dated June 24, 1997, the Office advised appellant of an additional medical examination with Dr. Mansmann to determine the cause and extent of impairment residual to the work-related injury or employment condition.

[3] In a July 27, 1995 report, nerve conduction velocity and electromyography studies, she found that there was no electrodiagnostic evidence to indicate tarsal tunnel syndrome or superficial peroneal neuropathy or lumbar radiculopathy at this time and stated that her impression was a normal study.

In a July 21, 1997 report, Dr. Mansmann noted that he examined appellant in his office and had previously examined her on March 20, 1996 and provided an April 8, 1996 report. He noted that the interim history was comprised of continued physical therapy, a repeat bone scan with no significant changes and no additional MRI scan or x-ray. Dr. Mansmann stated that appellant continued working at light duty with no extended walking or standing. After reviewing the additional medical records and conducting a physical examination, he stated that appellant had persistent left ankle pain of unknown etiology. Dr. Mansmann explained that at this time, the sprain and strain would have resolved and there might be an element of synovitis and tendinitis. He recommended a screen of blood tests to make sure there was no inflammatory process occurring, a Lyme titer, to rule out any additional etiologic causes to her continued complaints. Dr. Mansmann recommended a period of cast/equalizer type boot for complete mobilization of the ankle for a period of time to permit things to quiet down and he also recommended an injection into the area of inflammation once the blood tests were obtained. He found that with the bone scan, the objective findings substantiated her complaints. Dr. Mansmann continued appellant on light duty with no extended walking or standing.

In a February 25, 1998 MRI scan, Dr. Mark Schweitzer, Board-certified in diagnostic radiology, diagnosed Morton's neuroma second left interspace and found no evidence for Stage I or Stage III RSD.

In an August 10,1998 report, Dr. Glick continued to state that appellant could not return to her preinjury job without restrictions.

On April 5, 1999 the Office referred appellant along with a statement of accepted facts and a copy of the case record to Dr. Steven J. Valentino, an osteopath, for a second opinion evaluation as to the nature and extent of appellant's work-related disability.

In an April 27, 1999 report, Dr. Mansmann provided an update from his previous reports. He offered that appellant informed him that since July 14, 1997, she was diagnosed with RSD in approximately March or April 1998. Dr. Mansmann noted reviewing additional records and examining appellant. He concluded his examination with a diagnosis of "question RSD." Dr. Mansmann stated that based upon the bone scan findings, today's examination and her radiating pain, he would question, RSD. He indicated that the only treatment he would recommend would be contrast baths and if no relief, sympathetic nerve blocks. Dr. Mansmann stated that appellant could work at light duty with no extended walking or standing and no lifting greater than 20 pounds.

In an April 29, 1999 report, Dr. Valentino noted appellant's history of injury and treatment, including the November 9, 1995 report of Dr. Broudo, stating that appellant's left ankle injury had resolved. He conducted a physical examination and determined that appellant's left foot and ankle sprain had resolved. Dr. Valentino explained that his evaluation revealed no evidence of any residuals, the objective findings were normal and the effects of her work injury had ceased. He stated further that there was no evidence of clinical examination or the plethora of diagnostic studies of any basis to substantiate an RSD pattern. Dr. Valentino noted that appellant had preexistent degenerative changes about the left ankle which bared no causal relationship to her employment. He stated that appellant did not have any evidence of ongoing impairment or disability related to the March 2, 1995 history.

On May 12, 1999 the Office issued a proposed notice of termination of compensation. The Office advised appellant that her compensation for wage loss and medical benefits was being terminated because she no longer had any continuing injury-related disability. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Valentino, demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

By decision dated June 14, 1999, the Office finalized its proposed termination of benefits. The Office indicated that Dr. Valentino's opinion remained the weight of the medical evidence.

By letter dated May 26, 2000 received by the Office on June 8, 2000, appellant, through her representative, requested reconsideration and submitted additional evidence subsequent to the termination. Her representative also made several arguments regarding the reports that the Office relied upon and questioned the probative value.

The additional evidence was comprised of unsigned treatment notes dated July 20, October 28, 1999 and April 27, 2000 from Dr. Robert L. Knobler, a Board-certified neurosurgeon. In his July 20, 1999 report, Dr. Knobler stated that he started treating appellant on February 12, 1998 for a work-related injury to her left foot and ankle, sustained on March 2, 1995. He stated that this led to RSD, a chronic painful condition, more complex than a straightforward sprain or strain type of injury. Dr. Knobler indicated that appellant had persistent pain, swelling and atrophy as manifestations of the injury that persisted and appellant was using a cane on and off. He opined that appellant was totally disabled from performing her regular duties in her former or any related type job as a direct result of the injury, due to her level of pain, her inability to stand, walk or sit for prolonged periods of time. Dr. Knobler stated that appellant could not return to work in a full-duty capacity and could only perform in a light-duty capacity. In a January 27, 2000 report, he reiterated the contents of his previous report and stated that appellant could only perform light duty and that her restrictions were permanent in nature.

The Office properly determined that the reports of Dr. Knobler created a conflict in the medical evidence with the report of Dr. Valentino. Therefore, on June 28, 2000 the Office referred appellant along with a statement of accepted facts and a copy of the case record to Dr. I. Howard Levin, a Board-certified neurologist, to resolve the conflict in medical opinions.

By letter dated July 21, 2000, the Office advised appellant's representative as to the status of appellant's case and provided a copy of the June 28, 2000 letter advising appellant of an independent medical examination.

In an August 24, 2000 report, Dr. Levin noted appellant's history of injury and treatment. He stated that her current complaints consisted of pain in various parts of her body, with burning pain, swelling and throbbing pain in her toes, feet and ankles up to her knees and hips on the left and occasionally right. Dr. Levin also found that appellant was suffering from pain in the tips of her fingers to her wrist, across her shoulders to the left side of her chest and an occasional feeling of heaviness. He stated that appellant was informed that this was thoracic outlet syndrome secondary to her cane. Dr. Levin opined that appellant had fully recovered from any

injuries, which she may have sustained as a result of the ankle sprain on March 2, 1995. He conducted a neurological examination and stated that appellant was alert and oriented time three. Appellant was fluent, her comprehension and repetition were intact, and her memory was excellent. Dr. Levin noted that appellant did break down in tears on a number of occasions during the history taking. He stated that the cranial nerves II through XII were intact, and visual fields were full to confrontation, with pupils that were equally round and reactive to light. Dr. Levin stated extraocular movements were intact and there was no facila, palatal or lingual weakness noted. The motor examination revealed perfectly normal tone and bulk, with no evidence of atrophy. Dr. Levin stated that the left calf measured 38.5 cm and the right 39 cm. He stated that there was no drift or incoordination and confrontation strength was 5/5 throughout though the patient demonstrated diffuse give-away weakness throughout her left lower extremity. Appellant's gait was normal and she was, in fact, able to tiptoe and heel walk. The sensory examination was totally intact to vibration, cold and pinprick, and deep tendon reflexes were 2 to 2+4 throughout with absolutely no asymmetry and plantar responses were down going bilaterally. Dr. Levin stated that patient had full range of motion of both her cervical spine and both shoulders. Appellant had only mild limitation of motion of her thoracolumbar spine with flexion of 70/90 and slight limitation of lateral flexion. The patient complained of pain on palpation around her wrist and middle of her lumbar spine and absolutely no spasm was noted. He indicated that Tinel's was negative over the patient's wrists and elbows, Adson's and hyperabduction maneuvers were negative bilaterally, there was no wringing of the scapula, froment's sign was negative bilaterally and the sitting roof test was negative bilaterally. Dr. Levin opined that appellant did not demonstrate any evidence of allodynia, her skin color and temperature were normal, no changes were noted in appellant's hair or nails and her hands were warm and moist.

Dr. Levin observed that appellant brought a cane to the appointment but did not appear to exhibit any difficulty when walking or any instability that would have required the use of a cane. He indicated that appellant stated that she had trouble going up stairs, bending and stooping, and she also subsequently reported that she had twitching on the left side of her head and had problems with her memory and forgetfulness. After carefully reviewing appellant's medical records, Dr. Levin indicated that appellant had fully recovered from any injuries that she may have sustained as a result of the ankle sprain, which occurred on March 2, 1995. He opined that the nature and duration and array of complaints which appellant was reporting were clearly inconsistent and out of proportion to the injuries she sustained and there was absolutely no objective evidence on appellant's examination or any of her diagnostic studies that would account for her wide array of somatic complaints. Dr. Levin stated that he felt that the prolonged care appellant received was medically inappropriate and highly detrimental to appellant's physical and emotional well being and only served to encourage her inappropriate pain and illness behavior and reinforce her current invalid status. He further stated that he could not conceive of any medical justification for treatment with passive/physical modalities for nearly three years after a simple ankle sprain. Dr. Levin further found that it was very disturbing to see that this treatment was sanctioned by a specialist in physical medicine and rehabilitation. He opined that a more aggressive supervised physical therapy program should have been conducted, especially after receiving the initial bone scan done at Temple on August 16, 1995, that showed changes consistent with disuse. Dr. Levin stated that he did not believe that there was any objective evidence to show that she was suffering from RSD nor could he find any

documentation from the most recent progress notes to confirm that appellant was suffering from ongoing RSD. He opined that the "suggestion that appellant was suffering from thoracic outlet syndrome from her cane was absurd and he did not see any medical necessity for the use of a cane." Dr. Levin stated that appellant was not in need of any further care or treatment as a result of the ankle sprain she incurred on March 2, 1995. He explained that there was no objective evidence to even remotely suggest that appellant was suffering from residual or permanent physical or neurological impairment as a result of the incident. Dr. Levin noted further that he could not conceive of any physical or neurologic basis that would now account for the wide array of complaints that appellant was now reporting as a result of the ankle sprain appellant received almost five and a half years ago, nor could he conceive of any medical justification for the ongoing care and treatment that appellant received for over five and a half years after the incident.

By decision dated October 2, 2000, the Office denied modification of the June 14, 1999 decision.

By letter dated November 6, 2000, appellant, through her representative, requested reconsideration and submitted additional arguments and evidence consisting of a September 25, 2000 diagnostic report of left sided RSD.

By decision dated January 22, 2001, the Office denied modification of the October 2, 2000 decision. The Office determined that Dr. Levin's report, as the referee physician was well reasoned and afforded special weight to his report, finding appellant had fully recovered from the work-related injury without any residuals.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits on the grounds that her work-related disability had ceased by that date.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[4] 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.[5] The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support

[4] *Lawrence D. Price*, 47 ECAB 120 (1995).

[5] *Id; see Patricia A. Keller*, 45 ECAB 278 (1993).

[6] *Raymond W. Behrens*, 50 ECAB 221 (1999).

of the physician's opinion are facts which determine the weight to be given to each individual report.[7]

In this case, the Office accepted that appellant sustained a strain of the left foot and ankle and paid appropriate medical benefits. The Office subsequently referred appellant to Drs. Mansmann and Valentino for second opinion evaluations. The Board finds that the weight of the medical evidence rests with Dr. Valentino, who submitted a thorough medical opinion based on a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant's left ankle injury had resolved and any employment-related residuals had resolved, he further advised that there was no evidence to substantiate a RSD pattern. While Dr. Mansmann opined that appellant had persistent left ankle pain of unknown etiology, he proffered that appellant's sprain and strain should have resolved. Although, he ordered additional tests, they were to rule out any additional etiologic causes to her continued complaints. Dr. Mansmann further examined appellant in relation to RSD and questioned this diagnosis. He did not provide a definitive opinion or infer that it was related to appellant's accepted work-related injury and his report is therefore of diminished probative value. Drs. Glick and Tabuena, appellant's treating physicians, continued to state that appellant was disabled. However, their reports are also of diminished probative value because they did not explain why appellant continued to have residuals of her injury more than several years after the injury.

The Board finds that at the time the Office terminated medical benefits, the weight of the medical evidence rested with Dr. Valentino who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant had no continued disability from her accepted employment injury and was capable of performing her usual employment and that further medical treatment was unnecessary. He found no evidence of residuals determined that appellant's left foot and ankle strain had resolved, found that the objective findings were normal and the effects of her work injury had ceased. He stated that there was no evidence of a clinical examination or a plethora of diagnostic studies to substantiate an RSD pattern, noted preexisting degenerative changes about the left the left ankle that bared no causal relationship to her employment and there was no evidence of any ongoing impairment or disability related to the March 2, 1995 injury.

The Board finds that Dr. Valentino's report established, at that time, that appellant ceased to have any disability or condition causally related to employment, thereby justifying the Office's June 14, 1999 termination of benefits.[8]

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of

[7] *See Connie Johns*, 44 ECAB 560 (1993).

[8] *See Joe Bowers*, 44 ECAB 423 (1993).

compensation benefits.[9] Accordingly, the issue presented is whether appellant has met her burden of proof in establishing an employment-related condition on or after June 14, 1999 and if so, whether she established any periods of disability causally related to an employment injury.

Subsequent to the Office's termination, appellant submitted medical reports, from Dr. Knobler, indicating that she remained totally disabled and that her work injury led to the development of RSD.

The Office determined that a conflict of medical opinion existed between Drs. Knobler and Valentino, and referred appellant to Dr. Levin to serve as an impartial medical examiner. He concluded that appellant no longer had any continuing disability related to her March 2, 1995 employment injury.[10] The Board finds that the Office properly relied upon the impartial medical examiner's report as a basis for denying benefits after June 14, 1999. Dr. Levin concluded that appellant no longer had any injuries as a result of the ankle strain she sustained on March 2, 1995 and had fully recovered. He further stated that the suggestion that appellant was suffering from thoracic outlet syndrome from her cane was "absurd," and that there was no evidence to suggest that appellant was suffering from RSD. Dr. Levin provided findings on examination of appellant and reviewed appellant's medical records. He also reported accurate medical and factual histories. Accordingly the Office properly afforded determinative weight to Dr. Levin's opinion.[11] In as much as Dr. Levin provided a well-reasoned and fully-rationalized opinion regarding why appellant was no longer disabled due to residuals of her employment injury, the Office properly accorded his report special weight and found that the weight of the medical evidence rested with this opinion. Moreover, the Office properly determined that the reports of Dr. Knobler, which were submitted subsequent to the issuance of the Office's June 14, 1999 merit decision, were not sufficient to overcome Dr. Levin's report. The Board notes that Dr. Levin was selected to resolve the conflict in medical opinions between Drs. Knobler and Valentino. For this reason, the subsequent reports of Dr. Knobler are insufficient as he did not explain how and why the accepted employment injury would continue to cause appellant's continuing disability for work or how the employment injury would have caused her condition. Without such medical rationale addressing the crucial issues of causal relationship and continuing disability, his reports are of greatly diminished probative value.[12]

The Board also notes that appellant' representative presented several arguments concerning the report of Dr. Levin, but did not present any evidence to corroborate his

[9] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

[10] The Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[11] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper and factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[12] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

allegations. The Board finds that there is insufficient evidence of any bias or unfairness on the part of Dr. Levin.[13]

Consequently, appellant has not established that her condition on and after June 14, 1999 was causally related to her accepted employment injury.

The January 22, 2001 and October 2, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 22, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] *See Anthony La-Grutta*, 37 ECAB 602 (1986).