

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKIE L. MANUEL and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

*Docket No. 96-1872; Submitted on the Record;
Issued August 5, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation and medical benefits.

On January 12, 1993 appellant, then a 44-year-old clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on January 7, 1993 she injured her back and legs when she slipped and fell. The Office accepted the claim for lumbosacral strain on February 3, 1993.

In a duty status report dated April 17, 1993, Dr. Alexan Abdel-Malek, appellant's treating Board-certified physiatrist, checked that appellant was partially disabled from May 1, 1993 through July 31, 1993 and gave work restrictions.

Dr. Milton E Ashby, a Board-certified orthopedic surgeon, performed a fitness-for-duty examination and issued a report dated May 27, 1993. Dr. Ashby opined that appellant was malingering and that there are "no clinical signs of injury to an intervertebral disc." Dr. Ashby noted that the x-ray evidence and physical examination revealed no abnormalities.

By letter dated April 28, 1993, the employing establishment notified appellant that she would be placed on limited duty effective May 1, 1993.

On July 1, 1993 appellant filed a notice of recurrence of disability alleging that she sustained a recurrence of disability on June 29, 1993 causally related to her accepted January 7, 1993 employment injury.

By letter dated July 22, 1993, the Office advised appellant of the deficiencies in her recurrence claim and the evidence required to support her claim.

By letter dated August 12, 1993, appellant was placed on limited duty effective July 26, 1993.

On September 2 and 23, 1994 appellant filed claims for recurrence alleging that on June 29, 1993 she sustained a recurrence of disability causally related to her accepted January 7, 1993 employment injury.

By letter dated September 23 and October 21, 1994, the Office advised appellant of the definition of “recurrence” and the evidence needed to support her claim.

In a report dated October 7, 1994, Dr. Abdel-Malek noted:

“In addressing your questions concerning patient’s condition, patient was seen as outlined in her visits for continuation of her lower back pain problem which, according to her on different occasions, she related to the fall of January 1993, and she reported relief in between that were related to the use of medications. She was seen with exacerbations that were related to periods of lack of use of medicine or that needed more intervention as with steroid injections or physical therapy. There was no practical recovery from the original disability. As it stands, picture is suggestive of chronic mechanical/myofascial lower back pain. Factors which would be detrimental in such condition would be movements that include bending from the lower back, stooping, twisting, heavy lifting, lifting in an appropriate manner and prolonged sitting.”

By letter dated October 21, 1994, the Office advised appellant of the evidence required to support her claim for a recurrence of disability.

By letter dated October 26, 1994, the employing establishment placed appellant on limited duty effective October 24, 1994.

The Office accepted appellant’s claim for a recurrence of disability on December 13, 1994.

On December 15, 1994 the Office referred appellant, along with a statement of accepted facts and medical records, to Dr. Hugo V. Caesar, a Board-certified orthopedic surgeon. For a second medical opinion.

In a report dated January 10, 1995, Dr. Caesar, based upon a physical examination, medical records, statement of accepted fact and objective evidence, diagnosed degenerative disc disease, lumbosacral spine which “is medically connected to the work injury of January 7, 1993 by aggravation.” Dr. Caesar noted appellant’s chronic low back pain is “most likely associated with the patient’s apparent disc disease.” Dr. Caesar opined that appellant’s “residual disability should be apportioned 100 [percent] to the pre-existing history of chronic low back pain.”

On May 9, 1995 the Office issued a notice of proposed termination of appellant’s medical and compensation benefits, finding that the weight of the medical evidence, as represented by Dr. Caesar’s report, established that appellant was no longer disabled as a result of her January 7, 1993 employment injury.

In an undated letter received by the Office on May 25, 1995, appellant disagreed with the notice of proposed termination of benefits.

By decision issued June 12, 1995, the Office terminated appellant's compensation.

By letter dated June 21, 1995, appellant requested an oral hearing and reconsideration of the termination of her benefits. A hearing was held on February 29, 1996 at which appellant was allowed to testify and submit evidence in support of her claim.

In an April 10, 1996 decision, an Office hearing representative affirmed the June 12, 1995 decision on the grounds that the weight of the medical evidence was represented by the report of Dr. Caesar.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability casually related to his or her 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 In the present case, the Office accepted that appellant sustained a lumbosacral strain as a result of the January 7, 1993 injury.

In his January 10, 1996 report, Dr. Caesar provided a thorough history of appellant's January 7, 1993 employment injury, medical history and medical treatment obtained from Dr. Abdel-Malek. He related his findings on examination of appellant and noted that appellant's complaints were more likely associated with the patient's apparent disc disease and that her residual disability is due to her preexisting history of low back pain. Dr. Caesar also bases his opinion upon the objective evidence while Dr. Abdel-Malek based his opinion that appellant was totally disabled solely on her complaints of pain. Dr. Caesar also mentioned the objective testing performed in arriving at his opinion while Dr. Abdel-Malek made no reference to how the objective testing supported his opinion that appellant was totally disabled. Furthermore, in his report, Dr. Caesar provided a thorough review of appellant's medical records, detailed findings on examination and a rationalized opinion that appellant required no further medical treatment and could return to full employment. The Board, therefore, finds that Dr. Caesar's opinion that appellant had no continuing disability related to her January 7, 1993 accepted employment injury represents the weight of the medical evidence, as it is based on a thorough examination and is well rationalized.²

¹ *Henry P. Eanes*, 43 ECAB 510 (1992).

² *Connie Johns*, 44 ECAB 560 (1993).

The decisions of the Office of Workers' Compensation Programs dated April 10, 1996 and June 12, 1995 are affirmed.

Dated, Washington, D.C.
August 5, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member