United States Department of Labor
Employees' Compensation Appeals Board

TERESSA L. FORNICOLA, Appellant	)	
and	)	**Docket No. 05-1164**
	)	**Issued: April 21, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Scranton, PA, Employer	)	

Appearances:
Michael Parker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 2, 2005 appellant, through her attorney, filed a timely appeal from May 13, 2004 and March 17, 2005 merit decisions of the Office of Workers' Compensation Programs denying modification of the termination of her compensation and authorization for medical treatment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective February 22, 2004 on the grounds that she had no further disability due to her January 12, 2002 employment injury; (2) whether the Office properly terminated authorization for medical treatment; and (3) whether appellant has established that she had any continuing employment-related disability after February 22, 2004.

FACTUAL HISTORY

On January 12, 2002 appellant, then a 40-year-old part-time flexible carrier, filed a claim for a traumatic injury occurring that date when she fell down steps in the performance of duty. The Office accepted appellant's claim for a contusion of the buttocks and a coccyx fracture. She stopped work on January 13, 2002 and returned to part-time limited-duty work on April 1, 2002 and full-time limited-duty employment on October 22, 2002.

A magnetic resonance imaging (MRI) scan study of the lumbar spine obtained on April 2, 2002 revealed "no significant focal abnormalities."

In a duty status report dated November 1, 2002, Dr. Jack Henzes, an orthopedic surgeon and appellant's attending physician, diagnosed a coccyx fracture and found that she could work with restrictions.

By letter dated November 22, 2002, the Office referred appellant to Dr. Michael F. Busch, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated December 20, 2002, Dr. Busch opined that appellant had a healed fracture of the coccyx by x-ray and noted that her MRI scan was unremarkable. He diagnosed coccydynia due to her fall at work and found that she could return to full-time work with restrictions. In an addendum dated March 11, 2003, Dr. Busch related that he expected that appellant would be fully recovered in two to three months.

In a report dated April 11, 2003, Dr. Edward L. Batzel, a Board-certified surgeon, recommended removal of the coccyx bone and, on March 12, 2003, requested authorization for the surgery from the Office. The Office informed appellant that it could not authorize the surgery without the approval of one of her attending physicians, Dr. Dennis Kondash, an osteopath, or Dr. Henzes.[1]

On May 20, 2003 Dr. Batzel performed a coccygectomy on appellant.

In a report dated September 6, 2003, Dr. Vithal D. Dhaduk, a neurologist, discussed appellant's history of a coccyx fracture when she fell at work on January 12, 2002. He noted that she did not improve following the removal of her coccyx and currently experienced "severe pain in the lower back and tail area. Her pain radiates down to the lower extremities. [She] has lots of pain and discomfort with numbness." Dr. Dhaduk diagnosed chronic severe pain syndrome with lower lumbar and sacral radiculopathy, a coccyx fracture status post surgery and secondary depression due to her January 12, 2002 employment injury.[2]

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[1] In a report dated April 14, 2003, Dr. Henzes recommended that every conservative measure be attempted prior to a coccygectomy.

[2] In a follow-up report dated September 27, 2003, Dr. Dhaduk noted that an electromyogram and nerve conduction studies revealed "mild acute and chronic S1 radiculopathy with paraspinal muscle spasms."

Dr. Scott Naftulin, an osteopath, evaluated appellant on September 24, 2003 at the request of Dr. Kondash. He noted that she sustained an injury in 2002 when she fell at work and diagnosed probable L5-S2 radicular pain. In a follow-up report dated October 8, 2003, Dr. Naftulin diagnosed a coccyx fracture with surgical removal, probable lumbar discogenic syndrome and chronic low back pain. He recommended epidural injections.

An MRI scan of appellant's lumbar spine, obtained on October 28, 2003, revealed a "moderately large left lateral and far lateral disc protrusion extending into the left neural foramen from the exit zone to the exit zone as well as lateral to the neural foramen." The radiologist concluded that she had an L3-4 left disc protrusion encroaching on the left L3 nerve root and a small left lateral disc protrusion at L2-3.

By letter dated November 4, 2003, the Office referred appellant to Dr. David R. Cooper, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated November 19, 2003, Dr. Cooper discussed the history of injury and reviewed the medical evidence of record, including the results of diagnostic studies. He noted that she complained of pain when standing or sitting. On physical examination, Dr. Cooper listed findings of symptoms magnification. He noted that her claim was accepted for a contusion of the buttocks and coccyx fracture and stated:

> "At this time, we have [appellant] with a lot of subjective complaints with no objective findings. She continues to be subjected to unnecessary pain injections and narcotics, when, in fact, there is no objective evidence of any disease on her.
>
> "She has a high degree of symptom magnification on today's examination.
>
> "Therefore, it is my opinion that she has fully and completely recovered from any residuals of the January 12, 2002 [a]ccepted [w]ork [i]njury. I find no evidence that her coccygectomy has contributed in any current problems."

Dr. Cooper found that she could return to her usual employment with no restrictions. He noted that she appeared to be addicted to narcotics and opined that her medications were "unnecessarily prescribed based upon the normal objective findings."

The Office placed appellant on the periodic rolls on November 2, 2003.

In a follow-up report dated December 3, 2003, Dr. Naftulin discussed appellant's physical complaints, listed findings on examination and diagnosed an L3-4 disc herniation with impingement of the left L3 nerve root.

In a letter dated December 30, 2003, the Office requested that Dr. Kondash review the second opinion report of Dr. Cooper and provide an opinion regarding whether appellant could resume her usual employment.

On January 9, 2004 the Office notified appellant of its proposed termination of her compensation on the grounds that the evidence established that she had no further employment-

related disability or condition. The Office provided her 30 days within which to respond to the proposed termination with additional evidence or argument.

In a report dated January 28, 2004, Dr. Leroy J. Pelicci, a Board-certified neurologist, discussed appellant's history of an employment injury on January 12, 2002 and her subsequent medical treatment.[3] On examination he noted findings of muscle spasms in the buttocks and diagnosed coccygeal pain due to neural involvement. Dr. Pelicci interpreted an EMG performed on that date as revealing muscle spasms at T10 through T12 and involved nerve roots on the left side at L4-5 and S1. He stated, "T10 through T12, [and] L1 through S1 showed evidence of denerviation (sic) occurring off to the left at L3[-]4 [and] L5."

In a letter dated February 4, 2004, appellant noted that she had experienced pain down her legs since her employment injury. She further expressed disagreement with Dr. Cooper's report.

On February 27, 2004 Dr. Naftulin performed a discography on appellant which he found revealed a "[d]ecidedly positive disc at L3-4."

By decision dated February 20, 2004, the Office terminated appellant's entitlement to compensation and authorization for medical treatment effective February 22, 2004 on the grounds that she had no further disability or residual condition due to her accepted employment injury.

By letter dated March 11, 2004, appellant requested reconsideration. She submitted a report dated January 28, 2004 from Dr. Naftulin, who related:

> "[Appellant] remains under my care for injuries suffered at work on January 12, 2002. To summarize, she fell and developed both low back and bilateral leg pain. She had several diagnostic studies including MRI scan of the lumbar spine demonstrating obvious multilevel significant discal abnormalities/herniations."

He found that she had "ongoing disabling low back greater than bilateral leg pain." Dr. Naftulin noted that an MRI scan showed disc herniations. He concluded that appellant had not recovered from her employment injury.

By decision dated May 13, 2004, the Office denied modification of its prior decision.

On February 10, 2005 appellant, through her representative, requested reconsideration.

[3] In a follow-up report dated January 7, 2004, Dr. Naftulin recommended a discogram.

In a report dated November 24, 2004, Dr. Naftulin noted that he began treating appellant at the request of Dr. Kondash.[4] He stated:

> "Her chief complaint was low back pain. She related the onset of her symptoms to an incident at work while delivering mail in January 2001. She was walking down the steps and slid on a patch of ice, falling directly onto her buttocks. She was diagnosed with a coccygeal fracture for which she eventually underwent surgery."

Dr. Naftulin listed findings on examination of "tenderness in the sacral coccygeal regions and bilateral sciatic notches." He noted that an October 28, 2003 MRI scan revealed L2-3 and L3-4 disc herniations and a discogram showed "L3-4 internal disc disruption with an indeterminate disc at L2-3." Dr. Naftulin related:

> "Based upon the information supplied and summarized above, it is my professional opinion, with a reasonable degree of medical certainty, that this diagnosis of internal disc disruption is a direct result of the accident in question occurring on January 12, 2002. Prognosis for a full recovery is guarded at this time. She has been and remains totally disabled from her work injury since my initial consultation. This condition is a direct result of the work injury on January 12, 2002."

He recommended continued medical treatment.

By decision dated March 17, 2005, the Office denied modification of its May 13, 2004 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[5] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

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[4] The record contains follow-up reports dated February 18, 2004 through February 16, 2005 from Dr. Naftulin discussing appellant's current symptoms, listing findings on examination and recommending treatment.

[5] *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[6] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a contusion of the buttocks and a coccyx fracture due to a fall at work on January 12, 2002. Following her injury, she returned to part-time limited-duty work on April 1, 2002 and to full-time limited-duty work on October 22, 2002.

The Office terminated appellant's compensation effective February 22, 2004 based on the opinion of Dr. Cooper, a referral physician. In a report dated November 19, 2003, Dr. Cooper reviewed the medical evidence of record and discussed appellant's current complaints. He listed findings of symptom magnification on physical examination and found that she had "a lot of subjective complaints with no objective findings." Dr. Cooper concluded that she had no further disability or residual condition due to her buttocks contusion and coccyx fracture. He opined that she could return to work without restrictions. Dr. Cooper provided rationale for his opinion by noting that the physical examination yielded findings of symptoms magnification and that her subjective complaints were unsupported by the objective findings on examination. The Board finds that Dr. Cooper's report is adequately rationalized and based on a complete and accurate history; consequently, his opinion is sufficient to represent the weight of the medical evidence on the issue of whether appellant has any further disability or residuals of her buttocks contusion and coccyx fracture.

In response to the Office's proposed termination of compensation, appellant submitted a follow-up report dated December 3, 2003 from Dr. Naftulin, who listed findings on examination and diagnosed an L3-4 disc herniation with impingment of the left L3 nerve root. He did not, however, address causation and thus his report is of little probative value.[7] Additionally, the Office did not accept a disc herniation as employment related. It is thus appellant's burden to establish a causal relationship between the diagnosed condition and her employment injury through the submission of rationalized medical opinion evidence.[8]

In a report dated January 28, 2004, Dr. Pelicci noted appellant's history of a January 12, 2002 employment injury. He diagnosed coccygeal pain due to neural involvement and found that an EMG was abnormal at T10 through T12, L1 through S1 and L3, L4 and L5. Dr. Pelicci did not directly relate his findings to her accepted employment injury and thus his opinion is of diminished probative value.[9]

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[7] *Donald T. Pippin*, 54 ECAB 631 (2003) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[8] *See generally Tracey P. Spillane*, 54 ECAB 608 (2003).

[9] *See Donald T. Pippin*, *supra* note 7.

Dr. Naftlin performed a discogram on February 27, 2004 which revealed problems with the L3-4 disc. He did not, however, provide an opinion the cause of the positive findings at L3-4 and thus his opinion is not of probative value on the issue of causation.[10]

The Board, consequently, finds that the Office properly terminated appellant's compensation effective February 22, 2004 as the weight of the evidence established that she had no further disability due to the accepted January 12, 2002 buttocks contusion and coccyx fracture.

On appeal, appellant's attorney argues that Dr. Cooper erroneously disregarded the positive lumbar MRI scan findings and failed to address whether the disc herniations were employment related. The issue before Dr. Cooper, however, was whether she had any further disability due to her buttocks contusion and coccyx fracture.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[11] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[12]

ANALYSIS -- ISSUE 2

In order to terminate appellant's authorization for medical treatment, the Office must established that she has no further need for medical treatment due to her employment-related condition.[13] The Office met this burden through the report of Dr. Cooper, the Office referral physician, who found that she had no further residuals of her accepted conditions of a buttocks contusion and coccyx fracture and provided rationale in support of his opinion.

LEGAL PRECEDENT -- ISSUE 3

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had continuing disability after that date related to her accepted injury.[14] To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal

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[10] *Id*.

[11] *Pamela K. Guesford*, 53 ECAB 727 (2002).

[12] *Id*.

[13] *Id*.

[14] *Manuel Gill*, 52 ECAB 282 (2001).

relationship.[15] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[16] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationalize explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[17] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[18]

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[19]

ANALYSIS -- ISSUE 3

Given the Board's finding that the Office properly relied upon the opinion of Dr. Cooper in terminating compensation, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.[20]

Subsequent to the Office's termination of compensation, appellant submitted a report dated January 28, 2004 from Dr. Naftulin, who opined that she had not recovered from her employment injury of January 12, 2002. He found that she had disabling low back pain and bilateral leg pain and noted that an MRI scan revealed disc herniations.

In a report dated November 24, 2004, Dr. Naftulin discussed appellant's history of a January 2001 employment injury and medical treatment received. He noted that an MRI scan revealed disc herniations at L2-3 and L3-4 and that a discogram showed an internal disc disruption at L3-4. Dr. Naftulin opined that appellant's "internal disc disruption is a direct result of the accident in question occurring on January 12, 2002." He found that she was totally disabled as a "direct result of her work injury on January 12, 2002" and required additional medical treatment.

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[15] *Id*.

[16] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[17] *Leslie C. Moore*, 52 ECAB 132 (2000).

[18] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[19] *Phillip L. Barnes*, 55 ECAB ___ (Docket No. 02-1441, issued March 31, 2004).

[20] *See Manuel Gill*, *supra* note 14.

It is well established that proceedings under the Act are not adversarial in nature and that while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[21] The Board finds that the reports of Dr. Naftulin, although not sufficient to meet appellant's burden of proof to show continuing employment-related disability after February 22, 2004, raise an inference of causal relationship sufficient to require further development on the issue of whether she sustained a back injury causally related to her fall at work on January 12, 2002.[22] Additionally, there record does not contain substantial contradictory medical evidence.[23]

The case will, therefore, be remanded to the Office for further development of the medical evidence to determine whether appellant sustained a herniated disc due to her January 12, 2002 fall at work and, if so, the nature and extent of any disability or need for medical treatment. After such further development as the Office deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and authorization for medical treatment effective February 22, 2004 on the grounds that she had no further disability due to her January 12, 2002 employment injury. The Board further finds that the case is not in posture for decision regarding whether appellant has established that she had any continuing disability after February 22, 2004.

[21] *Allen C. Hundley*, 53 ECAB 551 (2002)

[22] *John J. Carlone*, 41 ECAB 354 (1989).

[23] Dr. Cooper did not specifically address the issue of whether appellant sustained a herniated disc due to her fall at work on January 12, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 17, 2005 and May 13, 2004 are affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 21, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board