

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. ELZA and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 97-2275; Submitted on the Record;
Issued March 6, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant had disability after July 21, 1995 due to her May 5, 1988 employment injury.

Once the Office of Workers' Compensation Programs has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.³

On May 5, 1988 appellant, then a 25-year-old distribution clerk, sustained an employment-related lumbosacral strain with left lumbar radiculopathy. The Office paid compensation for periods of partial and total disability. By decision dated July 21, 1995, the Office terminated appellant's compensation effective July 22, 1995 on the grounds that she no longer had disability due to her May 5, 1988 employment injury. The Office based its termination on the opinion of Dr. Michael Rohan, a Board-certified orthopedic surgeon, to whom appellant was referred. By decisions dated April 16 and October 3, 1996 and July 1, 1997, the Office affirmed its July 21, 1995 decision.

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

³ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

The Board notes that the Office met its burden of proof to terminate appellant's compensation effective July 22, 1995 by determining that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Rohan.

In his opinion dated April 5, 1995, Dr. Rohan detailed appellant's factual and medical history and reported the findings of his examination. He reported the results of range of motion and other testing and indicated that appellant exhibited no spasm or tenderness in the lumbar spine. Dr. Rohan noted that appellant's stiffness on formal straight leg testing versus her lack of stiffness on informal straight leg testing suggested that she might have functional overlay. He noted that diagnostic testing revealed essentially normal results. Dr. Rohan indicated that appellant's employment-related lumbar strain, a soft-tissue injury, was of such a nature that it would have resolved; he indicated that appellant could return to her regular work as a distribution clerk. Dr. Rohan's opinion is based on a complete and accurate factual and medical history and contains reasoning which is in accord with his evaluation of the findings upon diagnostic testing and examination. He provided rationale for his opinion by explaining that the findings did not support the presence of a continuing employment-related disability; he suggested that appellant's continuing problems might be due to functional overlay.

Appellant submitted reports in which Dr. Michael Zindrick, an attending Board-certified orthopedic surgeon, recommended that she continue with work restrictions. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain a clear opinion that appellant had continuing disability due to her May 5, 1988 employment injury.⁴ In a report dated June 29, 1993, Dr. Zindrick indicated that appellant exhibited full range of back motion and other normal examination results; he also stated that diagnostic testing of her back revealed no abnormalities. Although Dr. Zindrick recommended restrictions, he did not explain how they comported with appellant's essentially normal findings. In form reports dated July 2, 1993 and February 7, 1994, Dr. Zindrick recommended restrictions but he did not explain how they were justified by the findings upon diagnostic testing and examination.⁵

After the Office's July 21, 1995 decision terminating appellant's compensation effective July 22, 1995, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after July 22, 1995 due to residuals of her May 5, 1988 employment injury. Given that the Board has found that the Office properly relied on the opinion of Dr. Rohan, in terminating appellant's compensation effective July 22, 1995, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her May 5, 1988 employment injury after July 22, 1995.

⁴ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁵ It appears from the record that appellant did not seek medical treatment for her condition between late 1993 and mid 1995.

Appellant submitted several reports, dated between mid 1995 and early 1996, in which Dr. Zindrick continued to recommend work restrictions. In a report dated January 23, 1996, he indicated that appellant had been diagnosed with chronic severe lumbar disc syndrome, lumbar radiculopathy and spondylosis of the L4-5 vertebral motor units. In a form report dated February 6, 1996, Dr. Zindrick diagnosed “persistent low back pain with lumbar radiculopathy and bulging L4-5, L5-S1 discs” due to the May 5, 1988 employment injury. These reports, however, are of limited probative value on the relevant issue of the present case in that they did not contain adequate medical rationale in support of their conclusions on causal relationship.⁶ Dr. Zindrick did not explain the medical process through which a soft tissue injury could cause disability for more than seven years. It has not been accepted that appellant sustained bulging discs due to her employment injury and he did not provide adequate support for this assertion.

Appellant also submitted a September 9, 1996 report in which Dr. Sylvia Thomas, an attending chiropractor, indicated that her continuing problems were due to her May 5, 1988 employment injury. Her opinion, however, has no probative value on the issue of continuing employment-related disability because her report does not constitute medical evidence within the meaning of the Federal Employees’ Compensation Act. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal spondylosis as demonstrated by x-ray to exist.⁷ However, Dr. Thomas did not indicate that appellant had spondylosis as demonstrated by x-rays to exist. Appellant also submitted administrative documents which she believed showed she had continuing employment-related disability, but the main issue of the present case is medical in nature and must be resolved by the submission of medical evidence.

⁶ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁷ 5 U.S.C. § 8107(a); see *Jack B. Wood*, 40 ECAB 95, 109 (1988).

The decisions of the Office of Workers' Compensation Programs dated July 1, 1997 and October 3, 1996 are affirmed.

Dated, Washington, D.C.
March 6, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member