

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIDGETTE M. EDWARDS and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

*Docket No. 98-93; Submitted on the Record;
Issued February 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 11, 1995.

The Office accepted that appellant, then a 34-year-old letter carrier, sustained an injury to her back on August 27, 1993 when she put a tray of mail weighing approximately 20 pounds into a hamper. Appellant stopped work on the date of injury. The Office accepted the claim for herniated nucleus pulposus L4-5 and paid appropriate compensation.

In an October 30, 1995 decision, the Office terminated appellant's compensation effective November 11, 1995 on the grounds that appellant had no continuing disability or work-related residuals as a result of the accepted work-related condition. The Office found that the weight of the medical evidence rested with the July 25, 1995 report of Dr. Robert M. Yanchus, a Board-certified orthopedic surgeon, who acted as the impartial examiner to resolve the conflict in medical evidence. Appellant requested reconsideration and in decisions dated November 13, 1995, April 26, 1996 and June 26, 1997, the Office denied modification of its prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective November 11, 1995.

Where, as here, the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.²

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

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

In this case, the Office, in its October 30, 1995 decision, noted that a conflict in medical opinion was created when Dr. David A. Stone, a physiatrist and appellant's treating physician, recommended that appellant could work light duty four hours per day while Dr. Patrick G. Laing, a Board-certified orthopedic surgeon and a second opinion physician, opined that appellant was able to resume her full duties as a mailhandler. The Office properly referred appellant to Dr. Yanchus, a Board-certified orthopedist, for an impartial evaluation. In his report of July 25, 1995, Dr. Yanchus reviewed the statement of accepted facts, all medical and factual evidence of file and performed a thorough medical examination. He opined "regarding any objective findings to demonstrate a herniated disc at this time, the answer would be yes, from the standpoint of a magnetic resonance imaging (MRI) scan of March 7, 1995 demonstrating a protrusion at the L5-S1 level. However, this is definitely smaller than the protrusion noted on September 14, 1993. From a physical standpoint, however, there are no objective findings to demonstrate a current herniated disc; specifically, appellant is able to bend forward 90 degrees reversing her lumbar curve with no difficulty. Straight leg raising seated/supine is excellent at 90/80 degrees with no tension signs or symptoms. It is my opinion, based on reasonable medical certainty, that appellant could perform her job as letter carrier with no restrictions."

In situations when there exists opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³

The Board finds that the weight of the medical evidence rests with the July 25, 1995 report of Dr. Yanchus, to whom the Office referred appellant, who determined that appellant was capable of performing her job as a letter carrier with no restrictions and, thus, had no continuing residuals of the work injury of August 27, 1993. Dr. Yanchus' July 25, 1995 report is sufficiently rationalized and responsive to the Office's inquiries to be entitled to special weight. Dr. Yanchus was provided with a statement of accepted facts, the entire medical record with treatment notes and diagnostic findings, and performed his own examination of appellant. Based on his findings, Dr. Yanchus indicated that the March 7, 1995 MRI scan demonstrating a protrusion at the L5-S1 level was smaller than the protrusion noted on September 14, 1993. He further indicated that from a physical standpoint, however, there were no objective findings to demonstrate a current herniated disc. He opined that appellant could perform her job as a letter carrier with no restrictions. Dr. Yanchus' report was based on accurate facts, thorough examination and all medical records and diagnostic results available. Dr. Yanchus' conclusion is supported by medical rationale and is fully responsive to the inquiries of the Office. Thus, the Board finds that the Office could properly rely on Dr. Yanchus' report, that appellant is capable of working and that there are no continuing residuals of the work injury of August 27, 1993, when it terminated appellant's compensation effective November 11, 1995.

Following the Office's termination of her compensation, appellant submitted additional medical evidence and argument.

In a November 7, 1995 letter, appellant requested reconsideration. In a separate undated letter, appellant argued that Dr. Laing, the second opinion examiner, had difficulty hearing her and made numerous errors in his report regarding her diabetes history and symptoms. Appellant

³ 5 U.S.C. § 8123(a); *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

stated that she was still suffering from her ankle injury, which she had previously filed a claim for. Appellant argued that her MRI scan of March 1995 demonstrated that she had a herniated disc. Appellant also complained of a painful menses due to a fibroid tumor and stated that this increases her back and ankle pain.

A progress note from Dr. Stone noted that appellant complains of pain in her back and intermittent leg pain. She occasionally lifts her nephew, who weighs 21 pounds, and this increases her pain. Gynecologic problems were noted which results in a painful menses. It was also noted that appellant had a reinjury four or five weeks ago while at physical therapy. Examination findings were summarized with an assessment of status post large central herniated nucleus pulposus with recent left lumbosacral sprain/strain. Dr. Stone referred appellant for an evaluation of depression and memory deficits and for spinal manipulation. He recommended appellant be given a trial of light-duty work with lifting no greater than 15 pounds for 4 hours a day with one week off per month for painful menses.

In an October 31, 1995 report, Dr. Brett R. Stacey, a Board-certified anesthesiologist, noted that he first met appellant in 1994. He provided the results of his examination and stated that it was similar to her 1994 examination. Dr. Stacey stated that appellant has chronic myofascial back and neck pain, a sleep disturbance, muscular deconditioning, mechanical left ankle pain, work issues and depressed affect. An integrated program, such as the intensive pain rehabilitation program, was suggested.

In a November 2, 1995 report, Dr. Caryn S. Felman, a licensed psychologist, stated that appellant's problems with short-term memory, chronic depression and chronic pain were all interrelated. An intensive pain rehabilitation program was recommended.

In a November 6, 1995 report, Dr. Stone stated that appellant's diagnosis was large central L4-5 disc herniation and chronic depression exacerbated by chronic pain. He stated that there was no evidence appellant can work an eight-hour day, but a repeat physical capacities evaluation was needed to confirm that.

By decision dated November 13, 1995, the Office denied modification of its prior order finding that the evidence and arguments submitted failed to demonstrate that appellant's complaints were causally related to the August 27, 1993 work incident.

In an undated letter, received by the Office on February 12, 1996, appellant again requested reconsideration. Documents concerning leave usage, which are irrelevant to the current claim of whether appellant has continuing injury-related disability, were submitted along with additional medical reports.

A November 15, 1995 Postal Form 3956 noted, by having the appropriate box checked, that appellant had a herniated disc (large-centrally located) and ankle fractures which were job related and that appellant was unfit for duty. Other than having the appropriate box checked to denote whether appellant's conditions were job related and her duty status, no medical findings or explanations were provided.

In a January 22, 1996 report, Dr. Sonya Noh stated that appellant has had chronic back pain from her herniated disc. She stated that appellant's back pain was somewhat exacerbated

during her menses as is the case for women in general during their menses. Dr. Noh opined that appellant's chronic back pain was not due to her small fibroids.

In a November 29, 1995 report, Dr. Stacey clarified the results of appellant's comprehensive pain evaluation. He noted the evaluation process and stated that there were 11 diagnoses, including the myofascial pain syndrome. Dr. Stacey stated that the basis for stating that the pain problem was work related was the history provided by appellant as well as the records provided by Dr. Stone.

In a January 2, 1996 report, Dr. Stone stated that the point of requesting another physical capacity evaluation in his November 6, 1995 letter was to allow appellant to understand what her present capacities were and what type of employment she could be capable of performing.

In a February 5, 1996 report, Dr. Felman related that appellant's DSM-IV diagnoses were pain disorder associated with both psychological factors and a general medical condition; depressive disorder; rule out dysthymia; work issues. Dr. Felman recommended an intensive pain rehabilitation program.

By decision dated April 26, 1996, the Office denied modification of its prior decision finding that the medical evidence was of little probative value when compared to the opinion of Dr. Yanchus.

In an undated letter, appellant again requested reconsideration, and argued that her new MRI scan report continued to show that she had a herniated disc, and submitted additional medical reports.

In a May 5, 1996 report, Dr. Hae-Dong Jho, a Board-certified neurologist, summarized the results of appellant's examination and recommended a lumbosacral MRI scan be performed to rule out an L4-5 herniated disc.

A May 22, 1996 lumbar MRI scan indicated moderate degenerative change of the L4-5 disc, with a moderate size midline herniation that touches the thecal sac and a component of posterolateral herniation to the left extending into the neural foramen. A June 13, 1996 lumbosacral x-ray indicated slight narrowing of the disc at L4-5 with minimal posterior end plate spurring.

In a June 19, 1996 medical report, Dr. Robert G. Liss, a Board-certified orthopedic surgeon, diagnosed central herniation at L4-5, and chronic lower back and left leg pain. Dr. Liss provided the results of his examination and noted that he had reviewed the May 22, 1996 MRI scan of the lumbar spine. He stated that, "While the finding on the MRI [scan] may well be responsible for this patient's pain, I am a little reluctant to recommend the consideration of surgical treatment in her case. The longstanding nature of her symptoms, the possible secondary gain involved, and the nonanatomic findings on her physical examination argue against surgical intervention in this case.... I think a reasonable level of activity would be for her to return to work in her letter carrier position lifting no more than 25 pounds on a regular basis. She could carry for three to four hours a day."

In a July 5, 1996 report, Dr. Louis E. Penrod, a Board-certified physiatrist, provided a history of appellant's injury, noted the results of the May 1996 MRI scan of the lumbar spine and

provided the results of his musculoskeletal examination. Dr. Penrod opined that appellant's clinical finding was consistent with radiographic findings of L4-5 herniated disc. He referred her to a neurosurgeon to be evaluated for a discectomy as her pain severely limits her routine of daily living.

In a July 23, 1996 report, Dr. AnneMarie S. Valko, a Board-certified physiatrist, diagnosed lumbar strain with underlying degenerative disc disease; left thoracolumbar scoliosis, exogenous obesity and chronic pain syndrome. Dr. Valko indicated that appellant had an abnormal MRI scan showing moderate degenerative changes at the L4-5 with a moderate sized midline herniation on the left consistent with her symptoms. She concurred with the concerns raised by appellant's surgeons that an operation was not advisable in light of some inconsistency and nonneurological examinations. Dr. Valko stated that she could not give appellant a full release to work and recommended that appellant continue in some type of a reconditioning, strengthening exercise program and weight reduction. She also recommended the initiation of antidepressants coupled with a short course of outpatient psychological counseling for chronic pain management and depression. Dr. Valko noted that appellant was waiting for her litigation and has essentially put her life on hold. She opined that she did not think appellant was totally disabled. Dr. Valko felt that appellant was capable of working in at least a full-time light, if not light medium, duty capacity at the present time. She stated that she did not see appellant doing repetitive heavy lifting and would not clear her to return to her full duties. Dr. Valko also stated that she suspected that there were psychosocial factors impinging on appellant's chronic pain syndrome.

Reports dated September 10 and 17, 1997 from the pain management center discussed appellant's pain and the treatments provided.

Dr. Penrod, in a November 7, 1996 medical report, noted that he saw appellant on July 5, 1996 and that his clinical findings at the time were consistent with the radiographic findings of an L4-5 herniated disc. He noted that, although appellant was referred to be evaluated for a discectomy, she declined those evaluations secondary to financial problems. Dr. Penrod concluded that, "since appellant's pain severely limits her daily routines, and until such time as the issue of surgical intervention is addressed, I would consider her to be temporarily totally disabled as a letter carrier."

By decision dated June 26, 1997, the Office denied modification of its prior order finding that the medical and factual evidence was not sufficient to establish that any current medical condition was causally related to appellant's work injury of August 27, 1993.

The Board notes that the additional medical evidence is insufficient to either create a conflict in the medical evidence or to overcome the weight of the medical evidence as represented by Dr. Yanchus' report.

The Board notes that, while Dr. Stone continued to diagnose a herniated disc and depression, he failed to provide any objective findings from his examinations or provide an opinion as to the relationship of the diagnosed conditions to the accepted work injury. Although in his October 3, 1995 report, Dr. Stone diagnosed a recent left lumbosacral sprain/strain, he did not specifically address whether appellant's accepted back condition caused this recent condition or whether appellant sustained the injury by lifting her nephew or while engaged in physical therapy, as she asserted. The Board notes that the physical therapy notes in the record do not

support an injury occurring during any of the physical therapy sessions. Similarly, Dr. Stacey continued to diagnose myofascial pain syndrome along with various other conditions, but did not opine whether she had any disability due to her accepted conditions. For example, in his report of November 29, 1995, Dr. Stacey stated that appellant's pain problem was work related based upon the history provided by appellant and the records provided by Dr. Stone, but failed to provide the necessary medical rationale to support causal relation or provide any objective findings from Dr. Stone's records or his examination of appellant to support such a diagnosis. Likewise, in his February 5, 1996 report, Dr. Feldman opined that appellant had pain disorder associated with both psychological factors and a general medical condition and depressive disorder, but failed to provide any objective findings to support such diagnosis or relate these conditions to any of appellant's work-related injuries. Moreover, the Board notes that a depressive disorder is not an accepted condition in this case and, as evidenced from Dr. Feldman's November 2, 1995 report, appellant had been suffering from depression as early as 1989, which predates the work injury in this case. In her January 22, 1996 report, Dr. Noh indicated that appellant's back pain was exacerbated during her menses and opined that her chronic back pain was probably not due to her small fibroid condition. However, Dr. Noh failed to provide a reasoned medical opinion on what caused appellant's back pain and, thus, her report has no value in demonstrating a causal relation between appellant's back pain and the work injury.

Dr. Liss, in his June 19, 1996 medical report, attributed appellant's pain to her herniated disc, but he failed to indicate any additional or different findings from those contained in Dr. Yanchus' report and, thus, his report was insufficient to create a conflict with Dr. Yanchus' finding that appellant was capable of performing her job as a letter carrier with no restrictions. In his July 5, 1996 report, Dr. Penrod related that appellant had a radiographic finding of a L4-5 herniated disc, but failed to relate this condition to appellant's work or discuss the causal relationship of appellant's pain. Although Dr. Valko, in her July 23, 1996 report, stated that appellant may not return to full duty, it is not clear from her report whether this was due to appellant's chronic pain syndrome, appellant's disc herniation or the fact that appellant needed a reconditioning program since she had been out of work since September 1993. In his November 7, 1996 report, Dr. Penrod indicated that he would consider appellant temporarily totally disabled until the issue of surgical intervention was addressed. However, the record reflects that Dr. Liss, in June 1996, and Dr. Valko, in July 1996, specifically addressed the issue of surgical intervention and advised against it. Inasmuch as Dr. Penrod rendered his report after Drs. Liss and Valko had addressed the issue of surgical intervention, it appears as though Dr. Penrod did not have access to appellant's previous medical records. Accordingly, Dr. Penrod's opinion that appellant is temporarily totally disabled is of diminished probative value as he did not have a complete medical history of appellant.

Appellant argued that her medical evidence, in particular the MRI scan reports, continued to show that she had a herniated disc. It is not disputed that appellant had a herniated disc. Dr. Yanchus found evidence of a herniated disc from the March 7, 1995 MRI scan, but opined that from a physical standpoint, appellant could perform her job as a letter carrier with no restrictions. The most recent MRI scan report of May 22, 1996 continues to show evidence of a herniated disc. The mere fact that appellant had a herniated disc is not enough to create a conflict in the medical evidence or to overcome the weight of the medical evidence as represented by the report of Dr. Yanchus which supported the fact that appellant was capable of working and, thus, had no continuing residuals from her work injury of August 27, 1993. As the

earlier discussion demonstrated, the most recent medical reports of record continue to support the fact that, although appellant had a herniated disc, she was capable of some kind of employment. The Board further notes that, although appellant disagreed with the report of Dr. Laing, the second opinion physician, this argument has no bearing in this case as the termination decision was based on the weight of the medical evidence as represented by the report of Dr. Yanchus, the impartial medical examiner in this case. Similarly, appellant's arguments pertaining to her earlier ankle injury claim are irrelevant as it is not an issue in this case.

The decision of the Office of Workers' Compensation Programs dated June 26, 1997 is affirmed.

Dated, Washington, D.C.
February 4, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member