U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIA R. CORDOVA and U.S. POSTAL SERVICE,
POST OFFICE, Lakewood, CO

Docket No. 00-1109; Submitted on the Record;
Issued March 13, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective October 9, 1997; and (2) whether appellant has established that she has any continuing disability causally related to her accepted employment injury.

On October 27, 1993 appellant, then a 30-year-old letter carrier, sustained a right forearm strain while closing a door on a postal vehicle. She did not stop work and received medical and intermittent wage-loss compensation. The employing establishment placed appellant in a limited-duty job following her injury. Appellant filed a schedule award claim on November 29, 1994 and April 6, 1996. By decision dated November 20, 1996, the Office denied appellant's claim for a schedule award based upon an Office medical adviser's report.

In a report dated January 6, 1997, Dr. K. Ravi Ravilochan, an attending physician specializing in neurology, diagnosed chronic pain syndrome in the right upper extremity and myofascial symptoms which were "exacerbated after the accident of June 20, 1996 with further soft tissue and bony injury of the right upper extremity as well as the right lower extremity" and chronic lumbosacral strain since the June 20, 1996 automobile accident.

Dr. Ravilochan, in a January 20, 1997 report, concluded that appellant's chronic pain syndrome and forme fruste of reflex sympathetic dystrophy (RSD) in the right upper extremity were "a direct consequence of the injury of October 27, 1993."

In an August 4, 1997 report, Dr. Brian D. Lambden, second opinion Board-certified physiatrist,[1] after reviewing appellant's medical records and employment injury history, concluded that appellant's work-related injury of right forearm strain had resolved.

[1] The Board notes that Dr. Lambden had been selected by the Office to perform an impairment rating.

Dr. Lambden also diagnosed mild underlying myofascial pain syndrome and found there was no evidence to support a diagnosis of RSD. He stated:

> "[Appellant was] referred for an impairment rating utilizing the fourth edition, A[merican] M[edical] A[ssociation], *Guides to* [*the Evaluation of Permanent*] Impairment. In this case I saw no evidence for [RSD]; there is no laboratory evidence or physical evidence. She has complaints of pain with use of the arm and myofascial cervical pain."

On September 4, 1997 the Office issued a notice of proposed termination of benefits which was finalized by decision dated October 9, 1997. The Office found appellant had no continuing residuals from her accepted employment injury.

In a September 16, 1997 report, Dr. Ravilochan indicated that, while appellant experienced "periods of time when she did not have significant symptoms, she did have ongoing problems with her right upper extremity and the neck on a continuing basis." He concluded that "[i]t would only be speculation to say that the present symptoms in the right upper extremity and the neck are all related to the auto accident and not to the previous injury."

In a report dated October 16, 1997, Dr. Ravilochan noted that appellant had an employment-related injury on October 27, 1993 which was followed by an automobile accident on June 20, 1996 and that, prior to his evaluation, she had been diagnosed with reflex sympathetic dystrophy by Dr. Treihaft. He stated that he strongly believed "that the symptoms that are demonstrated in her right upper extremity continue to exist since the time of her injury, preceding the automobile accident of 1996 and they are a continuum of the symptoms and signs that she has had even before." Dr. Ravilochan also concluded that it was "erroneous to state that all the symptoms and signs in her right upper extremity are directly related only to the automobile accident [in] October 1996" and that in his opinion appellant's symptoms may have been aggravated by the automobile accident, "but have existed before this time as a consequence of the injury of 1993."

On October 24, 1997 appellant requested an oral hearing on the termination of her benefits, which was held on June 2, 1998.

On October 30, 1997 Dr. Ravilochan responded to an October 24, 1997 Office letter by checking "yes" that appellant's early RSD was due to her right forearm strain and "yes" that she has a permanent impairment due to her accepted employment injury. Regarding whether appellant's October 27, 1993 injury had resolved, the physician checked "no."

In a May 29, 1998 report, Dr. Yani C. Zinis, an attending physician, stated that appellant did "have the diagnosis of RSD which was diagnosed both by Dr. Ravilochan (a neurologist) and myself. It is felt to be related to a work injury sustained on October 27, 1993. Incidentally she did sustain a second injury to her right forearm on June 20, 1996 when she was involved in a motor vehicle accident and sustained a distal forearm fracture."

In a decision dated October 1, 1998, the hearing representative affirmed the termination of appellant's compensation benefits on the basis that she no longer suffered from any residuals due to her accepted employment injury. The hearing representative also rejected appellant's

contention that her RSD was due to her accepted October 27, 1993 employment injury. In support of this finding, the hearing representative noted that she failed to submit a rationalized medical opinion supporting a causal relationship between her condition and her accepted employment injury.

In a letter dated January 22, 1999, appellant's counsel requested reconsideration and submitted a January 13, 1999 report by Dr. Ravilochan, a statement by appellant, a summary of her medical treatment history and articles on reflex sympathetic dystrophy.

In his January 13, 1999 report, Dr. Ravilochan opined that appellant continued to suffer from RSD due to her accepted employment injury and requires medical care for this condition. He stated:

> "It should be noted that the patient's symptoms were intermittent from the onset of her condition in October 1993. From time to time, her swelling would go down; her discoloration would go down; her discoloration in her right hand and right arm would resolve; and her symptoms of numbness and tingling in those areas also, on occasion, would completely disappear for days. She has had numerous exacerbations of her symptoms both before and after her automobile accident in the summer of 1996."

On February 19, 1999 the Office issued a merit decision denying modification of the October 1, 1998 decision.[2]

In a letter dated April 9, 1999, appellant's attorney requested reconsideration and submitted a March 9, 1999 report by Dr. Ross M. Wilkins, a Board-certified orthopedic surgeon, in support of her request. Appellant also argued that Dr. Ravilochan and the medical evidence support appellant's contention that her RSD was due to her October 27, 1993 employment injury.

Dr. Wilkins noted appellant's medical history was "significant for RSD of her right upper extremity secondary to a work injury in 1993." Based upon a physical examination, medical history and x-ray examination of her knee, he diagnosed tibial plateau damage, reflex sympathetic dystrophy, right upper extremity."

On April 29, 1999 the Office denied appellant's request on the basis that appellant failed to submit sufficient evidence to warrant modification.

In a letter dated November 18, 1999, appellant's counsel requested reconsideration and submitted a June 21, 1999 report by Dr. Wilkins in support of her request.

In his report, Dr. Wilkins noted the following to support that appellant's RSD was employment related:

[2] Appellant filed an appeal with the Board on March 4, 1999 which was docketed as 99-1482. On November 3, 1999 the Board granted appellant's request to have her appeal withdrawn so she could submit new evidence to the Office for reconsideration.

"Dr. Ann Dickson originally treated this patient from the date of her injury on October 27, 1993 until she referred the patient to Drs. Yarnell and Ravilochan in the spring of 1994. Her original diagnosis was a right forearm strain, but after the development of numbness and tingling in the dorsal aspect of her forearm and hand which was associated with color changes and discoloration and coldness and tingling on the back of the hand and the forearm, she referred the patient to Dr. Mark Treihaft who had an electromyographic examination completed which revealed the presence of "PROBABLE" early right distal hand RSD. Dr. Dickson subsequently documented continuing objective findings of RSD conditions until she transferred the patient's care to Drs. Yarnell and Ravilochan. A review of the pertinent records of the subsequent treating physicians shows the continued existence of physical findings indicative of RSD. While the condition does not exist on a continuous basis in these records, the repeated incidents of physical findings such as temperature loss, redness and swelling of the right forearm as well as tingling and numbness are fully consistent with the diagnosis of RSD. My physical findings on a recent examination of her right upper extremity shows slightly decreased range of motion of her shoulder. Elbow exam[ination] is good, but she does have a cool hand when she puts it in a dependent position, it immediately turns bright red. It has mild swelling. There is an incision on the volar aspect of her forearm, with herniation of muscle through that area. She has weakness in grip strength on that side. These findings clearly establish ongoing RSD and by history establish that the RSD is work related."

By merit decision dated December 27, 1999, the Office denied modification of its prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective October 9, 1997.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.[3] 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.[4] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[5] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[6]

In the instant case, the Board finds that the opinion of Dr. Lambden represents the weight of the medical evidence. He provided a reasoned opinion, based on a complete background, that

[3] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[4] *Id.*

[5] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[6] *Id.*

residuals of appellant's accepted right forearm strain had ceased. The remainder of the medical evidence does not address the issue of whether her strain had resolved. Dr. Ravilochan diagnosed chronic pain syndrome and forme fruste of RSD due to the October 27, 1993 employment injury. Dr. Wilkins diagnosed RSD in the right upper extremity due to her 1993 employment injury. The Board notes that the Office accepted the claim for a right forearm strain. Neither Dr. Ravilochan nor Dr. Wilkins have provided any further medical evidence contradicting Dr. Lambden's opinion that the right forearm strain had resolved. Thus, his reports are insufficient to create a conflict with the opinion of Dr. Lambden on the issue of whether her accepted injury of right forearm strain had resolved.[7]

The Board therefore finds that the weight of the medical evidence rests with the opinion of Dr. Lambden the second opinion physician, who provided a rationalized explanation of why appellant had no continuing disability due to her accepted employment injury of right forearm strain. His opinion is sufficient to meet the Office's burden of proof in terminating appellant's compensation.

The Board finds that this case is not in posture on the issue of whether appellant has any continuing disability causally related to her accepted employment injury.

In reviewing the medical evidence of record, the Board finds that an unresolved conflict of medical opinion exists as to whether appellant has any continuing disability due to her accepted employment injury. Specifically, whether appellant's RSD is causally related to her accepted employment injury.

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination of the United States evidence that physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[8]

In this case, there is a conflict between Dr. Lambden, the Office second opinion referral physician, who found no evidence supporting a diagnosis of RSD and Drs. Ravilochan and Wilkins, who found that appellant had RSD as a result of her October 27, 1993 work-related injuries, which resulted in intermittent disability.

On remand, the Office should prepare a statement of accepted facts and should refer appellant to an impartial medical specialist to resolve the conflict as to whether appellant has employment-related RSD, and whether this condition has caused continuing disability. After such further development as necessary, the Office should issue an appropriate decision.

[7] Only reports of virtually equal weight and rationale are sufficient to create a medical conflict under 5 U.S.C. § 8123(a); *see Clara T. Norga*, 46 ECAB 473 (1995).

[8] 5 U.S.C. § 8123(a); *Lynda J. Olson*, 52 ECAB ___ (Docket No. 00-2085, issued July 11, 2001).

The decision of the Office of Workers' Compensation Programs dated December 27, 1999 is hereby affirmed in part, set aside in part and remanded for further proceedings consistent with the above opinion.[9]

Dated, Washington, DC
March 13, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Willie T.C. Thomas, Alternate Member, dissenting:

The difference between the majority opinion and the dissenting opinion is whether the appellant subsequently developed RSD in the right upper extremity is a residual of the accepted employment injury. I conclude from my careful perusal of the record that appellant's RSD of which pain is a significant concomitant is a residual of the employment injury and that the Office of Worker's Compensation Programs did not meet its burden of establishing that appellant's employment-related disability had ceased allowing it to terminate compensation benefits.

The Office in terminating appellant's compensation benefits relied on the second opinion evaluation by Dr. Brian D. Lambden, dated August 7, 1997. Therein, he stated:

> "(1) Work-related injury on October 27, 1993 with resulting right forearm flexor mass strain, currently resolved.
>
> "(2) Postinjury pain, swelling and discoloration with probable Vasomotor response diagnosed at that time as sympathetically maintained pain. At this point, I do not see any evidence for a sympathetic component to her pain presentation. She does have a mild underlying myofacial pain syndrome."

[9] The Board notes that appellant filed a traumatic injury claim on February 2, 2000 which has not been adjudicated by the Office. As no decision has been issued on this claim, the Board has no jurisdiction to consider this claim. 20 C.F.R. § 501.2(c).

The record is replete with medical reports expressing the view that appellant has and continues to have reflex sympathetic dystrophy secondary to her right upper extremity injury. In this connection, the earliest physician of record to make the diagnosis following the October 27, 1973 injury was Dr. Ann Dickson in her December 3, 1993 report wherein she documented right arm and hand intermittent numbness, pain, swelling and discoloration of hand and arm. Dr. Dickson made a neurology referral to Dr. Mark Triehaft.

In a December 10, 1993 report and a December 16, 1993 thermogram, Dr. Triehaft reported that appellant may have early reflex sympathetic dystrophy based on neurological examination and thermogram. In reports dated February 17, March 21 and April 11, 1994, Dr. Yarner also diagnosed RSD and noted that he agreed with Dr. Triehaft that appellant had an element of RSD with purple appearance from knuckles down, right upper extremity dysfunction and vasomotor changes.

Dr. Jane Burnham in a fitness-for-duty examination dated July 5, 1994 reported that appellant had mild symptoms of some pain and swelling in her right arm following an injury nine months prior. Dr. Burnham diagnosed probably very mild early RSD as confirmed by laboratory data. She reported appellant fit for duty.

On September 15, 1995 Dr. Yarnell referred appellant to Dr. Ravilochan, a neurologist specializing in RSD, who assessment was since the employment injury, appellant has had intermittent forme fruste of RSD.

Dr. Ravilochan submitted reports dated October 14 and 24, November 19 and December 7, 1994, February 28, April 18 and May 3, 1995. In his April 18, 1995 report to the employing establishment, Dr. Raviochan provided a lengthy description of appellant's chronic pain syndrome and chronic myofascitis versus a forme fruste of RSD, all of which he indicated was work related.

All of the foregoing medical reports of record support that appellant's diagnosis of RSD is causally related to the October 27, 1993 injury and a residual of that injury. Nonetheless, the Office relied exclusively on a single report of its second opinion referral physician, Dr. Lambden, who concluded that appellant did not have RSD at the time of his examination. The Office also concluded that none of the medical reports by any of the physicians noted above created a conflict in the medical evidence as to whether the diagnosed RSD was a residual of the accepted right forearm strain.

Appellant through her attorneys has requested several reconsiderations of the initial termination decision and submitted medical reports by Dr. Ravilochan covering the period September 16, 1997 through his last report dated January 13, 1999 wherein he continued to support the RSD as work related. In addition, appellant's attorneys submitted reports by Dr. Ross M. Wilkins, a Board-certified orthopedic specialist, dated March 8 and June 21, 1999. Dr. Wilkins discussed the medical reports of Drs. Dickinson, Yarnell and Ravilochan. He discussed appellant's findings on examination including appellant's 1996 automobile accident wherein appellant sustained an injury to the same extremity. Dr. Wilkins concluded his June 21,

1999 report stating, "These findings clearly establish the ongoing RSD and by history that the RSD is work related."

The denial of reconsideration dated December 21, 1999 is indicative of the Office's obvious attachment to the infallibility of Dr. Lambden's one time second opinion examination denying the existence of RSD and the conclusion that none of the specialists opinions in this field of medicine could outweigh or even create a conflict with Dr. Lambden's opinion. In this connection, I note specifically the reconsideration claims examiner's statement:

> "It seems clear from the medical records that the auto accident had caused additional injuries to the claimant's right arm, neck and back, thus breaking any chain of causal relationship, and that the residuals of the original injury had ceased."

I find an obvious conflict in the medical evidence that appellant's reflex sympathetic dystrophy is a residual of her accepted right forearm strain as indicated by the opinions of Drs. Dickinson, Triehaft, Burnham, Raviochan, and Wilkins and the opinion of the Office referral physician, Dr. Lambden that appellant does not have RSD. Such conflict in medical opinions can only be resolved by an impartial specialist under section 8123(a) of the Act. This being the case, I can only conclude that the Office did not meet its burden of proof to terminate benefits. I would reverse the decision of the Office dated December 27, 1999.

For the reasons stated above, I feel compelled to record this dissent.

Willie T.C. Thomas
Alternate Member