

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELOUISE CHESTNUT and ENVIRONMENTAL PROTECTION AGENCY,
REGION III, Philadelphia, Pa.

*Docket No. 96-2599; Submitted on the Record;
Issued August 4, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden to terminate appellant's compensation benefits effective April 14, 1994; and (2) whether appellant met her burden of proof in establishing that her medical condition on and after May 17, 1994 is causally related to the accepted April 19, 1991 lumbar strain.

On June 11, 1991 appellant, then a 44-year-old records officer, filed a notice of traumatic injury claim alleging that she lifted several boxes of files while at work on April 19, 1991 and that the next day, she bent over and could not straighten up for approximately 10 minutes. The Office accepted the claim for lumbar sprain/strain and commenced payment of compensation for temporary total disability.

In a report dated November 25, 1991, Dr. Sydney Berkowitz, appellant's treating physician and an orthopedic surgeon, reviewed appellant's history, course of treatment and current findings on examination. He noted that the September 24, 1991 electromyogram (EMG) revealed a chronic L5 radiculopathy involving the right lower extremity to a moderate degree, with nerve conductions within normal limits. The May 8, 1991 computerized tomography (CT) scan of the lumbar spine revealed a bulging disc at level L3-S1 with no evidence of spondylolisthesis or spondylolysis. He additionally noted that a neurologic evaluation conducted on June 5, 1991 by Dr. Myron W. Frederick revealed lumbar radiculopathy involving L2-3 or L4 on the right side. Dr. Berkowitz diagnosed acute lumbosacral strain and sprain with right sciatic neuralgia and lumbar disc disease from L3-S1. He opined that appellant could perform light duty if there was no lifting involved and appellant could change positions from standing to sitting as needed.

A magnetic resonance imaging (MRI) scan performed January 14, 1992 showed a small right-sided disc herniation at L4-5.

Effective April 7, 1992, Dr. Berkowitz released appellant to return to light duty, four hours a day.

The Office continued to pay compensation based on partial disability. Additionally, the Office referred appellant, together with a statement of accepted facts and the medical evidence of record, to Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon, for a second opinion evaluation concerning appellant's work capacity.

In an August 6, 1993 medical report, Dr. Eckbold stated that he reviewed the pertinent factual and medical evidence of record and provided his findings on examination. Under "diagnosis of alleged injury," Dr. Eckbold indicated "not defined." Dr. Eckbold provided the following opinion regarding appellant's condition:

"Although the patient has a positive computerized axial tomography (CAT) scan for pathology at the L4-5 interspace and although the EMG study was considered positive for right L5 involvement, the 90 degree sitting root test without complaint leads me to doubt the apparent weakness of the right extensor hallucis longus and the right anterior tibial pull through. This is further reinforced by the fact that the right calf was one quarter of an inch larger than the left, not smaller."

Based primarily on the absence of symptoms appellant had in doing the 90 degree sitting root test, Dr. Eckbold opined appellant was capable of working eight hours a day within the restrictions indicated in the restriction evaluation form.

On May 19, 1994 the Office determined that there was a conflict in medical opinion between Dr. Berkowitz and Dr. Eckbold regarding appellant's work capacity. Accordingly, appellant was referred to Dr. E. Balasubramanian, a Board-certified orthopedic surgeon, for an impartial medical evaluation. The Office provided Dr. Balasubramanian with the entire case record and a statement of accepted facts.

In an April 28, 1994 medical report, Dr. Balasubramanian stated that he reviewed the pertinent factual and medical evidence of record, the statement of accepted facts, and that he examined appellant on April 14, 1994. Dr. Balasubramanian stated that on examination, appellant was able to ambulate fairly well, her gait was normal, and that she was able to toe walk and heel walk. He found that appellant had good range of motion in lumbar flexion and extension, that there was no restriction of lateral motion, and that her straight leg raising and sitting root tests were negative. He found no evidence of motor or sensory deficit in the lower extremities. And found no evidence of any muscular weakness or atrophy. Dr. Balasubramanian stated that, after review of the medical records and statement of accepted facts and clinical examination, he did not feel that there was any objective evidence of any radiculopathy or any problems with the back to substantiate appellant's claim of pain. Dr. Balasubramanian noted that from the history, it appeared that appellant had a lumbar sprain which should have healed by this time. He stated that he did not see the need for any further physical therapy or treatments and opined that appellant could return to her normal activities with no restrictions.

On May 17, 1994, appellant stopped work completely and, on May 24, 1994, filed a claim for total disability commencing May 17, 1994. Appellant alleged that excruciating pain in her lower back developed as she was approaching the office on May 17, 1994.

In a June 29, 1994 medical report, Dr. Berkowitz discussed appellant's course of treatment during the period of claimed total disability from May 17 to June 21, 1994. On June 21, 1994 Dr. Berkowitz released appellant to return to light duty, four hours a day.

In a letter dated July 18, 1994, the Office advised appellant that medical evidence provided by Dr. Berkowitz was insufficient to support total disability for the claimed period of total disability from May 17, 1994 to June 20, 1994. The Office requested that Dr. Berkowitz send a supplemental report, based on objective medical findings, indicating what happened between the date of the Dr. Balasubramanian's impartial medical evaluation, which indicated that there were no residuals from the work injury, and the May 17, 1994 date to cause the work stoppage. The Office further requested that appellant state her specific duties which resulted in the claimed recurrence of disability on May 17, 1994. Appellant was given 15 days to provide the requested information.

The Office received copies of treatment notes from Dr. Berkowitz for the period of May 17 to June 7, 1994. Dr. Berkowitz noted a decreased range of motion and paravertebral muscle spasm. He advised a return to physical therapy and reiterated his opinion that appellant could not work more than four hours a day.

Appellant did not offer any details regarding the circumstances surrounding her claimed recurrence of April 17, 1994.

In a letter dated June 8, 1995, the Office issued a notice proposing to terminate entitlement to monetary compensation for any period beyond April 14, 1994 on the basis that the claimed recurrence of disability on or after April 17, 1994 was not causally related to the work injury of April 18, 1991. The Office further proposed to terminate medical benefits for the reason that the weight of the medical evidence of record failed to demonstrate any residuals of the original work injury.

In a decision dated July 17, 1995, the Office terminated compensation and medical benefits effective April 14, 1994 on the basis that the weight of the medical evidence established that there were no residuals of the work-related condition.

Appellant, through her attorney, Thomas R. Uliase, disagreed with the July 17, 1995 decision and requested an oral hearing.

On February 28, 1996 appellant testified that except for a minor injury in 1983, she had no prior problems with her back. She described her employment duties as including lifting and moving boxes containing approximately 150 to 200 files.

Appellant described her April 19, 1991 employment injury as well as her initial symptomatology and course of treatment. She discussed her subsequent course of treatment and

indicated that after her work injury, her back had went out when she and her daughter were lifting a cake weighing less than 10 pounds.

Appellant stated that in April 1992, she returned to four hours of light duty per day. She noted, however, that with the exception of not lifting boxes, she performs her regular duties. Appellant indicated that she still has to retrieve and carry files, some of which contain up to 200 pages. Appellant described her continuing low back problems.

Appellant stated that on May 17, 1994, she sustained a severe onset of back pain which made it difficult to walk. She indicated that she sought treatment from Dr. Berkowitz and that she was off work for approximately a month. She noted that she only returned to work due to financial necessity, not because her back felt better.

Appellant stated that she eventually increased her hours to six hours a day. She noted, however, that she continues to lose intermittent time from work and works, on the average, 50 hours a pay period. She described her current low back symptomatology as well as her physical limitations.

Appellant's attorney, Mr. Uliase, discussed the medical evidence of record. Specifically, he contended that Dr. Balasubramanian's report is not sufficient to justify termination of compensation benefits.

In an April 10, 1996 medical report, Dr. Berkowitz indicated that appellant had a recurrence of her low back difficulty as of April 17, 1994 which she related to the fact that she was bending over files and removing records. Dr. Berkowitz stated that on his last examination of appellant in late 1995 she continued to have pain, paresthesias and muscle fatigue in the lumbar spine in the mid afternoon. Dr. Berkowitz opined that appellant should have a repeat MRI scan and indicated the reason being that appellant had irritation of the thecal sac on the right anterolateral at the time of her original MRI scan. He further noted that the MRI scan indicated nerve root damage. Dr. Berkowitz stated appellant's status has not changed, other than becoming worsened with her degenerative and spinal stenosis. He further opined that appellant's workday should be limited to no more than four to six hours.

By decision dated June 5, 1996, an Office hearing representative found that the weight of the evidence rested with the report of Dr. Balasubramanian, the impartial medical examiner. The hearing representative further stated that appellant had failed to submit medical evidence sufficient to rebut the weight of the medical evidence as established by Dr. Balasubramanian or to establish a recurrence of total disability causally related to appellant's accepted employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 14, 1994.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.¹ After it has determined that

¹ *Robert C. Fay*, 39 ECAB 163 (1987).

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

In the present case, the Office accepted that appellant sustained a lumbosacral strain due to factors of her federal employment. A conflict in medical opinion was created between Dr. Berkowitz, appellant's treating physician, who opined that appellant could return to a light-duty position with a no lifting restriction and could change positions from sitting to standing as needed and Dr. Eckbold, an Office referral physician, who advised that appellant could return to full-time work within the limits of his restriction evaluation. Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician will be appointed to make an examination.³ Based on the conflict in medical opinion, the Office referred appellant for examination to Dr. Balasubramanian.

Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist is entitled to special weight if sufficiently well rationalized and based upon a proper factual review of the case.⁴ The Board finds that Dr. Balasubramanian's April 28, 1994 report is sufficiently rationalized and responsive to the Office's inquiries to be entitled to special weight. In his April 28, 1994 medical report, Dr. Balasubramanian related appellant's complaints, her history and course of treatment, and his findings on the April 14, 1994 examination. He found that, after review of medical records and statement of accepted facts and clinical examination, that there was no objective evidence of any radiculopathy or any problems with appellant's back to substantiate her claim of pain. He reported that her past lumbar sprain would have healed by this time and there was no need for further treatments or physical therapy. He further opined that appellant could return to her normal activities with no restrictions. Dr. Balasubramanian's conclusion is supported by medical rationale, is based on a proper factual and medical background, and a clinical evaluation of appellant. Dr. Balasubramanian additionally indicated that he reviewed the diagnostic test findings and stated that, on examination, he found no objective evidence to substantiate radiculopathy or any other back problems. Furthermore, unlike Dr. Berkowitz, Dr. Balasubramanian has specialized training and expertise for the type of

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ 5 U.S.C. § 8123(a).

⁴ *Glenn C. Chasteen*, 42 ECAB 493 (1991).

injury under consideration as he is a Board-certified orthopedic surgeon and thus his opinion has greater probative value than that of Dr. Berkowitz, who is a non-Board-certified physician.⁵ Accordingly, the Board finds that the report of Dr. Balasubramanian is entitled to special weight and is sufficient to support the termination of appellant's entitlement to compensation as of the date of Dr. Balasubramanian's evaluation on April 14, 1994.

Moreover, Dr. Berkowitz's subsequent reports of June 29, 1994 and April 10, 1996 are not sufficient to shift the weight of the medical evidence or to create a new conflict in medical opinion requiring further development of the record. The reports of June 29, 1994 and April 10, 1996 do not provide any new findings or rationale not indicated in previous reports. In fact, in his report of April 10, 1996, Dr. Berkowitz provides a diagnosis of degenerative spinal stenosis, not an assessment of herniated disc or lumbar radiculopathy. Degenerative spinal stenosis, however, is not an accepted employment-related condition in this case and Dr. Berkowitz offers no specific explanation as to how and if the condition of degenerative spinal stenosis is causally related to her April 19, 1991 employment injury.⁶ Moreover, Dr. Berkowitz describes no specific clinical objective findings to substantiate the previous diagnostic studies of record. Thus, Dr. Berkowitz's reports are insufficient to overcome the weight of the evidence as represented by the report of Dr. Balasubramanian, the impartial medical examiner.

The Board further finds that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability on and after May 17, 1994 causally related to her April 19, 1991 employment injury.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury.⁷ As part of such burden of proof, rationalized medical evidence showing causal relation must be submitted.⁸ The fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship between the two.⁹

In the instant case, Dr. Balasubramanian's report establishes that as of April 14, 1994, appellant had no continuing condition or disability causally related to her accepted employment injury. As previously discussed, the weight of the medical evidence rests with Dr. Balasubramanian's report and the June 29, 1994 and April 10, 1996 reports of Dr. Berkowitz discussing appellant's treatments subsequent to April 14, 1996 are insufficient to rebut the

⁵ See *Mary S. Brock*, 40 ECAB 461 (1989) (opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning questions peculiar to that field than opinions of other physicians).

⁶ *Barbara J. Williams*, 40 ECAB 649 (1989); *James A. Long*, 40 ECAB 538 (1989).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

weight of the medical evidence as established by Dr. Balasubramanian or to establish a recurrence of total disability causally related to appellant's accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated June 5, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 4, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member