

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS YOUNG and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA

*Docket No. 00-602; Submitted on the Record;
Issued November 20, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation.

On September 13, 1990 appellant, then a 33-year-old medical ward clerk, sustained a low back sprain when her chair slid out from under her and she fell on the floor. The Office accepted appellant's claim for low back strain.

In a report dated June 25, 1992, Dr. William Simpson, appellant's attending Board-certified orthopedic surgeon, stated that appellant's low back pain had decreased.

In a report dated October 31, 1996, Dr. Benjamin G. Cox, Jr., a Board-certified neurosurgeon specializing in spinal orthopedics and an Office referral physician, provided a history of appellant's condition, a review of the medical records and findings on examination. Dr. Cox stated that she could work eight hours a day with a prophylactic restriction against sitting for more than two hours at a time.

By letter dated June 18, 1997, the Office advised appellant that its proposed to terminate her compensation on the grounds that the weight of the medical evidence established that she had no residual disability causally related to her September 13, 1990 employment injury.

In a report dated July 17, 1997, Dr. Simpson diagnosed a herniated lumbar disc and superimposed chronic lumbar musculoligamentous sprain. He indicated that appellant's work restrictions included no standing for longer than 15 minutes at a time, no sitting for longer than 20 minutes at a time, no lifting more than 5 pounds from floor to waist level on a repetitive basis, 10 pounds frequently or 20 pounds occasionally, no repetitive lifting over shoulder level or lifting which required twisting of her trunk. Additional restrictions included no repetitive back bending or stooping, prolonged walking, sitting, or standing, repetitive kneeling, squatting, jumping or running, frequent stair climbing or climbing more than five stairs at any one time.

By letter dated October 21, 1997, the Office referred appellant to Dr. Fernando A. Ravessoud, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Simpson, appellant's physician, and Dr. Cox, the Office referral physician.

In a report dated December 9, 1997, Dr. Ravessoud provided a history of appellant's condition, a review of the medical evidence and findings on examination. He stated:

“[Appellant's] movements were slow and methodical. She had extreme laboring to move from a chair to a sitting position remaining flexed, stooped and bent during the maneuver. [Appellant's] gait was abnormal and markedly so with exaggerations in gait, limping on the right side and having to use the hands on different furniture pieces including the examining table and her chair to move about the room. [Her] pain behavior also included considerable verbalization of her pain and grimacing. [Appellant] states that she has been constantly in this severe pain for the better part of two years and at least three years since the pain has worsened. [She] specifically denies that this is a short-term flare, that this is more of her chronic condition.”

* * *

“[Appellant] states her main problem is her back pain. [Her] flexibility is difficult to assess due to compliance problem and severe verbalized complaints of pain. Flexion/extension range appeared to be limited, however, neurologic signs are negative for radiculopathy or neuropathy. She has symmetric reflexes in her knee and ankle. Straight leg raising test is negative as an indicator of neurologic impingement because pain complaints are noted when both the knee is flexed and straightened. Pulses are intact and the skin turgor is normal. Capillary filling is present in both lower extremities.”

* * *

“A [September 13, 1990] low back strain as a result of work-related injury for which the medical record evidence suggest[s] resolution of the condition sometime around 1992. Evidence of disc competency and work capacity exceeding work demands, i.e., successful pregnancy without significant medical documentation of lumbar disc disease[,] successful recovery [from] [Caesarian]-section again without significant medical evidence of exacerbation of spinal disease.”

* * *

“In my opinion, [appellant] no longer continues to suffer residuals of the [September 13, 1990] date of injury.”

* * *

“[Appellant’s] abnormal behavior suggests complaints that are out of proportion to objective findings. These appear to be more related to pain behavior not present at the time of her most recent physical examination with Dr. Simpson, not present at the time of her visit with Dr. Cox and never present during her treatments pursuant to the accident.

“Due to the lack of objective findings of impairment, further medical treatment is not indicated. Review of job description and job analysis indicates [appellant], from an objective basis, would be able to perform the material duties of her occupation (from her subjective complaints, [appellant] would be unable to do so). In the absence of objective findings to support her subjective complaints, [appellant] is released to the material duties of her former occupation without further physical limitations or restrictions or accommodations being necessary.”

By decision dated February 3, 1998, the Office terminated appellant’s compensation effective that date.

In an undated letter, appellant requested an oral hearing which was held on October 21, 1998.

In a report dated October 27, 1998, Dr. Simpson stated his disagreement with Dr. Ravessoud’s December 9, 1997 report.

In a report dated October 21, 1998, Dr. Alonzo Stakley stated that he had examined appellant five times beginning on July 8, 1997 for severe back pain which limited her walking, standing, sitting and sleeping. He stated that she had acute and chronic low back syndrome which had increased in severity over the past several years.

In a report dated February 2, 1998, Dr. Barry G. Lew stated that appellant had been a patient for three years and had continuing problems with back pain.

By decision dated December 23, 1998, the Office hearing representative affirmed the Office’s February 3, 1998 decision.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.¹

Section 8123(a) of the Federal Employees’ Compensation Act provides, in pertinent part: “If there is disagreement between the physician making the examination for the United States

¹ See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”²

In this case, due to the conflict in medical opinion between Dr. Simpson, appellant’s attending physician, and Dr. Cox, the Office referral physician, on whether appellant had any residuals causally related to her September 13, 1990 employment injury, the Office properly referred appellant to an impartial medical specialist for resolution of the conflict.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

The thorough and well-rationalized December 9, 1998 report of the impartial medical specialist, Dr. Ravessoud, established that appellant had no residual disability or medical condition causally related to her September 13, 1990 employment injury. He found no objective findings to support appellant’s complaints of disability and indicated that her behavior while being examined was inconsistent with his physical findings and with the medical evidence of record. He stated that appellant had no residual disability or medical condition causally related to her September 13, 1990 employment injury and was capable of performing her regular job. The Office therefore met its burden of proof in terminating appellant’s compensation, based on Dr. Ravessoud’s report.

After the Office’s February 3, 1998 decision terminating appellant’s compensation, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and finds that it has insufficient probative value to establish that appellant had residuals of her September 13, 1990 employment injury after February 3, 1998.

In a report dated October 27, 1998, Dr. Simpson stated his disagreement with Dr. Ravessoud’s December 9, 1997 report. However, as Dr. Simpson was on one side of the conflict of medical opinion which was referred to Dr. Ravessoud as the impartial medical specialist, his subsequent report is insufficient to outweigh or create a new conflict with Dr. Ravessoud’s opinion.⁴

The reports of Drs. Stakley and Lew are not sufficient to establish that appellant had any work-related disability after February 3, 1998 because they contain no physical findings on examination and no medical rationale explaining how appellant’s claimed continuing disability is causally related to her September 13, 1990 employment injury.

The decisions of the Office of Workers’ Compensation Programs dated December 23 and February 3, 1998 are affirmed.

² 5 U.S.C. § 8123(a); *see James P. Roberts*, 31 ECAB 1010 (1980).

³ *See Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

⁴ *See Dorothy Sidwell*, 41 ECAB 857 (1990).

Dated, Washington, DC
November 20, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member