



Office accepted the claim for episodes of low back pain caused by temporary aggravation of preexisting back conditions. Appellant was paid appropriate compensation.

In a report dated August 14, 2000, Dr. Steven M. Ginsburg, an osteopath and appellant's attending physician, stated that appellant continued to be disabled and experienced significant exacerbation of her low back pain after trying to clean her house or vacuum her floors. Dr. Ginsburg related that appellant had been out of work since April 1999. She had hoped that the time off from work would allow her back to heal, but had stated that her back pain had not improved. He stated:

"It is my opinion that [appellant's] past employment duties at the [employing establishment] at the very least significantly aggravated her low back pain and that the effects of her past postal service employment continue to cause aggravation of degenerative disc disease problem. I reach[ed] the aforementioned conclusion based on the fact that her duties while employed by the [employing establishment] involved repetitive significant lifting which would have produced a significant strain on her spine. I do not know how long [appellant] will remain disabled but the fact that she continues to experience debilitating low back pain 16 months after ceasing to work for the [employing establishment] is a poor prognosis sign.... Her prognosis at this time is fair at best based on her persisting debilitating low back pain."

In order to determine appellant's current condition and to ascertain whether she still suffered residuals from her accepted low back condition, the Office referred appellant for a second opinion examination with Dr. Steven J. Valentino, an osteopath. In a report dated August 16, 2001, Dr. Valentino, after reviewing the medical records and the statement of accepted facts and stating findings on examination, stated:

"Based on today's evaluation, review of reports of diagnostic studies and medical records, I find [appellant] has recovered from her low back injury causally connected to her duties at the [employing establishment]. She is not suffering residuals of the episode of work injury. Her current symptoms are consistent with underlying and preexistent degenerative arthritis about the lumbar spine which bears no causal connection to her employment history. Today's evaluation reveals normal orthopedic, neurological and neurologic examinations. Her prognosis is excellent. She is not in need of ongoing supervised medical care. No restrictions need be applied with regard to return to work as it relates to her history of work injury. Given the fact that she does have chronic and long-standing preexisting degenerative changes about the lumbar spine, it may be prudent for her to return to work in a medium, full-time capacity. However, this bears no causal connection to the subject history of work injury."

By decision dated February 12, 2003, the Office, finding that Dr. Valentino's August 16, 2001 report represented the weight of the medical evidence, terminated appellant's compensation.

By letter dated February 18, 2003, appellant's attorney requested a hearing, which was held on October 21, 2003. Appellant did not submit any additional medical evidence.

By decision dated January 12, 2004, an Office hearing representative affirmed the February 12, 2003 termination decision.

By letter dated April 20, 2004, appellant's attorney requested reconsideration. In a report dated March 25, 2004, Dr. Ginsburg advised that he had examined appellant on December 4, 2003, at which time she stated that she continued to suffer from debilitating chronic low back pain which had not improved since his last assessment of her back condition in September 2001. He related that appellant indicated that she experienced low back pain with lifting, bending, floor mopping, vacuuming or continuous sitting for more than 15 to 20 minutes. Dr. Ginsburg stated that on examination appellant showed normal range of motion of the back, with mid low back pain elicited with full lumbosacral flexion and left hip abduction, in addition to tenderness at her left low back L5-S1 region and left sacral region. He advised that straight leg raising did not suggest any evidence of radiculopathy, noted that her most recent lumbosacral spine x-rays showed moderately severe degenerative disc disease at L4-5 and L5-S1, and advised that magnetic resonance imaging (MRI) scan results of the lumbosacral spine recorded in June 1999 showed disc herniation at L4-5 and disc protrusion at L5-S1. Dr. Ginsburg stated:

“It is my assessment that [appellant] would be at significant risk of further low back injury if she were again to perform the essential duties of a position similar to the one from which she retired at the [employing establishment]. She no longer can safely do repetitive lifting, bending, carrying and twisting. It is my assessment that [appellant] continues to suffer from chronic lower back pain secondary to moderately severe lumbosacral degenerative disc disease. It is my medical opinion that her prior work at the [employing establishment] at the very least aggravated and exacerbated her lower back pain condition and very possibly contributed to her lumbosacral degenerative disc disease/disc herniation. Her prognosis is fair at best due to her long-term persistent low back pain.”

By decision dated July 22, 2004, the Office denied modification of the prior decision.

### **LEGAL PRECEDENT -- ISSUE I**

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.<sup>1</sup> 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.<sup>2</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *Id.*

establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

In this case, the Office based its decision to terminate appellant's compensation on Dr. Valentino's August 16, 2001 report. Dr. Valentino stated that his evaluation revealed a normal orthopedic, neurological and neurologic examination. He advised that appellant was not experiencing residuals from her accepted employment-related back condition, from which she had fully recovered. Dr. Valentino noted that appellant's current symptoms were consistent with her underlying, preexisting degenerative arthritis of the lumbar spine, but advised that this was not causally related to her employment. He opined that appellant's prognosis was excellent and that she was not in need of ongoing supervised medical care or work restrictions stemming from her accepted condition.

The Board finds that the Office properly found that Dr. Valentino's referral opinion negated a causal relationship between appellant's current condition and her accepted low back condition. Dr. Valentino found that she no longer had any residuals from the employment-related back condition. His report is sufficiently probative, rationalized and based upon a proper factual background. The Office properly accorded greater weight to the opinion of Dr. Valentino than to that of Dr. Ginsburg, the attending physician, who had not submitted any updated medical reports during the two and one-half years prior to the termination decision. At the time that the Office terminated appellant's compensation benefits, there was no current medical report from Dr. Ginsburg addressing appellant's current status. Accordingly, the Board finds that Dr. Valentino's opinion constituted the weight of medical opinion and sufficient rationale to support the Office's decision to terminate appellant's compensation.

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office terminated appellant's compensation in its February 12, 2003 decision, the burden of proof shifted to appellant to establish a continuing employment-related disability.<sup>4</sup>

### **ANALYSIS -- ISSUE 2**

Appellant submitted Dr. Ginsburg's March 25, 2004 report in which he stated that at the time of his December 4, 2003 examination appellant continued to complain of debilitating chronic low back pain which had not improved since his September 2001 evaluation. He stated findings on examination and reiterated his previous opinion that appellant continued to suffer from chronic lower back pain secondary to moderately severe lumbosacral degenerative disc disease. Dr. Ginsburg also restated his previous opinion that appellant's prognosis was fair at best due to her long-term, persistent low back pain.

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<sup>3</sup> *John F. Glynn*, 53 ECAB 562 (2002).

<sup>4</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servatos*, 43 ECAB 424 (1992).

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>5</sup> Dr. Ginsburg's opinion regarding continuing disability is of limited probative value because he does not provide a medical explanation as to why the current condition was not caused by appellant's underlying degenerative condition, but rather was due to the accepted injury. Dr. Ginsburg's opinion on causal relationship is also of limited probative value in that he did not provide adequate medical rationale in support of any conclusion.<sup>6</sup> Moreover, his opinion is of limited probative value for further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's current low back complaints were causally related to the accepted employment condition. Dr. Ginsburg therefore failed to provide a rationalized, probative medical opinion relating appellant's current condition to her accepted employment injury. Based on these facts, therefore, the Office properly found in its July 22, 2004 decision that Dr. Valentino's opinion that appellant had no residuals from her accepted low back condition continued to constitute the weight of the medical evidence. The Board, therefore, affirms the January 12 and July 22, 2004 Office decisions.

### **CONCLUSION**

Under the circumstances described above, the Board finds that the Office met its burden to terminate appellant's compensation benefits and appellant has not established entitlement to continuing benefits.

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<sup>5</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>6</sup> *William C. Thomas*, 45 ECAB 591 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 22 and January 12, 2004 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: August 10, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board