

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY E. PRATT and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Gainesville, Fla.

*Docket No. 96-2566; Submitted on the Record;
Issued December 16, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability related to the accepted work injury.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office burden

¹ 5 U.S.C. § 8101 *et seq.*

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant's notice of traumatic injury filed on September 10, 1990 was accepted by the Office for a left hip strain sustained when appellant, a registered nurse, was trying to move a patient. Appellant returned to part-time, light-duty work on May 1, 1991 and was paid appropriate compensation during the period she was disabled. Subsequently, appellant participated in a work-hardening program and was diagnosed with myofascial pain syndrome, which was accepted as a work-related temporary psychogenic pain disorder.

Following her termination by the employing establishment due to unfitness for duty⁷ and her referral to vocational rehabilitation, appellant changed physicians and underwent chiropractic treatment. The Office referred appellant for a second opinion evaluation, which was conducted by Dr. Michael Mac Millan, a Board-certified orthopedic surgeon, on July 5, 1994. Based on his report, the Office issued a notice of proposed termination on August 31, 1994.

Appellant responded on September 15, 1994, arguing that Dr. Mac Millan's conclusions did not support the Office's determination that appellant's disability had ceased; rather, her permanent physical limitations caused by the initial work injury prevented her from being employable due to constant pain. Appellant pointed out that Dr. Mac Millan had diagnosed a nonspecific lumbar spine pain syndrome, which included soft tissue injuries and that her need of ongoing chiropractic treatment showed that her disability caused by the initial incident had not ceased.

On February 15, 1995 the Office terminated appellant's compensation, effective March 5, 1995, on the grounds that appellant's disability from the accepted injuries had ceased. The Office noted that Dr. Mac Millan had found "no specific objective evidence to correlate" appellant's subjective complaints of pain. The Office added that the fact that appellant had been found to be unable to work because of her pain behaviors did not entitle her to disability compensation because only disability caused by employment factors was compensable.

Appellant timely requested an oral hearing, which was held on December 11, 1995. Appellant reiterated that Dr. Mac Millan had been concerned only with a surgical problem

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

⁷ Appellant was separated from the employing establishment in 1992.

during his examination, but that her disabling pain stemmed from the muscles, tissue and ligaments of her back. Appellant submitted medical treatment notes from Dr. Thomas H. Moore, a Board-certified orthopedic surgeon, and the results of a bone scan and a magnetic resonance imaging (MRI) scan administered on April 14, 1995.

On May 8, 1996 the hearing representative affirmed the termination of appellant's compensation on the grounds that appellant had no continuing disability causally related to the September 1990 injury. The hearing representative noted that Dr. Moore's reports failed to address the relevant issue of any causal relationship between appellant's back condition and the accepted work injury and, therefore, lacked any probative value.

The Board finds that Dr. Mac Millan's report constitutes the weight of the medical opinion evidence and is sufficient to meet the Office's burden of proof in terminating appellant's compensation. Dr. Mac Millan examined appellant on July 5, 1994 and found normal heel and toe walking and reflexes, pain-related weakness in her left iliopsoas but otherwise normal muscle groups and pain produced by hip motions and straight leg raising.

Noting that an MRI dated March 18, 1993 was normal as were the May 8, 1994 x-rays of her pelvis and vertebrae, Dr. Mac Millan diagnosed a nonspecific lumbar pain syndrome with no specific objective evidence to correlate appellant's subjective complaints of pain. He added that appellant had no objective definable pathology that would limit her activities. He stated that she was capable of working eight hours a day, with a rest period each hour to change position, and limited her lifting to 25 pounds at knee level and 12.5 pounds overhead.

Dr. Mac Millan agreed with the maximum medical improvement date of May 1992 found by Dr. Michael S. Scharf, a Board-certified orthopedic surgeon, to whom appellant had been referred by the Office, and added that she had been satisfactorily evaluated by her previous physicians regarding her physical ability to work, referring specifically to Dr. Lori B. Wasserberger's work capacity evaluation dated December 6, 1991.

Asked for a prognosis in view of appellant's long history of injury and lack of response to physical therapy, Dr. Mac Millan stated that no particular exercise of therapy would predictably change appellant's ability to perform work tasks. He concluded that, based on his evaluation and comparison with the 1991 evaluation, the chiropractic manipulation appellant was undergoing would not make any objective improvement in her functional abilities.

Also supportive of Dr. Mac Millan's opinion is the May 5, 1992 work restriction evaluation completed by Dr. Scharf. The form indicated that appellant could work eight hours a day within certain time limits on intermittent sitting, standing and walking. Dr. Scharf stated that appellant could be gainfully employed in a light to sedentary capacity.

Appellant's treating physician also opined that appellant was capable of working. Dr. Wasserberger, who first saw appellant in September 1990 and diagnosed myofascial pain syndrome, stated on May 17, 1991 that her primary injury had probably long since resolved and that the only way appellant could continue to improve would be to keep her activity levels high and avoid prolonged rest and immobilization.

On December 20, 1991 Dr. Wasserberger, Board-certified in preventive medicine and rehabilitation, stated that appellant's "pain behaviors" were preventing her from returning to work and that her permanent or indefinite physical restrictions were not based on any objective medical data. On October 23, 1992 Dr. Wasserberger noted that appellant's multiple diagnostic studies were all normal, except for some minimal degenerative changes and that she had no medical explanation for appellant's complaint that her condition was getting worse.

Dr. Moore's treatment notes in March-April 1995 indicated that appellant experienced pain in her back, hip, and left buttock but demonstrated no muscle weakness and normal reflexes. He noted that appellant certainly had some disc bulging, but a bone scan did not show anything significant. Dr. Moore did not discuss whether appellant was capable of working or whether her current pain condition was related to the accepted injuries. Therefore, his notes lack probative value.

Similarly, the 1993-94 treatment notes prepared by Dr. Wendell L. Roberts, an osteopathic practitioner, related the nature and extent of appellant's complaints of pain and the modalities used to relieve her symptoms. Dr. Roberts found muscle spasms and point tenderness in appellant's back but did not address the issue of any continuing disability resulting from the 1990 injuries. Therefore, this evidence does not detract from Dr. Mac Millan's conclusions.

Finally, Dr. Jeffrey B. Klein, Board-certified in psychiatry and neurology, who diagnosed a soft tissue injury and lumbar radiculopathy, stated that in lifting the patient in 1990 appellant may have sustained muscle spasms in her low back and exacerbation of preexisting degenerative disc disease, causing her intermittent radicular symptoms. However, he added that appellant could work in some type of light-duty capacity with no heavy lifting and sitting for prolonged periods of time, and discharged her from treatment on September 15, 1993, noting that she could take over-the-counter medicines for her "aches and pains" and undergo chiropractic treatment.

In sum, none of the medical evidence in the record contradicts the conclusion of Dr. Mac Millan that appellant has no continuing disability resulting from the 1990 lifting incident and is capable of working. As the Board has long held, pain is a symptom, not a diagnosed condition and pain without objective physical or diagnostic findings to support a condition causing the pain is not compensable under the Act.⁸

⁸ See *John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

The May 8, 1996 decision of the Office of Workers' Compensation is affirmed.

Dated, Washington, D.C.
December 16, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member