U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of JOANN GIACONA and U.S. POSTAL SERVICE,
POST OFFICE, Albany, NY

*Docket No. 99-525; Submitted on the Record;*
*Issued February 16, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant had any disability or medical residuals after October 10, 1998, causally related to her November 15, 1991 muscular soft tissue lumbosacral strain injury.

The Office of Workers' Compensation Programs accepted that on November 15, 1991 appellant, then a 42-year-old casual employee, sustained a lumbosacral strain as she was pushing a full cage out to the loading dock. She stopped work on November 17, 1991 and did not return.

On November 22, 1991 appellant came under the care of Dr. Gregory Shankman, a Board-certified orthopedic surgeon, and has remained under his care. He found appellant to be totally disabled due to her November 15, 1991 injury. By January 16, 1992 a magnetic resonance imaging (MRI) scan and medical reports, thereafter, appellant was diagnosed by Dr. Shankman with herniated discs at L4-5 and L5-S1, "probably on a traumatic basis." His treatment has consisted entirely of medication therapy.

On December 2, 1992 appellant was examined by Dr. Warren T. Rhinehart, a Board-certified orthopedic surgeon, for a second opinion evaluation. By report dated December 16, 1992, he found that appellant demonstrated a marked discrepancy between her objective physical findings and her subjective complaints and that she had no neurological objective findings to correlate with the MRI scan findings of two small central herniated discs at L4-5 and L5-S1. Dr. Rhinehart diagnosed chronic pain syndrome with a marked psychophysiologic overlay of symptoms and recommended intensive rehabilitation focusing on both physical and psychological factors. Dr. Shankman, however, disagreed with Dr. Rhinehart and claimed that appellant would not benefit from rehabilitation and opined that she remained totally disabled.

On May 19, 1995 appellant was examined by Dr. Eliot M. Friedman, a Board-certified orthopedic surgeon, who diagnosed chronic lumbosacral sprain with bilateral sciatic complaints; noted that, although appellant denied difficulty with her back prior to November 15, 1991, the record indicated that she had been seen before that date for problems with her back which were thought to be some type of fibromyositis and noted that on December 6, 1992 Dr. Rinehart

diagnosed a chronic pain syndrome secondary to low back sprain and marked psychophysiological overlay symptoms, and MRI scan evidence disproportionate to physical findings. Dr. Friedman diagnosed chronic lumbosacral sprain with bilateral sciatic complaints but opined that appellant had a psychosomatic problem that completely disabled her and inasmuch as the problem was related to the November 15, 1991 injury, it was partially causally related. He also noted that appellant's lumbar disc protrusions were probably caused by degenerative changes in her lower back and did not indicate the need for surgery.

On December 8, 1997 Dr. Shankman noted that appellant had no scoliosis or kyphosis, no excessive lumbar lordosis, flexion to 50 degrees with 10 degrees of side bending on each side, that reflexes were 2+ and symmetric, that she had good sensation to light touch and pinprick, that she had a 4+ dorsales pedis pulse, intact motor and sensory function, no other heat, redness, swelling or other palpable abnormalities. He noted that she had good strength in her muscle groups, that she ambulated with a heel to toe gait bearing weight evenly on both extremities, that she had no motor weakness, that she could walk a heel/heel and toe/toe gait and that she had negative straight leg raising bilaterally, negative Lasegue's test, negative Patrick's test and Eli's test, negative reverse straight leg raising and no point tenderness. Dr. Shankman diagnosed a herniated disc.

On January 13, 1998 and again on April 1, 1998 Dr. Shankman indicated that appellant was totally disabled. Diagnosis was noted as herniated nucleus pulposus.

On June 15, 1998 the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the complete case record, to Dr. Patrick Hughes, a Board-certified neurologist, for a second opinion as to whether appellant remained disabled due to a neurologic condition.

On July 6, 1998 the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the complete case record, to Dr. Patrick Rourke, a Board-certified orthopedic surgeon, for a second opinion as to whether appellant remained disabled due to her accepted employment condition of lumbosacral strain and as to whether she has injury residuals which warranted further medical treatment. However, no second opinion orthopedic examination was ever conducted.

On July 21, 1998 the Office also referred appellant, together with a statement of accepted facts, questions to be addressed and the complete case record, to Dr. Lawrence Carmen, a Board-certified psychiatrist, for a second opinion as to whether appellant was disabled due to a psychiatric condition.

By report dated July 1, 1998, Dr. Hughes reviewed appellant's medical history[1] and her history of injury and present complaints, conducted a physical neurological examination, reviewed the records and diagnosed "acute lumbosacral strain, causally related to her work injury of November 15, 1991, resolved." He opined that appellant's MRI scan findings were age related and were not causing symptoms, that appellant exhibited symptom magnification, that she did not have a disability, that she could perform her job eight hours per day, that she had reached maximum medical improvement and that there was no further need for medical treatment or job restrictions.

By report dated July 30, 1998, Dr. Carmen reviewed appellant's medical and psychiatric history, noted that she had worked for the employing establishment for eight days prior to her injury, noted that appellant claimed pain 24 hours per day from her head to the bottom of her feet, noted that she resented a psychiatric examination and noted that appellant believed that her injury also caused her carpal tunnel syndrome. He reviewed appellant's family history, noted that her husband was also claiming compensation for a back injury and noted her history of drug use. Dr. Carmen performed a mental status examination and opined that appellant had no psychiatric diagnosis. He noted that appellant made it crystal clear that a very significant part of her whole condition was that she was on compensation and did not want to jeopardize that money. Dr. Carmen opined that appellant was determined that she will not be working and that she blamed everything on her November 15, 1991 back strain injury. He opined that there was a lack of physical findings but that psychologically he did not see that she would improve as she perceived herself as totally incapacitated and unable to return to work and had no desire to change her status. Dr. Carmen found no objective emotional findings due to the work injury, no emotional disability and no possibility for improvement as the limitations on appellant's ability to work were those she imposed herself.

On August 26, 1998 the Office issued appellant a notice of proposed termination of compensation finding that the reports of Drs. Hughes and Carmen served as a basis for the termination and supported that appellant had no disability causally related to her accepted condition of lumbosacral strain. The Office found that these reports were well rationalized and were based upon a complete and accurate history and statement of accepted facts. The Office found that Dr. Shankman's reports supporting continuing disability were brief, unrationalized and based upon subjective complaints rather than on objective findings. The Office further found that he related appellant's alleged ongoing disability to the diagnosis of herniated discs, which were not conditions accepted by the Office as being injury related. Appellant was given 30 days within which to submit contrary evidence.

In response appellant submitted a September 10, 1998 MRI scan report revealing a tiny central protrusion at the L4-5 disc and a small central paracentral protrusion at L5-S1.

By decision dated October 2, 1998, the Office finalized the proposed termination of compensation effective October 10, 1998. The Office found that the weight of the medical evidence of record established that appellant had no further disability resulting from her November 15, 1991 muscular soft tissue lumbosacral strain.

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[1] He noted that appellant had a prior head injury when she jumped out of a car which resulted in amnesia and unconsciousness, a history of drug abuse, physical abuse, depression and arthritis, a motor vehicle accident in October 1997 in which she hurt her neck, eye surgery in 1994 and a heart catheterization.

The Board finds that appellant had no disability or medical residuals after October 10, 1998, causally related to her November 15, 1991 muscular soft tissue lumbosacral strain.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] 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.[3] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[4] 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.[5]

The Office met its burden of proof to terminate both compensation and medical benefits in this case.

In the instant case, the only medical evidence of record supporting continuing disability was provided by Dr. Shankman. In his reports indicating continuing total disability Dr. Shankman noted the diagnosis of appellant's disabling condition as a herniated nucleus pulposus, which was never a condition accepted by the Office as being injury related. He did not address any continuing disability due to the accepted condition of lumbosacral strain. In these reports of total disability, Dr. Shankman failed to provide any medical rationale supporting that the herniated discs at L4-5 and L5-S1 were causally related to the November 15, 1991 employment pushing incident or to the accepted soft tissue muscular strain injuries which were accepted as being injury related. In fact, in his December 8, 1997 report, Dr. Shankman reported only normal objective physical findings and identified no objective basis to support the diagnosis of herniated nucleus pulposus. He merely reported the diagnoses and did not discuss causation. Consequently, Dr. Shankman's unrationalized reports are insufficient to establish that appellant sustained herniated nucleii pulposii on November 15, 1991 in the performance of duty,[6] such that any disability due to these herniated discs would not be compensable under the Federal Employees' Compensation Act.

In contrast, Dr. Hughes provided a thorough and well-rationalized medical opinion based upon an accurate and complete statement of accepted facts and a review of the records, which determined that appellant's acute lumbosacral strain had resolved, that her MRI scan findings were age related and were nondisabling and nonsymptom producing and that appellant exhibited symptom magnification. He opined, based upon his objective physical examination, that appellant did not have any disability and that she could perform her job for eight hours per day, that she had reached maximum medical improvement and that no further medical treatment or

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[2] *Harold S. McGough*, 36 ECAB 332 (1984).

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

[4] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[5] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

[6] *See Jean Culliton*, 47 ECAB 728 (1996); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

job restrictions were necessary. As Dr. Hughes' report was based upon a complete and accurate factual and medical background and upon a thorough physical examination, it is entitled to great probative value on the issue of whether appellant had any further disability or injury residuals requiring further medical treatment.

Dr. Carmen's psychiatric report was likewise based upon a complete and accurate factual and medical history and upon a complete psychiatric examination. His report, therefore, is also entitled to great probative value on the issue of whether appellant had any psychiatric disability, causally related to her accepted lumbosacral strain injury or to the employment incident of November 15, 1991. Dr. Carmen found that appellant had no psychiatric disability causally related to either appellant's November 15, 1991 employment incident or to her lumbosacral strain. As appellant has presented no rationalized psychiatric evidence supporting that she developed a psychiatric disability causally related to her federal employment, his report constitutes the weight of the medical evidence on the issue and she has failed to establish that she is now currently disabled by an employment-related psychiatric condition.

The Office properly relied upon the well-rationalized reports of Drs. Hughes and Carmen to determine that appellant no longer suffers from disability or injury residuals requiring further medical treatment and appropriately terminated appellant's entitlement to compensation and medical benefits.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 2, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 16, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member