

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KARIN JACOBUS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH

*Docket No. 00-114; Submitted on the Record;
Issued March 5, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective June 7, 1999; and (2) whether appellant established that her emotional condition is a consequence of her accepted work injury.

On January 28, 1978 appellant, then a 42-year-old police officer, injured her right leg when she tripped over a set of jumper cables and fell. She was treated at a local emergency room for multiple fractures of the right leg. The Office accepted appellant's claim for fracture of the right tibia and comminuted simple fracture of right proximal fibula. Appellant was off work from January 28 through October 30, 1978, when she was approved for light duty. She stopped work again on January 3, 1979, complaining of swelling in the right ankle and has not returned. Appellant received compensation on the periodic rolls until the Office terminated her compensation effective June 7, 1999.

Appellant has been treated by numerous physicians over the years since her work injury. She most recently came under the care of Dr. Robert Zaas, a Board-certified orthopedic surgeon.¹ In a report dated April 25, 1994, Dr. Zaas noted that appellant continued to complain of right leg weakness even though the tibia and fibula fractures had "healed solidly." He related that appellant sustained several falls which she attributed to right leg weakness, especially a fall in her kitchen on February 4, 1993, at which time she sustained a right hip fracture. Dr. Zaas stated that appellant "has considerable disability in her right leg which by history she relates to the January 28, 1978 work injury." He indicated that appellant had "considerable functional overlay superimposed on the subjective and objective physical findings related to the right leg."

¹ Appellant fell at home on April 15, 1993 sustaining a right hip fracture that required insertion of a plate and multiple screws. It was noted in the surgical report that appellant was trying to go to the bathroom without the aid of her crutches when she fell injuring her right hip. It is appellant's contention that she has had numerous falls as a result of right leg weakness and "giving way" due to her work injury. The record indicates that appellant fell sustaining injuries to her neck, face, left wrist and right ankle on May 25, 1994. She is also on medication for a seizure disorder.

Dr. Zaas concluded that appellant was totally disabled for all work due to physical and psychological problems. He recommended that appellant be evaluated by a psychiatrist, noting that he suspected that the original injury set off a psychological reaction.

On October 5, 1994 the Office referred appellant for a second opinion examination with Dr. Sheldon Kaffen, a Board-certified orthopedic specialist. In a reported dated October 11, 1994, Dr. Kaffen noted that appellant presented wearing a right leg brace, a cervical collar and using one crutch. On physical examination, he noted that appellant exhibited tenderness over the region of the old tibia fracture, but that she had no swelling in the right ankle and full range of motion in the foot and ankle. Dr. Kaffen stated that x-rays revealed complete healing of the fractures of the right tibia and fibula in satisfactory condition. Although he found a five degree varus at the fracture site, he opined that the varus was acceptable and should not cause symptoms. Dr. Kaffen diagnosed a remote healed tibia and fibula fractures and nonwork-related conditions of intertrochanteric fracture of the right femur, a cervical spine injury and seizure disorder. He concluded that there was no objective evidence from which to conclude that appellant remained totally disabled for work.

In a work evaluation form dated October 12, 1994, Dr. Kaffen found that appellant should limit standing but could work eight hours per day.

On September 26, 1993 the Office also referred appellant for a second opinion evaluation with a Board-certified psychiatrist, Dr. Gottfried Spring in order to ascertain whether appellant sustained an emotional condition due to her accepted work injury. Dr. Spring opined that appellant suffered from a somatoform pain disorder because she complained of numerous orthopedic symptoms that were not substantiated by the objective findings. He noted that there was no evidence that the somatoform pain disorder was apparent prior to the January 28, 1978 work injury, therefore, Dr. Spring opined that the condition was "probably precipitated" by the work injury. He further opined that appellant's emotional condition rendered her totally disabled.

In a supplemental report dated February 16, 1995, Dr Spring explained that the "considerable functional overlay" described by Dr. Zaas was in fact a somatoform pain disorder. He opined that there was no latent somatoform pain disorder and that the origin of the disorder was unknown, although "certain personalities tend to such somatoform disorders such as histrionic personalities which [appellant] could have." Dr. Spring further stated:

"Somatoform disorders perpetuate themselves often because of secondary gain. In the part they were often called compensation neuroses. Also, [appellant's] actual physical problems such as swelling of the foot and possible seizures and pain and multiple orthopedic medical treatment perpetuated and contributed to her condition. The prognosis is poor for her somatoform disorder based on the above comments. [Appellant's] muscoskeletal problems also contribute to her disability. She is not totally disabled just from her somatoform disorder, however, in these cases it becomes impossible as the lengthy chart demonstrates to separate out her physical from her psychological problems. [Appellant's] condition is chronic and has reached maximum medical improvement. There is

no psychiatric treatment that she could benefit from. The pain program failed. Conservative and symptomatic medical treatment may be indicated as needed.”

The record indicates that appellant continued in a nurse intervention program. The Office attempted to obtain an updated report from Dr. Zaas in April 1996, but was informed that he had not treated appellant since September 1994.

The Office referred appellant for examination by Dr. Malcom Brahms, a Board-certified orthopedic surgeon. In a July 24, 1996 report, Dr. Brahms stated that it was doubtful whether appellant was capable of returning to work due to her abnormal psychological state. He noted that appellant exaggerated her complaints with respect to her right leg. Dr. Brahms indicated that appellant was using a walker to ambulate but that the walker was not necessary. He reported that, while appellant showed a slight degree of varus of the right lower extremity and some shortening of the leg length, the physical findings were not sufficient to cause any functional limitation.

In a supplemental report dated September 20, 1996, Dr. Brahms noted that the work-related fractures of the right lower extremity had healed with no significant residual manifestation of either of the fractures except for the slight shortening and mild degree of varus. He further noted that appellant’s right leg was within normal weight bearing function. Dr. Brahms, however, opined that appellant could not return to work as a police officer because she suffered from a somatoform disorder. He concluded that appellant could only return to sedentary work because she insisted on using a walker to ambulate. Dr. Brahms opined that appellant’s disability was due to nonwork-related conditions, including her emotional state, the remote fracture of her right hip and a history of seizure disorders.

The Office determined that a conflict was created in medical opinion and referred appellant for an impartial medical evaluation by Dr. Ralph Kovach, a Board-certified orthopedic surgeon. In a report dated February 7, 1997, Dr. Kovach reviewed the medical record and a statement of accepted facts. He discussed appellant’s history of injury, symptoms and physical findings. On physical examination Dr. Kovach noted that appellant had a one half inch shortening of the right leg due to the fractures, which was confirmed by x-ray. He found the fractures to be well healed without swelling or angulation. Dr. Kovach concluded that appellant had no continuing disability related to her 1978 work injury. He further opined, however, that appellant was disabled from work due to nonwork-related conditions of the cervical spine and depression.

Appellant was next examined by Dr. R. Taylor Seagraves, a Board-certified psychiatrist, at the request of the Office. In a March 26, 1998 report, Dr. Seagraves found that there was a functional overlay to appellant’s complaints of leg pain and that she suffered from somatoform pain disorder her complaints could not be explained by the objective orthopedic evidence. He indicated that the origin of somatoform disorder was unknown and could not state with certainty whether or not it was related to the accepted work injury.

In a May 21, 1998 supplemental report, Dr. Seagraves stated:

“(1) An undifferentiated somatoform disorder, by definition, exists when after appropriate investigation, one or more physical complaints exist without physical etiology.

“(2) This disorder apparently began after the work injury. The work injury may have aggravated a preexisting predisposition. The condition is not clearly related to the work injury.

“(3) An undifferentiated somatoform disorder would not prevent a gradual resumption of work duties.”

Given the equivocal nature of Dr. Seagraves opinion, the Office referred appellant for psychiatric evaluation by Dr. Daniel Schubert, a Board-certified psychiatrist, on October 14, 1998. Dr. Schubert confirmed that appellant suffered from a somatoform disorder and carefully reviewed appellant’s medical records and her medical care to ascertain the exact onset of the condition. He stated, “[a]lthough there is no evidence of earlier onset, I would assume that this has been a lifelong pattern of concern and focus on physical symptoms.” Dr. Schubert indicated that appellant had mild chronic pain which interfered with her social and occupational functioning along with other undifferentiated somatoform symptoms. He concluded that appellant’s somatoform disorder was not due to her injury of January 28, 1978. Dr. Schubert also opined that appellant was not disabled from gainful employment.

On April 27, 1999 the Office issued a notice of proposed termination of compensation. The Office informed appellant that the weight of the medical evidence established that she was no longer disabled as a result of her accepted employment injury. Appellant was provided 30 days to submit additional evidence or argument if she disagreed with the proposed action.

Appellant submitted a June 6, 1999 report from Dr. Zaas, who indicated that he had last seen appellant for treatment of her work injury in 1994. Based on his June 6, 1999 evaluation, Dr. Zaas reported that appellant’s symptoms were essentially the same and that she continued to complain of swelling, pain and weakness in her entire right leg. He related that appellant reported incidents of her leg “giving way,” which had caused her to fall on several occasions. Dr. Zaas indicated that appellant had fractured her right hip in February 1993 and that she suffered from right lumbar radiculopathy that was causing some of the pain, weakness and diminished sensation of the right leg. He also noted that appellant used a walker for ambulation and wanted approval for a wheelchair. On physical examination, Dr. Zaas reported shortening of the right leg due to the work-related fractures, moderate extensor weakness of the right ankle and toes and a larger girth of the right ankle compared to the left ankle. He concluded that appellant remained totally disabled from all gainful employment due to the residuals of her employment injury.

In a June 7, 1999 decision, the Office terminated appellant’s compensation on the grounds that she no longer had any disability causally related to the work injury of January 28, 1978.

Appellant requested reconsideration on July 20, 1999 arguing that she was not able to work due to the condition of her right leg.²

In a decision dated August 11, 1999, the Office denied modification of its June 7, 1999 prior decision.

The Board finds that the Office properly terminated appellant's compensation effective June 7, 1999.

Once the Office accepts a claim it has the burden of proof in justifying modification or termination of compensation. After it has been determined that an employee has disability casually related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.³

In this case, the Office accepted that appellant sustained a right tibia fracture and a comminuted simple fracture of the right proximal fibula as a result of a work injury on January 28, 1978. Appellant received compensation on the periodic rolls for total disability. The Office, in reliance on the report of Dr. Kovach, concluded that appellant had no continuing disability causally related to the accepted right leg fractures. The Board has duly reviewed the record and finds that Dr. Kovach's opinion is entitled to special weight as an impartial medical specialist on the issue of whether appellant has continuing disability related to her accepted right leg fractures.

The Office correctly determined that a conflict existed in the record between Drs. Zaas and Brahms as to whether appellant's accepted work injury prevented her from returning to her work as a police officer. Dr. Zaas considered appellant to be totally disabled from all gainful employment while Dr. Brahms opined that appellant could perform sedentary work. Dr. Brahms further stated that appellant's disability was due solely to nonemployment-related medical factors.

Section 8123(a) of the Federal Employees' Compensation Act provides that, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁴ When a case is referred to a referee medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁵

The Office referred appellant to Dr. Korach as an impartial medical specialist. He reviewed the entire medical record, a statement of accepted facts and performed a thorough examination of appellant. Citing confirmation by x-ray that appellant's right leg fractures were

² Appellant had requested an oral hearing but later withdrew that request.

³ *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Mary E. Jones*, 40 ECAB 1125 (1989).

⁴ 5 U.S.C. § 8123.

⁵ *See Sherry A. Hunt*, 49 ECAB 467 (1998); *Wiley Richey*, 49 ECAB 166 (1997).

healed, Dr. Kovach opined that appellant was not longer disabled by residuals of such fractures. Rather, he attributed her continuing disability to her cervical spine and emotional conditions. Because Dr. Kovach's opinion is rationalized and based on a proper factual background, the Board concludes that it is entitled to special weight. Thus, the Office met its burden of proof to terminate appellant's compensation on the grounds that she is no longer disabled due to the January 28, 1978 employment injury.

The Board also finds that appellant failed to establish that her diagnosed emotional condition is a consequence of her 1978 leg fractures.

The general rule respecting consequential injuries is that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury similarly arises out of the employment unless it is the result of an independent intervening cause. An employee who asserts that a nonemployment-related injury was a consequence of a prior employment-related injury has the burden of proof to establish that such was the fact.⁶

Based on the reports of Dr. Zaas who recommended a psychiatric evaluation, appellant was referred to Dr. Spring, who diagnosed a somatoform pain disorder. He noted that she complained of numerous orthopedic symptoms that were not substantiated by objective evidence. Although Dr. Spring noted that appellant showed no symptoms of somatoform disorder prior to her 1978 injury, he provided insufficient reasoned analysis to attribute the disorder to appellant's leg fractures.⁷ Similarly, Dr. Seagraves found a functional overlay and somatoform disorder but was not certain whether it was due to appellant's work injury. He opined that the origin of appellant's function overlay is unknown.

The weight of medical opinion is represented by the report of Dr. Schubert. He also diagnosed a somatoform disorder, but indicated that this arose from a lifelong pattern of focusing on physical symptoms. Dr. Schubert concluded that the disorder was not attributable to the 1978 fracture injury and did not disable appellant from gainful employment.

Appellant has the burden to prove that her somatoform disorder is a consequence of her accepted employment-related leg fractures. Because there is no reasoned medical opinion evidence of record to establish a causal relationship between appellant's diagnosed emotional condition and the work injury, the Board concludes that appellant has not carried her burden of proof.⁸

⁶ See *William F. Gay*, 50 ECAB 276 (1999).

⁷ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. *Elizabeth Stanislav*, 49 ECAB 540 (1998).

The August 11 and June 7, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 5, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member