

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RHODA C. CARGILL and U.S. POSTAL SERVICE,
POST OFFICE, Marysville, WA

*Docket No. 98-2251; Submitted on the Record;
Issued April 11, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective October 21, 1997.

On February 18, 1994 appellant, then a 40-year-old letter carrier, filed a notice of traumatic injury alleging that she injured her neck and back on February 16, 1994 when her right foot slipped and she caught herself in the course of her federal employment. The Office accepted the claim for a cervical strain and a right shoulder strain and appellant received continuation of pay.¹

On July 1, 1994 Dr. Marc E. Lee, appellant's treating physician and a Board-certified family practitioner, reviewed appellant's history and conducted a physical examination. He diagnosed cervical and right shoulder strain secondary to her February 16, 1994 work-related injury, low back pain with reported exacerbation from prior work-related injury and fibromyalgia. On July 20, August 5 and 19, 1994, Dr. Lee again diagnosed fibromyalgia. He checked "yes" to indicate that the condition was due to appellant's February 16, 1994 injury and to indicate that she was totally disabled for her usual work.

On August 8, 1994 Dr. Santosh Kumar, a physician Board-certified in physical medicine and rehabilitation, examined appellant for neck and back pain syndrome. Dr. Kumar reviewed appellant's history, performed an examination and reviewed the objective testing. He stated that on February 16, 1994 appellant suffered a probable temporary soft tissue sprain and pain. Dr. Kumer stated that appellant had an overwhelming subjective carryover of somatic symptoms. He stated that appellant had the physical capability to perform her preinjury work.

¹ On November 25, 1991 appellant filed a notice of traumatic injury alleging that she injured her right ankle, right knee, left shoulder and tail bone when she slipped and fell down some stairs on that same date in the course of her federal employment. The Office accepted this claim for a right knee contusion, left shoulder strain and right ankle strain. The Office subsequently doubled appellant's claims.

On November 1, 1994 Dr. Kim B. Wright, a Board-certified neurological surgeon, treated appellant for neck, low back and leg pain. Dr. Wright stated that a magnetic resonance imaging (MRI) scan of the cervical spine demonstrated a small disc herniation at C5-6 with osteophytic spurring and a mild compromise of the neural foramina. She further stated that there was a compromise of the neural foramina at C4-5 bilaterally. Dr. Wright stated that appellant's February 1994 injury probably significantly aggravated her neck condition which has left her with a chronic problem due to the disc herniation and spondylitic changes. She stated that appellant's lumbar spine problems were related to a facet arthropathy problem.

By decision dated March 20, 1995, the Office disallowed appellant's claim for compensation. In an accompanying memorandum, the Office found that the record failed to contain any rationalized medical evidence indicating that appellant currently suffers residuals from her February 16, 1994 injury or that she sustained any disability wage loss.

On March 31, 1995 Dr. Wright stated that appellant gave a good history that her symptoms of neck and back pain were initiated by a fall at work in 1991 and severely aggravated by a second injury on February 16, 1994. She assumed that appellant's low back condition as well as her cervical spondylosis were due directly to her work-related injury.

On April 3, 1995 appellant requested an oral hearing.

On August 29, 1995 Dr. Gary Schillhammer, a Board-certified family practitioner, reviewed appellant's history and clinical summaries. Dr. Schillhammer stated that appellant had a work-related injury on February 16, 1994 and that this correlated with an MRI scan demonstrating disc herniations at C3-4 and C5-6. He stated that this continued to provide disability and that the work-related injury remained a major obstacle to appellant's return to her usual employment.

By decision dated November 14, 1995, the Office hearing representative reversed the Office's previous decision terminating benefits. The hearing representative also indicated that appellant had established entitlement to compensation benefits. He stated, however, that the Office should refer appellant to a second opinion physician for a rationalized opinion addressing whether appellant continued to suffer residuals from her employment injuries.

On February 15, 1996 the Office referred appellant, along with a statement of accepted facts, to Dr. Loy E. Cramer, a Board-certified orthopedic surgeon, and Dr. John Chapman, a neurologist and Board-certified pediatrician, for a second opinion examination.

On March 1, 1996 Drs. Cramer and Chapman rendered their second opinion examination. The physicians indicated that they reviewed the history of appellant's injuries in November 1991 and February 1994. They recorded appellant's complaints of pain in her neck, upper extremity, lower back and lower extremity. The physicians also reviewed the medical evidence of record. They performed physical and musculoskeletal examinations. They found a complaint of low back pain upon the release of approximately one pound of axial loading on the vertex of the skull and that en bloc rotation was positive to the left. They found that straight leg raising was done to 40 degrees bilaterally with complaints of posterior thigh pain, but that appellant obtained full knee extension while sitting erect. They reviewed x-rays and found changes at C4-5 and C5-6.

They diagnosed status post strain cervical and lumbar spine, status post contusion of the coccyx, status post strain right and left shoulder and degenerative disc changes to the cervical spine. They opined that there were no residuals from the injuries under consideration and that the degenerative changes in the cervical spine preexisted the reported injuries. They further stated that there was no evidence of aggravation of the preexisting degenerative changes. The physicians opined that appellant recovered from her November 1991 and February 1994 injuries and that there were no objective findings related to these injuries. They also indicated that there were no consistent physical findings of cervical, lumbar, coccygeal or shoulder impairment which would preclude appellant from her usual employment.

On April 19, 1996 the Office issued a notice of proposed termination of compensation on the basis that disability resulting from appellant's injury had ceased. Appellant was allowed 30 days to submit additional evidence or argument.

On April 22, 1996 the Office medical adviser reviewed the reports of Drs. Cramer and Chapman. The medical adviser stated that the physicians' findings of a global decrease in sensation to pin prick indicated that the complaint was nonorganic. Moreover, he found that appellant's complaints of pain at 40 degrees straight leg raising when lying down combined with findings of full knee extension while sitting also demonstrated that this complaint was nonorganic. The Office medical adviser stated that the same was true for appellant's complaints of pain with one pound of axial loading and with en bloc rotation. He stated that appellant's osteophyte found on November 1, 1994 predated her injury. Finally, the Office medical adviser opined that there was no objective evidence or reasonable medical rationale to indicate that appellant had residuals from her employment injuries.

On May 1, 1996 Dr. Wright diagnosed a small disc protrusion, an osteophytic spur, foraminal narrowing, a mild compression of the cervical cord primarily at C5-6 and some foraminal narrowing at C4-5. Dr. Wright noted appellant's descriptions of her injuries in 1991 and 1994. She stated that based upon appellant's description of the onset of her symptoms that they resulted from her 1991 slip and fall and were aggravated by her 1994 slip and near fall.

On May 1, 1996 Dr. Paul E. Schwaegler, a Board-certified orthopedic surgeon, treated appellant for back and left lower extremity pain. Dr. Schwaegler recorded appellant's history of her February 1994 injury. He stated that an MRI scan showed early levels of desiccation of the L5-S1 level. Dr. Schwaegler indicated that he was not sure of the etiology of appellant's radicular-type pain, but noted that it followed the S1 dermatome and that, due to persistent back pain, it could be discogenic, related to her L5-S1 disc. On May 14, 1996 he, again, reviewed the history of appellant's February 16, 1994 injury. Dr. Schwaegler noted that appellant continued to suffer lower back pain radiating down her left lower extremity. He stated that an MRI scan showed a disc injury at the L5-S1 level and that this could be causing appellant's lower back problems. Dr. Schwaegler noted that he performed a left S1 nerve block which provided early relief of her symptomology. He stated that appellant's symptomology was directly related to her disc injury which occurred at the time of her February 16, 1994 work injury.

By decision dated June 6, 1996, the Office terminated appellant's compensation because the weight of the medical evidence established that appellant's disability resulting from her February 16, 1994 injury had ceased.

On June 17, 1996 appellant's representative requested an oral hearing.

By decision dated May 7, 1997, the Office hearing representative found that a conflict existed between the opinions of Dr. Cramer, concluding that the residuals of appellant's employment injuries had resolved, and the contrary opinions of Drs. Wright, Schillhammer and Lee. The hearing representative, therefore, set aside the Office's June 6, 1996 decision terminating compensation benefits and remanded the case for the Office to obtain an impartial evaluation.

On June 25, 1997 the Office referred appellant to Dr. Charles Peterson, a Board-certified orthopedic surgeon, for a referee examination.

On July 15, 1997 Dr. Peterson reviewed the history of appellant's November 1991 and February 1994 employment injuries. He also reviewed the treatment appellant received for these injuries. Dr. Peterson conducted a physical examination including motion testing of appellant's lumbar and cervical spines. With regard to appellant's lumbar spine, he found that appellant could forward flex to 80 degrees, hyperextend to 15 degrees, rotate to 30 degrees and lateral bend to 30 degrees. Dr. Peterson's examination of the neck revealed that appellant had flexion to 30 degrees, hyperextension to 15 degrees, rotation of 60 degrees and lateral bending of 60 degrees. He noted that straight leg raising was mildly painful on the back. Dr. Peterson noted that sensory examination by pinprick and light touch was normal. He found that motor function and hip function was normal. Dr. Peterson found tenderness to palpation in the lower lumbar region and off the sacroiliac region. He found that appellant's sensory, motor and reflexes were all normal in the upper extremities. Dr. Peterson found tenderness to palpation in the trapezius muscles and tenderness in the posterior cervical region of a mild nature. His examination of the right shoulder revealed tenderness anterolaterally over the shoulder with full range of motion. In regard to the shoulder, Dr. Peterson found marked pain with impingement sign and pain with supraspinatus stress. His review of x-rays of the lumbar spine were within normal limits, showing mild degenerative changes at L5-S1. Dr. Peterson diagnosed chronic lumbar strain with possible spondylolysis, herniated lumbar disc by history and previous MRI scan, chronic neck pain, chronic cervical strain by MRI scan and right shoulder impingement syndrome. He stated that there were no objective findings to support impairment. Dr. Peterson concluded that appellant had no indication of ongoing impairment to her neck or back. He opined that appellant recovered from her injuries and that there were no objective physical findings indicating that appellant could not perform her usual work. Finally, Dr. Peterson stated that he ordered new MRI scans of appellant's cervical and lumbar spines.

On July 23, 1997 Dr. Peterson interpreted MRI scans of appellant's lumbar and cervical spine. He stated that the MRI scan of appellant's lumbar spine showed very minimal early desiccation at the L5-S1 disc, but that it was essentially normal. Dr. Peterson stated that the MRI scan of appellant's cervical spine showed some degeneration of the C5-6 disc with a left posterior paracentral protrusion of the disc with osteophytes. He said that since appellant's right side looked normal that it did not support appellant's right side symptoms. Dr. Peterson stated that the MRI scans did not confirm impairment.

On July 28, 1997 Dr. Peterson reviewed additional medical evidence of record. He stated that his opinion remained unchanged.

On September 16, 1997 the Office issued a notice of proposed termination of compensation on the basis that appellant's accepted conditions had resolved. Appellant was allowed 30 days to submit additional evidence and argument.

By decision dated October 22, 1997, the Office finalized its proposed termination of compensation. In an accompanying memorandum, the Office found that the weight of the medical opinion rested with the well-rationalized opinion of Dr. Peterson, the referee examiner.

Appellant subsequently requested a hearing which was held on March 24, 1998.

Prior to the hearing appellant submitted a July 29, 1997 report from Dr. Wright. Dr. Wright indicated that an MRI scan of appellant's lumbar spine was notable for degenerative disc changes at L5-S1 without significant nerve root impingement. She stated that the cervical MRI scan demonstrated deterioration of the disc space at C5-6 with posterior osteophytic spurring causing compromise of both neural foramina, left greater than right and that there was also moderate foraminal narrowing on the left at C4-5. Dr. Wright opined that appellant's neck symptoms were most likely due to the degenerative changes that have developed at C5-6 as a result of the disc herniation present since her injury in 1991.

By decision dated May 15, 1998, the Office hearing representative affirmed the Office's October 22, 1997 decision terminating benefits. The hearing representative found that the well-reasoned opinion of Dr. Peterson, the referee examiner, was entitled to the weight of the medical evidence.

The Board finds that the Office met its burden in terminating appellant's compensation benefits effective October 21, 1997.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.³ Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.⁴ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁵

In the present case, the Office accepted appellant's claim for a cervical and tight shoulder strain and authorized appropriate compensation. Subsequently, Dr. Lee, appellant's treating physician and a Board-certified family practitioner, Dr. Wright, a Board-certified neurological surgeon, and Dr. Schillhammer, a Board-certified family practitioner, submitted medical reports

² *Frederick Justiniano*, 45 ECAB 491 (1994).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

indicating that appellant continued to suffer residuals from her accepted employment injuries. These opinions, however, were contradicted by the second examination opinion of Dr. Cramer, a Board-certified orthopedic surgeon and Dr. Chapman, a neurologist and Board-certified pediatrician, who stated that appellant had recovered from her November 1991 and February 1994 injuries. Because of the conflict between these reports, the Office hearing representative properly referred appellant to an impartial medical examination pursuant to section 8123 of the Federal Employees' Compensation Act.⁶

In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial specialist, the opinion of such a specialist will be given special weight if the opinion is based on proper factual background and well rationalized.⁷ In this case, Dr. Peterson, a Board-certified orthopedic surgeon, thoroughly reviewed appellant's history and performed a complete physical examination. In fact following his initial review of the medical evidence in his July 15, 1997 report, Dr. Peterson issued a supplemental report on July 28, 1997 addressing any evidence not reviewed in his earlier report. Dr. Peterson concluded that, based on the absence of any objective findings from his complete physical examination, based on normal x-rays of appellant's cervical and lumbar spine, and based on his normal interpretations of MRI scans of appellant's cervical and lumbar spines, that appellant had recovered from her accepted employment injuries. Because Dr. Peterson's opinion was based on a proper factual background and supported by medical rationale, his opinion, as that of the impartial specialist, constitutes the weight of the evidence. Moreover, the July 29, 1997 report from Dr. Wright is essentially the same as her earlier reports, which contributed to the conflict in the medical evidence found by the Office, and is, therefore, not sufficient to overcome the determinative weight accorded to the opinion of the referee examiner.

⁶ 5 U.S.C. § 8123 *et seq.*

⁷ See *Jack R Smith*, 41 ECAB 691 (1990).

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 15, 1998 is affirmed.

Dated, Washington, D.C.
April 11, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member