U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA M. POLK and U.S. POSTAL SERVICE,
POST OFFICE, Midflorida, Fla.

Docket No. 97-1556; Oral Argument Held May 14, 1998;
Issued September 28, 1998

Appearances: *Peter Cushing, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any residual disability or condition causally related to her April 18, 1995 employment injury after April 27, 1996, the date the Office of Workers' Compensation Programs terminated her compensation benefits.

On April 18, 1995 appellant filed a claim for a traumatic injury to her back occurring on that date in the performance of duty. The Office accepted appellant's claim for low back sprain.

Following her injury, appellant received treatment form Dr. Markus Kornberg, a Board-certified orthopedic surgeon. In an office visit note dated May 12, 1995, Dr. Kornberg stated that he informed appellant that a magnetic resonance imaging (MRI) scan dated May 9, 1995, revealed early degenerative disc disease but "no evidence of disc protrusion or herniation or evidence of nerve root compression." In an office visit note dated May 30, 1995, Dr. Kornberg noted that appellant displayed "considerable pain behavior" and told him that she refused to return to work. Dr. Kornberg found that appellant could return to work the following Monday with restrictions.

Appellant changed her attending physician to Dr. K. Michael Davidson, a Board-certified orthopedic surgeon. In an initial consultation report dated June 1, 1995, Dr. Davidson interpreted the May 1995 MRI performed for Dr. Kornberg as revealing a large spur protruding posteriorly into the spinal canal. Dr. Davidson opined that while the spur was a preexisting condition, appellant's employment injury may have cut and stretched the nerve roots thereby causing pain. He diagnosed right leg sciatica with S1 radiculopathy, severe low back spasm and a large osteophytic spur at L5-S1.

In a report dated July 20, 1995, Dr. Robert F. Beller diagnosed low back pain, bilateral lower extremity pain and degenerative disc disease of the lumbar spine. He found that appellant's complaints were not explained by the MRI results.

In a report dated August 8, 1995, Dr. Davidson opined that appellant was disabled from work. He stated:

> "[Appellant] is being held off work due to severe radiculopathy with sensory changes and motor weakness, both of which are increasing. These are due to the incident of April 18, 1995. As far as I am concerned, the lumbar strain has resolved itself. Had it not been for the trauma of April 18, 1995, the preexisting degenerative disc disease and arthritic spur in the spinal canal would have not caused her any problems."

In a report dated August 28, 1995, Dr. Frank R. Hellinger, a Board-certified neurosurgeon and Office referral physician, noted appellant's history of injury and subsequent symptoms of pain and motor weakness in the lower extremities and urinary incontinence. He reviewed the results of objective tests and listed findings on physical examination. He diagnosed "[l]umbosacral strain and paraparesis of undetermined cause, possibly functional," and recommended a computerized tomography (CT) scan and myelogram.

Appellant underwent a myelogram on September 18, 1995 which was interpreted as showing ventral impressions on the thecal sac at L3-4 and L4-5. A CT scan obtained post myelogram revealed mild stenosis at L4-5 and L5-S1 and a possible herniated nucleus pulposus at L4-5 "indenting the ventral surface of the thecal sac at L4-5 without overt root impingement."

In a report dated September 20, 1995, Dr. Jonathan Greenberg, to whom Dr. Davidson referred appellant for an examination, noted appellant's history of injury and listed his findings on physical examination. He further reviewed the results of objective studies. He found evidence of primarily left-sided lumbosacral radiculopathy as shown by EMG [electromyogram] and mild degenerative disc disease as seen on the myelogram/CT scan and MRI. He stated that her symptoms were due to her employment injury and recommended epidural steroids as treatment.

In a report dated September 26, 1995, Dr. Hellinger opined that the results of the CT scan/myelogram revealed no abnormality which would explain appellant's bilateral leg weakness. He recommended an MRI of the thoracic and cervical spine. On October 10, 1995 Dr. Hellinger found that the MRI of the thoracic spine was normal. In a report dated October 5, 1995, Dr. Hellinger noted that an MRI of appellant's cervical spine obtained on October 3, 1995 revealed "degenerative changes of osteoarthritis but no compression of the cervical cord which could explain the symptoms in her lower extremity and lower back."[1] He did not recommend further treatment.

On December 4, 1995 The Office referred appellant to Dr. J. Darrell Shea, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated December 28, 1995, Dr. Shea, based on appellant's history of injury, a physical examination, and review of objective studies, diagnosed paraparesis of unknown etiology. He related:

> "I can find no objective findings suggestive of any neurologic deficits. The sensory deficit in the left lower extremity is not consistent with any dermatome

[1] The MRI of appellant's cervical spine, obtained on October 3, 1995, was interpreted as revealing a "[f]ocal left paracentral disc herniation at C5-6 with left foramen stenosis."

pattern. There are no consistent motor deficits in the lower extremities, however, she proposes that she is paralyzed in the lower extremities, but she is able to walk with crutches, and I have observed her walking with crutches.

"The history as presented by [appellant] is not consistent with the injury as reported on April 18, 1995 of pushing a door and twisting."

He concluded that appellant required no further medical treatment and could return to work.

On January 23, 1996 the Office referred appellant, together with the case record and an updated statement of accepted facts, to Dr. Robert S. Roberts, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Roberts examined appellant on February 21, 1996 and diagnosed lumbosacral strain with paraparesis of undetermined etiology. He conducted a physical examination in which he noted appellant's complaints of weakness and lack of feeling in her lower extremities. He further discussed the results of the objective studies of record and the opinions of the other physicians. Dr. Roberts concluded that appellant had no objective findings which would support continuing lumbar strain and found no relation between her current complaints and her accepted employment injury. He stated that her "sensory complaints do not follow neurologic dermatomal patterns and there is no consistency of the motor deficits in her lower extremities despite her claims of paralysis. Although she claims to have paralysis of the left lower extremity she has been observed to use this leg while ambulating w[ith] crutches." He opined that appellant could return to her prior employment without restriction and that she had no residuals of her work injury.

On March 15, 1996 the Office issued a proposed termination of compensation on the basis that the weight of the medical evidence established that appellant had no residuals from her April 18, 1995 employment injury. The Office provided appellant 30 days in which to submit additional argument and evidence.

Appellant submitted a report dated February 21, 1996 from Dr. Davidson, in which he criticized Dr. Shea's findings in his December 28, 1995 report.

By decision dated April 23, 1996, the Office terminated appellant's compensation benefits effective April 27, 1996.

By letter dated May 3, 1996, appellant requested a hearing before an Office hearing representative.

In office visit note dated July 23, 1996, Dr. Greenberg diagnosed chronic lumbosacral radiculopathy with a secondary myofascial syndrome.

In an office visit note dated August 28, 1996, Dr. Davidson described appellant's worsening condition. He noted that appellant could not support weight with her left leg and opined that due to pain and urological difficulties she could not perform even restricted work for the employing establishment.

A hearing was held on January 8, 1997. At the hearing, appellant submitted a videotaped deposition from Dr. Davidson. In his deposition, Dr. Davidson discussed the history of his

treatment of appellant and his diagnosis of right leg sciatica with radiation to the S1 nerve root and severe back spasms. Dr. Davidson attributed the radiculopathy to appellant's preexisting spinal stenosis caused by a large spur at L4-5 combined with the trauma of her employment injury.

By decision dated March 20, 1997, the Office hearing representative affirmed the Office's April 23, 1996 decision.

The Board finds that appellant had no further residual disability or condition causally related to her April 18, 1995 employment injury after April 27, 1996, the date the Office terminated her compensation benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

In the present case, the Office accepted appellant's employment injury for low back sprain. The Office thus has the burden of proof to justify termination of compensation for that condition.

The Office properly found that a conflict in medical opinion occurred between Dr. Davidson, a Board-certified orthopedic surgeon and appellant's attending physician, who found that appellant was disabled from employment due to a condition caused by her employment injury, and Dr. Shea, a Board-certified orthopedic surgeon and Office referral physician, who found that appellant had no condition or disability causally related to her employment injury.[5] In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial medical specialist to resolve the conflict in medical opinion, the opinion of the impartial medical specialist, if based upon a proper factual and medical background and sufficiently well rationalized, must be given special weight.[6]

In his February 21, 1996 report, Dr. Roberts provided a thorough history of appellant's April 1995 employment injury, reviewed the results of objective tests and medical reports, and described his findings on examination. He concluded that appellant's complaints could not be verified by any objective findings and that she could resume her regular employment without restrictions. The Board finds that Dr. Roberts' opinion is based on a proper factual background and supported by medical rationale, and thus represents the weight of the evidence. The Office, therefore, met its burden of proof to establish that appellant had no further disability due to her

[2] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[3] *Id*.

[4] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[5] *See* 5 U.S.C. § 8123(a).

[6] *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

employment injury by April 27, 1996, the date the Office ceased appellant's compensation benefits.

Following Dr. Roberts' February 21, 1996 report, appellant submitted a deposition from Dr. Davidson in which he reiterated his opinion that appellant's preexisting condition of an osteophytic spur and L5-S1 was aggravated by her employment injury. He further disagreed with Dr. Roberts' findings. However, Dr. Davidson failed to provide acceptable medical rationale supporting his opinion that appellant's current condition and disability was causally related to her accepted employment injury and, therefore, his report is insufficient to outweigh that of Dr. Roberts. Furthermore, as Dr. Davidson was on one side of the conflict that Dr. Roberts resolved, his additional report is insufficient to overcome the weight accorded Dr. Roberts' report as the impartial medical specialist or to create a new conflict.[7]

The decisions of the Office of Workers' Compensation Programs dated March 20, 1997 and April 23, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 28, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).