

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUTH WEBB and U.S. POSTAL SERVICE,
POST OFFICE, Centreville, VA

*Docket No. 00-1929; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective April 24, 1999 on the grounds that she had no further employment-related disability.

The Office accepted that on July 28, 1998 appellant, then a 50-year-old distribution clerk, sustained a lumbosacral sprain in the performance of duty.¹ She had initially injured her back in a work-related incident in 1975² and was on light duty at the time of the 1998 injury. She stopped work and received wage-loss compensation.

By report dated December 17, 1998, Dr. Frederic T. Schwartz, a Board-certified neurological surgeon and appellant's treating physician, detailed appellant's physical examination and noted that previously obtained x-ray studies and magnetic resonance imaging (MRI) scans of the lumbar spine showed minimal disc bulge at L5-S1. The cervical MRI scan showed disc protrusions at C3-4 and C4-5, with a bulge at C5-6 and right-sided neuroforaminal narrowing at C5-6. X-rays of the hips showed degenerative changes bilaterally, without evidence of acute abnormalities. He noted that appellant had fallen at work on July 28, 1998 and, at almost five months postinjury, had no discernible cause for continued complaints of pain. Dr. Schwartz opined that appellant could return to work at any time.

On January 7, 1999 Dr. Francisco Ferraz, a Board-certified neurological surgeon, completed a work restriction evaluation noting that appellant could work 4 hours a day, with no lifting over 20 pounds and no back bending, squatting, kneeling or twisting. Dr. Ferraz noted the history of injury of July 28, 1998 wherein appellant had some sort of body impact and loss of

¹ Appellant's coworker had playfully pushed appellant, which caused her to trip over a tub and fall.

² See the OWCP File No. 25-0075429.

balance which resulted in a fall on the floor. He further reviewed the medical records of appellant's past back conditions.

Dr. Ferraz noted that the cervical MRI scan showed a very minimal central spur present at C4-5, there were some spondylotic changes but no changes from recent traumas and no disc herniations of any significance. The MRI scan of the lumbar spine indicated that changes from a previous surgery at L5-S1 with some disc degenerative changes. Changes of surgery were present on the left side. There were no disc breaks, ruptures or herniations present. Dr. Ferraz opined that appellant's lumbosacral strain should have resolved on an objective basis and her continuation of pain was probably related to the arthritic changes in the cervical and lumbar spine and the significant psychological emotional overlay and reservation on her part as far as her capability to work, to perform it well and the possibility of recurrence of the alleged disc herniations. He advised against strong pain medications and opined that if appellant was willing to work within the limitations provided and accept the presence of some discomfort, she would be able to perform her duties working four hours a day. Electromyograms (EMG's) of the lumbar spine taken in September showed no radiculopathies to the lower extremities.

Dr. Schwartz received a copy of Dr. Ferraz's report and advised that appellant could return to normal duty without restrictions. In an April 22, 1999 report, Dr. Schwartz opined that appellant could return to her previous duties responsibility prior to her July 28, 1998 injury.

Reports dated January 25 and February 10, 1999 from Dr. Rida N. Azer, a Board-certified orthopedic surgeon, linked appellant's current medical problems of cervical, lumbar and hip problems, as being related to the work injury of July 28, 1998. Dr. Azer noted that appellant had a past history of back surgery, in 1980 which left her with residual neurological deficit on the left side. He stated that the symptoms were now on the right side and that appellant's low back pain started since July 28, 1998 when appellant was injured at work when a coworker ran into appellant and she fell backward. Dr. Azer provided diagnosis of lumbar disc syndrome with herniated L4-5 and L5-S1 discs; cervical disc syndrome; and bilateral carpal tunnel syndromes status post-op to previous surgery. He opined that appellant's condition had deteriorated. Recommendations for further medical care and testing were provided along with explanations for further evaluation. A February 4, 1999 EMG/NVC test conducted by a physical therapist diagnosing bilateral C6 nerve root irritation, right L5 radiculopathy and left L5-S1 radiculopathy were also provided.

On March 18, 1999 the Office issued appellant a notice of proposed termination of compensation based on the opinion of Dr. Schwartz. Appellant was provided 30 days to submit additional evidence or argument.

In a letter dated March 23, 1999, appellant clarified the circumstances of her injury and advised about her prior back injury for which she had undergone surgery. Appellant further related that she was still disabled and could not return to work. Questions were raised about the logic of sending her back to employment activities. Appellant further advised that she had requested Dr. Azer to be her treating physician in January 1999.

By decision dated April 21, 1999, the Office terminated appellant's compensation effective April 24, 1999 finding that the additional evidence submitted was insufficient to

warrant a reversal or modification of finding that the weight of the medical evidence establishes appellant's capacity to return to work.

Appellant requested a hearing and submitted an April 27, 1999 report from Dr. Azer in addition to reports previously of record. In a report dated April 27, 1999, Dr. Azer opined that appellant's work injury of July 28, 1998 caused appellant's current conditions of lumbar disc syndrome with herniated L4-5 and L5-S1 discs, cervical disc syndrome, bilateral carpal tunnel syndromes status post-op to previous surgery. He advised his diagnoses were confirmed and supported by all objective clinical findings from his initial report of January 25, 1999 and objective testing rendered thereafter. Dr. Azer further clarified the credentials of the physical therapist who rendered the EMG and nerve conduction studies of February 1999. He also advised that appellant was not fit to perform her duties until her condition improves.

An August 6, 1999 note from Dr. Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon, noted that appellant had persistent symptoms in her neck and back, with previous disc surgery in 1979 or 1980. Results of the head compression test along with examination findings were provided. Dr. Jackson advised that the conditions for which appellant was examined were totally related and a result of injuries when a coworker slammed appellant and knocked her over two tubs of mail and she hit a steel cage and fell to a cement floor.

By decision dated December 8, 1999, an Office hearing representative affirmed the prior decision.

By letter dated February 2, 2000, appellant, through her attorney, requested reconsideration and presented arguments pertaining to the Office hearing representative's decision. Also submitted were medical reports and objective tests from the Fauquier Hospital for treatment received on September 22, 1999 and a December 27, 1999 report from Dr. Azer.

The September 22, 1999 hospital report diagnosed a contusion to appellant's back following a fall one hour prior to arrival. The September 22, 1999 x-ray report concluded that there were degenerative changes at L5-S1 with findings suspicious for acute compression fracture L1 which has taken place since the February 1999 examination.

In his December 27, 1999 report, Dr. Azer noted the results of his examination, advised appellant has cervical and lumbar disc syndrome and should see a neurosurgeon for further evaluation. He opined that appellant's condition, her treatment, her residuals and her limitations were caused by the July 28, 1998 injury. Dr. Azer further opined that appellant cannot return to work until her condition has been treated and appellant has convalesced.

By decision dated March 20, 2000, the Office denied appellant's request for reconsideration, finding that the evidence and arguments submitted in support were insufficient to warrant modification.

The Board finds that the Office properly terminated appellant's compensation effective April 24, 1999 on the grounds that she had no further employment-related physical disability.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ 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.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The Office met that burden with the reports of both appellant's treating physician and the Office second opinion specialist.

In this case, appellant's own treating physician, Dr. Schwartz, noted that at almost five months postinjury, appellant had no objective signs or symptoms related to the accepted condition of lumbosacral strain. He opined that appellant could return to work at any time. In an April 22, 1999 report, Dr. Schwartz opined that appellant could return to work at her previous duty responsibility prior to her July 28, 1998 injury. The record reflects that Dr. Schwartz was involved with appellant's care under her prior work injury of 1975 and had been treating her back condition over the years. Thus, he had detailed knowledge of appellant's medical history and followed appellant's treatment after her July 28, 1998 fall. Therefore, appellant's own treating physician does not support that she had any continuing disability causally related to her July 28, 1998 lumbosacral sprain injury.

The Office's second opinion specialist, Dr. Ferraz, found that, objectively, appellant's lumbosacral strain should have resolved on an objective basis. He opined that appellant's continuation of pain was probably related to arthritic changes in the cervical and lumbar spine and noted that there was a significant psychological emotional overlay and reservation on appellant's part concerning her ability to work and the fear of a possibility of recurrence of alleged disc herniations. He opined that appellant could work for four hours a day within certain restrictions. Dr. Ferraz also had access to appellant's medical records and noted the results of the objective testing.

Appellant did not submit sufficient rationalized evidence to support any continuing injury-related objective symptomatology or disability. The reports of Dr. Azer are of reduced probative value to cause a conflict in the medical opinion evidence regarding whether appellant has continuing disability causally related to her July 1998 lumbosacral strain injury. Dr. Azer began treating appellant January 25, 1999. Although he noted appellant's prior work injury of 1975 and subsequent surgery, he had no access to appellant's medical records or diagnostic testing prior to or immediately after her July 28, 1998 work injury.

The Board has held that the report of a physician who does not examine an appellant contemporaneous with the alleged onset of total disability, but examines him or her after the fact

³ *Lawrence D. Price*, 47 ECAB 120 (1995).

⁴ *Id*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

⁵ See *Mary Lou Barragy*, 46 ECAB 781 (1995); see also *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

and speculates as to the date of onset, is of reduced probative value.⁶ Dr. Azer also causally relates all of appellant's current conditions which concern cervical, lumbar, hip and carpal tunnel problems, to the July 28, 1998 work injury which was only accepted for the condition of a lumbosacral strain. He provides no medical rationale or explanation as to how or why all of appellant's current conditions are related to the July 28, 1998 work injury. Although Dr. Azer diagnoses herniated discs at the L4-5 and L5-S1 levels and opines that appellant's condition has deteriorated, he provides no medical explanation for the cause of appellant's pain or how or why these discs could have become herniated more than six months after the July 28, 1998 work injury. He further provides no detailed discussion as to whether appellant could return to her modified assignment she was working prior to her July 28, 1998 injury. Accordingly, Dr. Azer's reports are not well-rationalized medical evidence to support any continuing injury-related objective symptomatology or disability and his opinion on causal relationship is of diminished probative value.

Likewise, Dr. Jackson's opinion in his August 6, 1999 report that appellant's back and neck conditions were causally related to the July 28, 1998 work injury is also of diminished probative value. There is no indication that Dr. Jackson had access to or reviewed appellant's medical record or objective testing prior to or immediately after her July 28, 1998 work injury. Moreover, no explanation or medical rationale is provided as to why appellant's current neck and back conditions are causally related to the work injury when only a lumbosacral strain was accepted.

As both appellant's treating physician and the Office's second opinion specialist opined that appellant had no continuing disability causally related to her July 28, 1998 lumbosacral strain injury and because no other physician of record provided rationalized medical evidence reporting any continuing injury-related objective symptomatology or disability, the weight of the medical evidence clearly supports that appellant had recovered from her July 28, 1998 lumbosacral strain injury. Accordingly, the Office properly terminated appellant's monetary compensation entitlement on that basis.

Following the termination of her monetary benefits, appellant, through her attorney, requested reconsideration and presented several arguments of alleged error. An argument was made pertaining to the characterization of the manner in which the July 28, 1998 injury occurred. Appellant argued that the injury was not minor in nature and her description of how the injury occurred was not considered. The Board notes that appellant's initial statements and the treatment notes following the July 28, 1998 injury indicate that appellant's coworker bumped or playfully pushed appellant which caused appellant to lose her balance and fall. There is no indication with the medical evidence and reports most contemporaneous to the event to support Dr. Azer's April 27, 1999 characterization of the work injury as being an assault, which would denote an inference of a forceful pushing of the appellant. Regardless of the amount of impact appellant sustained which resulted in her unfortunate fall and injury, the Office properly

⁶ See *Eileen R. Kates*, 46 ECAB 573 (1995) (a physician's contemporaneous medical opinion is of greater probative value on appellant's ability to work than the opinion of another physician who did not examine appellant until later); see also *Linda I. Sprague*, 48 ECAB 386 (1997); *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

accepted appellant's resulting lumbosacral sprain from her fall as being work related. Furthermore, appellant's treating physicians from her original work injury of 1975 and how treated her after the July 28, 1998 injury did not mention that any of appellant's preexisting conditions were permanently aggravated or accelerated by the July 28, 1998 injury. Dr. Schwartz and the second opinion specialist provided well-rationalized reports supported by objective evidence that appellant's work-related injury had resolved.

Although appellant continued to argue that Dr. Azer's medical reports supported appellant's continued disability, the December 27, 1999 report of Dr. Azer contained similar deficiencies to his earlier reports of record. Dr. Azer opined that appellant's condition was caused by the work injury of July 28, 1998 but failed to provide any medical rationale or explanation for his opinion especially in light of the September 22, 1999 hospital report and x-ray report, which noted degenerative changes at L5-S1 with findings suspicious for an acute compression fracture at L1 since a February 1999 examination. Additionally, although Dr. Azer indicated that appellant should not return to work, he also failed to provide an opinion as to why appellant could not perform her light-duty assignment held prior to the July 28, 1998 injury. Dr. Azer's opinion on causal relationship is of diminished probative value as it is not well rationalized and not based on an accurate history. Accordingly, Dr. Azer's opinion is insufficient to create a conflict with the Office's determination that the weight of the medical evidence supported that appellant's work-related disability had ceased.

The Board, therefore, finds that appellant had no employment-related disability on or after April 24, 1999 and the Office met its burden of proof to terminate her compensation on that date.

The March 20, 2000 and December 8, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 25, 2002

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member