

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIE C. YIN and U.S. POSTAL SERVICE,
AMC/JFK, Jamaica, N.Y.

*Docket No. 97-1812; Submitted on the Record;
Issued May 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective December 12, 1996 on the basis that she had no residual disability from her accepted July 23, 1993 injury that would prevent her from returning to her date-of-injury position.

On July 23, 1993 appellant, then a 58-year-old clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her leg when she slipped and fell in the cafeteria. The Office accepted the claim for a sprained left hip.¹ Appellant returned to light-duty work on September 2, 1993. Appellant filed a claim for recurrence of disability on December 12, 1994. Appellant returned to work four hours per day on April 1, 1995 and increased to six hours on May 27, 1995.

In a note dated January 12, 1995, Dr. Charles J. Hwu, an attending Board-certified physician in cardiology, critical care medicine, geriatrics and internal medicine, stated that appellant developed severe pain in her left hip which caused her difficulty in walking.

In a report dated June 13, 1995, Dr. K.E. Seslowe, a Board-certified orthopedic surgeon, opined that appellant had no disability due to her accepted July 23, 1993 employment accident. Dr. Seslowe also stated that appellant had a "mild disability with reference to the 1992 accident." Dr. Seslowe opined that appellant could continue working with the restrictions that she not lift more than 40 pounds or perform prolonged bending.

In attending physician's supplemental reports dated May 29, June 25 and July 23, 1996, (Form CA-20a), Dr. Hwu diagnosed pain weakness on left hip due to her injury to the left hip and checked that appellant was not totally disabled for her usual work. Dr. Hwu checked that appellant's disability "probably" would not continue for longer than 90 days.

¹ This claim was assigned the file number 020665930.

In various duty status reports from May 1995 to December 1996, Dr. Hwu opined that appellant was able to return to work with limited hours and physical restrictions on lifting/carrying, sitting, standing and walking. Dr. Hwu also stated that appellant required a high back chair to allow her to walk slightly and stand up during work to avoid discomfort in her hip.

By letter dated June 10, 1996, the Office referred appellant, a statement of accepted facts and the medical record, to Dr. Edward Toriello, a Board-certified orthopedic surgeon, for a second opinion as to whether appellant continued to have any disability causally related to her accepted July 23, 1993 employment injury.

By letter dated June 19, 1996, Dr. Toriello, based upon a history of the employment injury, physical examination and review of the medical records, opined that appellant required no further orthopedic treatment or physical therapy for her left hip strain. Dr. Toriello also opined that appellant had no continuing disability due to her accepted July 23, 1993 employment injury and that she was capable of performing her usual position with restrictions.

On July 30, 1996 the Office issued a notice of proposed termination of compensation advising appellant that any disability from her July 23, 1993 injury had resolved. In the attached memorandum, the Office noted that Dr. Hwu's opinion was not rationalized as he did not provide any objective evidence to support his opinion and found the weight of the medical evidence rested with the opinions of Drs. Seslowe and Toriello.

Appellant requested reconsideration in a letter dated January 9, 1997 and submitted a September 20, 1996 magnetic resonance imaging (MRI) test, a January 6, 1997 letter by Dr. Richard B. Rafal,² a December 20, 1996 nerve conduction report by Dr. William W. Chang,³ a January 9, 1997 letter by Dr. Hwu and a January 8, 1997 report by Dr. Tsai C. Chao.⁴

In the January 6, 1997 report, Dr. Rafal diagnosed mild degenerative changes in her left hip by x-ray interpretation with joint space narrowing.

In the January 8, 1997 report, Dr. Chao diagnosed "chronic recurrent lower pack pain secondary to lumbar sprain and strain" and pain in her left hip due to a joint sprain in her left hip. Dr. Chao also opined:

"[T]he patient's lower back pain was causally related to the May 8, 1992 repetitive lifting injury leading to symptom activation of previous asymptomatic lumbar discogenic disease and subsequent development of L1-2 disc intervertebral herniation and multiple levels of lumbar nerve root compressions. The lower back pain was aggravated and the left hip pain occurred following the accidental fall of July 23, 1993 with electrodiagnostic evidence of lumbar radiculopathy. At the present time, the patient is markedly partially incapacitated. Her condition is permanent. She could continue with a sedentary type of work

² Board-certified in diagnostic radiology.

³ Board-certified in physical medicine and rehabilitation.

⁴ Board-certified in physical medicine and rehabilitation.

assignment with restriction included lifting, carrying, forward bending, pushing and pulling. Symptomatic physical therapy program is indicated at this time.”

In a letter dated January 9, 1997, Dr. Hwu noted that appellant continued to have low back pain and pain in her left hip and that prior to her two injuries appellant did not have this pain. Dr. Hwu stated that a September 20, 1996 MRI test showed that appellant still had disc bulges in her lumbar spine with a “focal herniation at level of L1-2.” Dr. Hwu opined that due to appellant’s continued pain, she could not perform her usual employment duties and that she should continue in her limited-duty position.

By decision dated February 5, 1997, the Office denied appellant’s request for reconsideration. The Office found the evidence submitted by appellant was not sufficient to outweigh the opinion of Dr. Toriello.

The Board finds that the Office improperly terminated appellant’s compensation benefits, effective December 12, 1996, due to an outstanding conflict of medical opinion between Drs. Hwu and Chao, for appellant, and Dr. Toriello, for the government. This conflict pertains both to whether appellant had injury-related residuals on and after December 12, 1996 and whether appellant was medically able to return to her date-of-injury job as a distribution clerk. Drs. Hwu and Chao both opined that appellant still had residuals from her accepted employment injury that prevented her from returning to her date-of-injury position while Dr. Toriello opined that appellant had no residual disability due to her accepted employment injury.

The decisions of the Office of Workers’ Compensation Programs dated February 5, 1997 and December 12, 1996 are hereby reversed.

Dated, Washington, D.C.
May 7, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member