U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA L. MICHEL and DEPARTMENT OF THE NAVY,
STENNIS SPACE CENTER, MS

Docket No. 01-1988; Submitted on the Record;
Issued August 22, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation benefits effective February 22, 2001.

On March 15, 2000 appellant, then a 54-year-old clerk, filed a claim for traumatic injury alleging that on that day she sustained an injury to her left shoulder and arm.

On August 7, 2000 the Office accepted that appellant sustained an aggravation of a preexisting left shoulder osteoarthritis. It also stated that her left shoulder impingement syndrome was work related and authorized physical therapy and left shoulder arthroscopic surgery. Appellant received appropriate benefits.

In a report dated September 28, 2000, Dr. Hontas stated that appellant remained symptomatic with pain in her left shoulder, "a little bit more than I would have felt is appropriate for two months [post surgery]." He noted that her range of motion was improved but noted that she was not able to return to work. He stopped therapy, prescribed a pain medication and requested a shoulder magnetic resonance imaging (MRI) scan.

In a report dated October 5, 2000, Dr. Hontas stated that appellant could return to an 8-hour workday with restrictions against reaching over her shoulder, pushing and pulling more than 10 pounds, a restriction against lifting more than 20 pounds, a limitation against general reaching and a restriction against ladder climbing.

In a treatment note dated October 19, 2000, Dr. Hontas stated that appellant was symptomatic with pain radiating from the neck into her left arm. He noted that the MRI scan "[r]eally did not show a lot, neither did the electromyography (EMG) test [or] the nerve conduction study (NCS). [Appellant] has mild degenerative changes seen in the acromioclavicular joint, no tendinopathy. I am wondering if this is coming from the neck or perhaps even a thoracic outlet syndrome. I think we need to do more of a work up and we are going to get an MRI scan of the spine."

In a report dated October 19, 2000, Dr. Hontas stated that appellant could not return to an eight-hour workday based on left shoulder pain.

On October 12, 2000 the Office referred appellant, a copy of her medical records, a statement of accepted facts and a list of specific questions to Dr. John Montz, a Board-certified orthopedic surgeon and a second opinion physician, to determine whether she had residuals of her work-related injury, whether she would be able to return to work and, if so, when and under what restrictions.

In a report dated November 2, 2000, Dr. Montz stated that he had examined appellant that day and noted his findings. In her history of injury, Dr. Montz noted that appellant had a motor vehicle accident in 1993 "and ultimately underwent a two level discectomy by Dr. [Charles W.] Krieger." Upon examination, he noted "90 percent normal cervical range of motion with discomfort of full rotation, flexion and extension." Dr. Krieger noted no anterior or cervical tenderness or definite spasms. He also noted normal motor, sensory and reflexes in the upper extremities. Appellant's shoulder examination revealed essentially full range of motion on external rotation, full internal rotation and full flexion. Dr. Montz noted that appellant's x-rays revealed "fusion of C5-6 and 7." He stated that she had left shoulder contusion, postdecompression, acromioclavicular joint arthritis and cervical disc disease. Dr. Montz stated that appellant's preexisting arthritis may have been aggravated by her work-related injury, but did not feel that her condition was in any way related to her surgery, but rather appeared related to her cervical disc symptoms. He noted that appellant could return to work in a light-duty status with limitations.

In a supplemental report dated November 22, 2000, Dr. Montz stated that appellant's shoulder arthritis and joint arthritis may have been aggravated by her March 15, 2000 work-related injury, but that such conditions were resolved after her surgery.

On January 16, 2001 the Office proposed termination of appellant's compensation benefits on the grounds that she had no medical residuals of her work-related injury.

In a form report dated January 11, 2001, Dr. Hontas stated that appellant "is able to return to work on January 15, 2001 with the following limitations: no use of key board, no use of left arm, no lifting greater than five pounds."

In a report dated January 22, 2001, appellant agreed to a light-duty position provided by the employing establishment.[1]

In response to the Office's notice of proposed termination, appellant stated in a report dated February 12, 2001, that upon her return to work on January 22, 2001, her left shoulder condition worsened, that her neck pain which began in September 1999 in a work-related injury and aggravated by her March 15, 2000 work-related injury, remained extremely painful. Appellant stated that because the Office did not accept her neck injury, she had sought treatment from another physician, Dr. Jeffrey H. Oppenheimer, a Board-certified neurosurgeon.

[1] Appellant's light duty consisted of no computer use. She was required to review records for correctness and to alphabetize them, to answer the telephone using headphones and to shred documents.

In a report dated January 24, 2001, Dr. Oppenheimer stated that appellant's left neck pains were attributable to her work-related injuries of September 1999 and March 2000.

In a decision dated February 22, 2001, the Office terminated appellant's compensation benefits effective that day on the grounds that she had no medical residuals as a result of her work-related injury of March 15, 2000.

By letter dated April 16, 2001, appellant requested reconsideration.

In support of her request, appellant submitted a February 21, 2001 report from Dr. Oppenheimer. She also submitted a March 22, 2000 report from Dr. Krieger, a copy of the functional capacity evaluation and a page from Dr. Montz' second opinion report. However, the Office had reviewed these documents in its prior decision.

In his February 21, 2001 report, Dr. Oppenheimer stated that appellant's recent MRI scan "demonstrated what appears to be a pseudoarthrosis at C5-6, probably from surgery that was referenced. This all begins following an original injury at work, so I believe this is work related within a reasonable medical probability, greater than 50 percent."

In a decision dated May 31, 2001, the Office denied appellant's request for reconsideration.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office has accepted 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.[2] The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.[3]

Dr. Hontas, appellant's treating physician, last treated her for her work-related injuries on September 28, October 5 and October 12, 2000. In none of these reports did he indicate that appellant was disabled from her work-related injury and support that impression with a rationalized medical opinion. Although, he was concerned that appellant continued to be symptomatic with left shoulder pain, he stated that neither the MRI, EMG or the NCS revealed objective results to support pain based on her work-related injuries. Similarly, in his February 8, 2001 report, Dr. Hontas noted symptoms but did not provide an opinion regarding the causal relationship between appellant's continued pain and her work-related injury.

In his February 21, 2001 report, Dr. Oppenheimer noted that appellant's pain was caused by her work-related injuries sustained in September 1999 and March 2000, but provided no rationalized medical opinion in support of his conclusion.

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[2] *Wallace B. Page*, 46 ECAB 227 (1994).

[3] *Larry Warner*, 43 ECAB 1027 (1992).

Dr. Montz, a Board-certified orthopedic surgeon and the Office's second opinion physician, provided well-reasoned medical reports dated November 2 and 22, 2000 wherein he found 90 percent normal cervical range of motion with discomfort of full rotation, flexion and extension with no anterior or cervical tenderness or definite spasms and normal motor and sensory reflexes in the upper extremities. Appellant's shoulder examination revealed essentially full range of motion on external rotation, full internal rotation and full flexion. Dr. Montz stated that appellant's preexisting conditions appeared related to her cervical disc symptoms which were not work related and noted that she could return to work in a light-duty status with limitations due to the disc symptoms. He pointed out that appellant's accepted shoulder arthritis and joint arthritis were resolved after her surgery.

Because the Office provided an adequate basis for its determination that appellant ceased to have residuals of her March 15, 2000 employment injury effective February 22, 2001, the Office met its burden of proof to terminate appellant's compensation.

The decisions of the Office of Workers' Compensation Programs dated May 31 and February 22, 2001 are affirmed.

Dated, Washington, DC
August 22, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member