

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VILONIA F. NETTLES and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Long Beach, CA

*Docket No. 03-315; Submitted on the Record;
Issued May 6, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's April 27, 1976 employment injury resolved by February 1, 2001.

On April 28, 1976 appellant, then a 54-year-old laborer, filed a claim for a traumatic injury to her low back sustained on April 27, 1976 when she climbed a 30-foot hill and raked grass and leaves.

Appellant stopped work on April 27, 1976 and the following day was examined at the employing establishment's medical unit by Dr. S.S. Johnson, who noted a long history of back and shoulder pain plus a fractured clavicle and whiplash injury in an August 1975 automobile accident. Dr. Johnson stated that from a review of the medical records it appeared that appellant could not continue to perform work.

Appellant worked on April 29 and 30, 1976. On April 30, 1976 she was examined by Dr. Bernard Cooperman, a Board-certified orthopedic surgeon, who recommended she rest at home one week, undergo physical therapy and stay off work at least three weeks.

Appellant stopped work, returning to limited duty on June 25, 1976. She received continuation of pay for April 28, 1976 and from May 3 to June 15, 1976.

In a report dated July 9, 1976, Dr. Cooperman noted that appellant complained of constant lumbar spine pain and that "examination showed a good range of lumbar motion without spasm or guarding. The neurological examination was normal." He stated:

“[Appellant’s] job duties at this time consist of vigorous cleaning of Naval facilities. This includes considerable stooping and bending and some getting down on her knees. Apparently, she finds that this is more physical exertion than she can tolerate. There is nothing on my examination that indicates any specific

injury or lesion that would preclude these activities or would contraindicate such activities.

“I conclude, therefore, that at the age of 54, [appellant] is not up to her current job duties any more. I recommend, therefore, that [she] be reclassified to some type of work, which is not as vigorous and demanding.”

On October 18, 1976 appellant filed a claim for an occupational disease for low back pain, lumbosacral sprain and cramps in her legs and upper thighs. Appellant listed prior work injuries, including several involving her low back: a contusion of the lumbar spine on May 27, 1975 when she was struck by a ladder; a low back strain on February 25, 1975 when she slipped on stairs while mopping; and a back strain approximately April 8, 1970 when she slipped.

In conjunction with appellant’s application for disability retirement, Dr. Laszlo Ambrus, a Board-certified physiatrist, diagnosed chronic low back pain and bursitis of the right shoulder and indicated that appellant was disabled beginning July 27, 1976, the date of his report. In a September 4, 1996 report, Dr. C.B. Walsworth, diagnosed generalized fibrositis, chronic right subdeltoid bursitis and “Chronic low back pain due to repeated injuries to the back in her work of janitorial service.” Dr. Walsworth indicated that appellant was disabled beginning April 27, 1976.

Appellant’s application for disability retirement was approved effective October 21, 1976 on the basis that she was unable to perform the duties of her position and there was no other work available.

In a report dated December 6, 1976, Dr. Cooperman stated that appellant’s condition was unchanged when he saw her on November 3, 1976 that her date of maximum improvement was July 9, 1976 and that “her actual work-incurred impairment is minor, in the range of five percent of the whole person” but that she felt more impaired due to a subjective reaction probably related to her age and post menopausal reaction. In a report dated March 7, 1977, Dr. Cooperman stated that appellant had received maximum benefit from treatment and that she was released from his care on November 3, 1976.

In a report dated May 9, 1977, Dr. Ambrus stated that appellant’s back motion was restricted and painful and that lumbar x-rays showed osteoarthritic changes. Dr. Ambrus concluded, “In my opinion this patient has an overwhelming pain syndrome, which she cannot cope with and due to the fact that she feels the pain continuously she is not able to engage in any gainful occupation.”

By decision dated February 18, 1978, the Office of Workers’ Compensation Programs reduced appellant’s compensation, which it had been paying for temporary total disability, on the basis that she had a wage-earning capacity as a salesperson.

On March 29, 1978 appellant elected benefits under the Federal Employees’ Compensation Act in preference to those under the Civil Service Retirement Act.

In a report dated September 17, 1979, Dr. Walter Stegeman, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion evaluation, stated that

“impairment of the whole man on the basis of industrial accident with regard to neck and back is rated at 20 percent,” that appellant was not “reasonably considered suited for any remunerative work,” and that there “may be some requirement for further medical care.”

In a report dated February 23, 1981, Dr. Stanley Josephs, a Board-certified orthopedic surgeon to whom the Office referred appellant to resolve a conflict of medical opinion, stated that by July 9, 1976 appellant’s “injury of April 27, 1976 should have caused, at most, only minimal subjective complaints and no work restrictions,” and that the generalized osteoporosis of the lumbosacral spine was “obviously a naturally progressive condition, which in my opinion, was neither precipitated, aggravated or accelerated by the patient’s injury of April 27, 1976.” Dr. Josephs diagnosed “history of lumbosacral sprain, April 27, 1976, resolved,” and concluded that appellant’s work restrictions were “due to her naturally progressive degenerative osteoarthritis, various nonindustrial injuries and various emotional and functional problems.”

By decision dated October 6, 1981, the Office found that appellant had a wage-earning capacity as a telephone solicitor effective March 8, 1978.

In a report dated March 27, 1985, Dr. Yohsuke Fukami, a Board-certified neurosurgeon, stated that a neurological examination was unremarkable, that a computerized tomography (CT) scan showed degenerative changes, most marked at L5-S1 and that appellant’s symptoms were related to the degenerative process.

In a report dated June 15, 1987, Dr. Ronald Rothman, a Board-certified physiatrist, stated that an examination was essentially negative and diagnosed “chronic low back pain probably secondary to degenerative disc disease.” In a report dated July 24, 1997, Dr. Rothman diagnosed chronic sciatica and stated that appellant’s “back symptoms are permanent and stationary and occasional steroid injection gives her relief.”

A series of reports, dated December 14, 1998 to September 12, 2000, reflected trigger point injections in appellant’s right iliolumbar region. These reports were signed by Dr. Irina Gaal, a specialist in occupational medicine, for Dr. Rothman.

By letter dated January 19, 2000, the Office requested a report from Dr. Rothman addressing the continuing causal relationship between appellant’s back condition and “the accepted work-related lumbosacral sprain with sciatica.” Having received no response, the Office directed this inquiry to Dr. Gaal by letter dated August 14, 2000.

In a report dated October 20, 2000, Dr. Gaal set forth appellant’s history, reviewed prior medical reports, described appellant’s complaints and listed findings on physical examination and on a magnetic resonance imaging scan done on March 16, 1990. She diagnosed chronic low back pain secondary to degenerative joint disease and work-related temporary aggravation of preexisting low back pain -- resolved. Dr. Gaal concluded:

“In this examiner’s opinion, the patient’s current symptoms and degree of impairment are due to her underlying and progressive degenerative disc disease at the lumbosacral spine. It is probable that the patient had undergone a strain of her lumbosacral or sacroiliac joints as a result of a minor work[-]related injury on April 27, 1976 and thus sustained a temporary aggravation of her nonindustrial

condition. It is this examiner's opinion that that injury should in all medical probability have resolved and the patient returned to her baseline underlying low back pain. This nonoccupational preexisting low back pain was due to underlying degenerative changes at the lumbosacral spine as well as due to a then recent car accident prior to the date of industrial injury, which had left her with low back pain."

* * *

"It is this examiner's opinion that the patient's work[-]related sacroiliac/lumbosacral sprain, which she sustained on the job on April 27, 1976 had resolved. Her current symptoms in this examiner's opinion are due to her underlying and progressive degenerative joint disease of the spine. There is documentation of symptomatic low back pain due to degenerative joint disease for several decades. Furthermore, the patient had a nonindustrial car accident, which appears to have significantly worsened her underlying lumbar degenerative joint disease, predating the work[-]related injury on April 27, 1976. I would also like to mention the fact that the patient had been seen by a neurosurgery consultant in March 1985 and it was his opinion that this patient's symptoms were related to her degenerative joint disease of the lumbar spine, which is a nonindustrial condition. Furthermore, in his initial consultation, the patient's current treating physical medicine specialist, Dr. Rothman, had opined in June 1987 that the patient's chronic low back pain is probably secondary to degenerative disc disease. Thus, to reiterate, in this examiner's opinion, the patient's work[-]related back injury, which was a temporary aggravation of her chronic low back pain, had in all medical probability resolved. She is left with impairment due to her underlying progressive symptomatic degenerative joint disease of the lumbar spine, which was present and symptomatic even prior to her work[-]related injury of April 1976 and, which has since progressed. It is this examiner's opinion that minus the work[-]related injury of April 27, 1976, the patient would be equally symptomatic due to the natural progression of her lumbar degenerative process."

On December 19, 2000 the Office issued appellant a notice of proposed termination of compensation on the basis that Dr. Gaal's October 20, 2000 report established that she no longer had a work-related condition.

By decision dated February 1, 2001, the Office terminated appellant's compensation on the basis that the medical evidence established that she no longer had a work-related condition.

By letter dated February 12, 2001, appellant requested a hearing, which was held on June 20, 2001. Appellant testified that she returned to her regular work after her July 1975 automobile accident and that she did not file claims for her work injuries sustained before April 27, 1976.

Appellant submitted additional medical evidence. In a report dated January 3, 2001, Dr. Rothman stated that appellant's April 27, 1976 back injury "resulted in chronic pain and she

has received treatment on compensation for this for many years. I have been treating [appellant] since some time in 1978 and it is my opinion that the osteoarthritis in her back is a result of her injury at work and thus her compensation should continue.” In a report dated March 27, 2001, Dr. Rothman stated that he had been seeing appellant for over 20 years and that the “trigger point injections, which she has had on a frequent and regular basis are to control the pain in her back, which she first sustained after the work[-]related injury in 1976,” and that it was “true that this condition has gotten somewhat worse over time with the patient’s aging; however, I do feel that the original condition was a consequence of her work[-]related injury and, therefore, these intermittent exacerbations are a result of the original condition.” Dr. Rothman then opined that “it is somewhat unreasonable for a physician who has only seen this patient a couple of times to clearly state that [appellant’s] current condition is purely a result of osteoarthritis and related spinal stenosis.”

In a report dated June 28, 2001, Dr. Wayne K. Baybrook, a Board-certified orthopedic surgeon, set forth appellant’s history, complaints and findings on physical examination. After reviewing the results of April 12, 2001 x-rays showing marked osteopenia, of CT scans and an electromyogram, Dr. Baybrook diagnosed: “1. Sprain/strain of the lumbar spine on April 27, 1976 resulting in disc protrusion, central and lateral recesses, right greater than left, L5-S1 by CT [scan] of November 18, 1986. 2. Radiculopathy, bilateral lower extremities, secondary to [No.] 1 with weakness of lower extremities.” Dr. Baybrook stated that the symptoms of each of appellant’s back injuries before April 27, 1976, subsided quickly with only short losses of time from work and that the April 27, 1976 injury resulted in time off work until June 25, 1976 instead of the usual short course of symptoms. Dr. Baybrook then explained why the subjective complaints with regard to appellant’s back and lower extremities were supported by the objective findings on examination, stated that the degenerative changes were “far less than one is led to believe when reading the reports” of the x-rays and opined that Dr. Josephs’ findings were “not completely supported by the objective findings,” since a CT scan had not yet been taken. Dr. Baybrook stated that Dr. Rothman’s conclusion that appellant’s pain, trigger points and stiffness were the result of her April 27, 1976 injury was “consistent with the information obtained by the undersigned on review of the extensive medical records as well as the evaluation and information/history of injury obtained from [appellant].”

By decision dated September 6, 2001, an Office hearing representative found “that the Office met its burden of proof to terminate compensation benefits finding that the medical evidence of record established the claimant no longer had any residuals due to the accepted lumbosacral sprain or sciatica accepted as causally related to the employment injury of April 27, 1976. Although the claimant alleges other employment injuries caused or aggravated her underlying condition, she has failed to submit rationalized probative medical opinion evidence in support of such contention.”

The Board finds that the Office met its burden of proof to establish that appellant’s April 27, 1976 employment injury resolved without residuals by February 1, 2001.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

The Office accepted that appellant's April 27, 1976 employment injury, incurred by climbing a hill and hoeing and raking, resulted in a lumbosacral strain and sciatica. The medical evidence clearly establishes that appellant's lumbosacral strain resolved by February 1, 2001. Dr. Josephs, a Board-certified orthopedic surgeon, concluded in a February 23, 1981 report that the lumbosacral strain had resolved. In an October 20, 2000 report, Dr. Gaal, a specialist in occupational medicine, also concluded that the lumbosacral strain appellant sustained on April 27, 1976 had resolved.

There is no medical evidence indicating that appellant's lumbosacral strain did not resolve by February 1, 2001. The reports of Drs. Rothman and Baybrook supporting continuing disability related to appellant's April 27, 1976 employment injury do not attribute this disability to the accepted lumbosacral strain but rather to her osteoarthritis (Dr. Rothman) or a disc protrusion (Dr. Baybrook).

Since these conditions were never accepted by the Office, appellant retains the burden of proof. She has the burden of establishing by reliable, probative and substantial evidence that the condition, for which she seeks compensation, was causally related to her employment. This burden includes the necessity of furnishing rationalized medical opinion evidence showing a cause and effect relationship, based upon a proper factual and medical background. Neither the fact that the condition became apparent during a period of employment, nor the belief of the employee that the condition was caused, precipitated, or aggravated by factors of her employment, is sufficient to establish causal relation.²

The reports from Drs. Rothman and Baybrook are insufficient to establish that these additional conditions are related to appellant's April 27, 1976 employment injury. Dr. Baybrook stated that appellant's sprain/strain on April 27, 1976 resulted in the disc protrusion shown by a November 18, 1986 CT scan, but did not provide any rationale for this opinion. Similarly, Dr. Rothman stated that the osteoarthritis in appellant's low back was a result of her April 27, 1976 employment injury, but did not provide any rationale for this opinion. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.³ Dr. Rothman's reports also appear to be based on an inaccurate history that the pain in appellant's low back was "first sustained after the work[-]related injury in 1976." As early as August 30, 1972 a medical report lists a history of back pain for years. Dr. Rothman also shows no awareness that osteoarthritic changes were seen on an x-ray done on December 29, 1975 four months before the employment injury, to which he attributed her osteoarthritis.

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

² *Melvina Jackson*, 38 ECAB 443 (1987); *Bernice M. Swartz*, 31 ECAB 1525 (1980).

³ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

Dr. Josephs stated, in his February 23, 1981 report, that appellant's osteoarthritis was not precipitated, aggravated or accelerated by her April 27, 1976 employment injury. Dr. Gaal stated, in her October 20, 2000 report, that appellant's degenerative joint disease of the lumbosacral spine was a nonindustrial condition and explained that it predated and was symptomatic before the April 27, 1976 employment injury. In any case, the Office is not required to disprove a claim. Causal relation between a disabling condition and employment must be established in each case by affirmative evidence.⁴ As appellant has not submitted probative, rationalized medical evidence that the degenerative disc disease or disc protrusion that is causing her disability is causally related to her employment, she has not met her burden of proof with regard to these conditions.

The September 6, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ *Kimper Lee*, 45 ECAB 565 (1994).