

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GOLDIE K. BEHYMER and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, Fla.

*Docket No. 97-2535; Submitted on the Record;  
Issued May 18, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's monetary compensation and medical benefit entitlements effective December 2, 1996 on the grounds that she had fully recovered from and had no further residuals related to her June 28, 1995 lumbosacral strain injury.

The Board finds that the Office did not meet its burden of proof.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> 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.<sup>2</sup> Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>4</sup>

The Office did not meet its burden of proof in this case to terminate either monetary compensation or medical benefits due to an unresolved conflict in medical opinion evidence between the Office's second opinion specialist and appellant's treating physicians.

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *See Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

<sup>4</sup> *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

In the instant case, the Office based its termination decision solely in reliance upon the second opinion evaluation by Dr. Frank K. Kriz, Jr., a Board-certified orthopedist. The Board notes, however, that Dr. Kriz, in his June 11, 1996 report, did not review all of the medical evidence of record at that time, omitting any review or discussion of the January 30, 1996 work capacity assessment findings and conclusions, which included appellant's physical restrictions and demonstrated decreased work tolerance. He failed to discuss any of Board-certified neurologist, Dr. Luis G. Figueroa's, February 9, 19 or 26, 1996 reports noting continuing disability and the need for modified duty on a part-time basis, or Dr. Figueroa's March 18, 1996 findings that appellant's condition was essentially unchanged, that she had been barely able to tolerate a four-hour work schedule which she began March 4, 1996 which left her exhausted and sore, and that recommended continuation of the same work-related physical restrictions. Dr. Kriz further failed to provide comment addressing the April 11, 1996 findings of Dr. Lynne C. Columbus, an osteopath, who noted that appellant was working only four hours per day, had significant paraspinous muscle spasms, and demonstrated upon electromyographic (EMG) evaluation abnormal spontaneous activity in the left lower lumbar paraspinous muscle, and who diagnosed ongoing myofascial pain syndrome. Dr. Kriz did mention that EMG testing "revealed some perispinal [sic] muscle findings," but he did not discuss what these positive findings meant. The Board, therefore, finds that Dr. Kriz's report was not based upon a complete medical history of appellant.

The Board further notes that Dr. Kriz provided no current diagnoses, referring instead to his earlier mention of sacral coccygeal problems and objectively demonstrated disc bulging, but noted, in answer to the Office's question, that there were "no positive objective findings other than the normal findings in the tests that are described in the discussion paragraph," however, he failed to reconcile this conclusion with his findings as stated in his discussion section, where he identified disc bulging at L4-5 and L5-S1, mild scoliosis, "perispinal [sic] muscle findings" upon EMG testing and a "positive physical examination finding" of localized tenderness to direct palpation of the lower sacral region. The Board further notes that Dr. Kriz stated: "There appears to be some causal relationship of the June 28, 1995 injury which is difficult to directly relate with any objective testing to date," but he failed to clarify what he meant by this statement. The Board notes that these statements require clarification.

Finally, the Board notes that the only mention of appellant's accepted lumbosacral strain injury was Dr. Kriz's conclusory and unrationalized comment: "The lumbar strain that was diagnosed as a result of the June 28, 1995 injury has resolved." Absolutely no discussion of how or why he reached this conclusion was provided. The only comments accompanying this conclusion addressed why appellant's coccygeal syndrome was difficult to relate to her accepted injury. The Board notes that this is not sufficient rationale for the stated conclusion.

Dr. Kriz concluded that appellant could return to her pre-June 1995 duty status, that she was fit to return to her previous full but limited duty from the shoulder restrictions, and that the only restriction she required was one on prolonged sitting. Dr. Kriz reached this conclusion without reviewing appellant's January 30, 1996 work capacity assessment, and without conducting an independent assessment or work capacity evaluation on his own. His stated rationale for these conclusions was solely the knowledge that appellant was exercising at a local gym prior to going to work which he stated indicated that she was fit to return to full duty. He

did not, however, demonstrate any knowledge of what exercises appellant was doing or what equipment she was using and how she was using it to rehabilitate or strengthen which body parts or maintain or improve what mobility. Consequently, the Board finds this determination unrationalized.

Although the Office states in its September 12, 1996 memorandum that Dr. Kriz provided a thorough review of all the medical evidence of record, the Board finds that he did not. Although the Office found that Dr. Kriz provided rationale supporting why he believed appellant's coccygeal syndrome was unrelated to her June 1995 lumbosacral strain, the Board finds that this is not directly relevant to the issue of whether she continues to have some disability or injury residuals related to her accepted June 1995 lumbosacral strain. Although the Office found that Dr. Kriz provided rationale as to why appellant was able to resume full-time regular duties as a modified carrier, the Board finds that his knowledge of the fact that appellant was exercising in a gym, without having any knowledge of what her exercising was comprised of, is not nearly sufficient rationale to justify his conclusion.

Further, the Board does not find any rationalized opinion supporting Dr. Kriz's conclusion that appellant no longer remains disabled from or has injury residuals related to her accepted lumbosacral strain, which is the issue in this case. As the weight of medical evidence is determined by its reliability, its probative and convincing quality, the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion,<sup>5</sup> and as Dr. Kriz's report is deficient in several of these criteria, it does not outweigh the multiple reports from appellant's treating physicians which support continued injury residuals, related partial disability, and the need for continuing work restrictions.<sup>6</sup> Because Dr. Kriz's report is deficient in several criteria, it cannot constitute the weight of the medical opinion evidence of record, and therefore merely creates a conflict in medical opinion evidence of record which requires resolution for the Office to justify termination of compensation and medical benefits.

Therefore, the Office did not meet its burden of proof to justify termination of monetary compensation benefits in this case. The Office, further, did not meet its burden of proof to terminate appellant's entitlement to medical benefits. The Office cited Dr. Kriz's report as indicating that appellant required no further medical treatment, since the "lumbar strain ... has resolved."<sup>7</sup> However, the Board notes that Dr. Kriz specifically stated that "Further treatment with Dr. Figueroa [the neurologist] does not seem to be medically indicated or necessary."<sup>8</sup> Dr. Kriz did not specifically address the issue of the absence or presence of residuals, either

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<sup>5</sup> See *Naomi A. Lilly*, 10 ECAB 560 (1958).

<sup>6</sup> Particularly when some of the subsequently submitted reports from appellant's physicians also directly support unresolved lumbar strain.

<sup>7</sup> Which the Board has found was an unrationalized conclusion.

<sup>8</sup> The Board notes that appellant's accepted condition was a musculoskeletal condition and not a neurological condition.

disabling or nondisabling, and, in that same report discussed appellant's need for further evaluation by Dr. Joseph Sena, the orthopedist, who had treated her previously for her accepted condition. This report, therefore, is not dispositive on the issue of whether appellant is entitled to further medical benefits.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated July 10, 1997 and December 2, 1996 are hereby reversed.

Dated, Washington, D.C.  
May 18, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member