

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA DELOACH and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 99-788; Submitted on the Record;
Issued December 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's continuing disability on or after February 16, 1994 was causally related to the employment injury of February 2, 1994.

On February 7, 1994 appellant, then a 36-year-old letter carrier, filed a notice of traumatic injury and claim for compensation alleging that she was injured on February 2, 1994 when an improperly secured wall unit of mailboxes at an apartment complex came loose and struck her in the abdomen. At the time of the accident, appellant was approximately six months pregnant. She initially sought treatment at a local hospital where an ultrasound showed a prominence of the endocervix with a moderate amount of fluid present. Appellant was diagnosed with a contusion of the abdomen and discharged with instructions to rest, apply ice, take Tylenol and follow-up with her gynecologist.¹ The Office of Workers' Compensation Programs accepted the claim for an abdominal wall contusion. Appellant stopped work on February 2, 1994. She claimed disability compensation through December 1994 as a result of her work injury.²

In a CA-17 duty status report dated February 9, 1994, Dr. Jonathon Reed, appellant's treating physician and a Board-certified gynecologist, opined that appellant was totally disabled from work until her delivery date due to a contusion of the anterior abdominal wall.

In a supplemental report dated April 15, 1994, Dr. Reed indicated that follow-up examinations with appellant had revealed fetal lowering, which he attributed to the work injury. He advised that appellant was totally disabled for all work until August 8, 1994 due to the work injury and the complications it presented to appellant's pregnancy.

¹ Appellant complained of back pain in the emergency room.

² Appellant began to receive chiropractic treatment for low back pain on August 15, 1994. An x-ray dated August 16, 1995 revealed osteoarthritis at C5-6 and no evidence of subluxations.

The Office referred appellant for an examination with Dr. Sudha Saha, a Board-certified gynecologist. In a report dated March 28, 1994, Dr. Saha noted that she had not been provided a copy of the ultrasound. She reported that appellant's treating physician should be the final authority on appellant's "do's and don'ts."

The Office subsequently referred a copy of the medical record to Dr. Daniel Zimmerman, a district medical Director, for review. In a November 16, 1994 report, Dr. Zimmerman disagreed with Dr. Reed that appellant sustained a contusion of the interior abdominal wall to such a severe extent that it rendered appellant totally disabled and placed her at risk for a premature pregnancy. The reasons cited by Dr. Zimmerman for his conclusion that appellant was not totally disabled by her work injury were: (1) if the anterior contusion were that severe it would have left markings on the skin surface, but appellant had no such markings; (2) the medical records indicated that appellant had a problematic pregnancy in 1992; (3) a progress noted dated February 9, 1994 indicated that appellant was the one who initiated her off-work status (even though the blood pressure reading at the time of the examination was normal and there was no evidence of vaginal bleeding or a "placenta previa, abruptia"); and (4) appellant's February 2, 1994 sonogram was suggestive of an incompetent cervix as evidenced by the prominence of the endocervix and the moderate amount of fluid in the cervix. According to Dr. Zimmerman, although appellant may have been required to be off work and on bedrest due to complications of her pregnancy caused by an incompetent cervix, appellant had not been disabled due to her work injury. He further stated that appellant's back symptoms were not causally related to the work injury or factors of her federal employment.

In a November 16, 1994 report, Dr. Reed reviewed Dr. Zimmerman's November 16, 1994 report. Dr. Reed stressed the fact that appellant had been put on bedrest at his recommendation not by her own request. He stated that, during his examinations of appellant up and to the date of the work injury, he had never considered a diagnosis of an incompetent cervix. Dr. Reed noted that one week after the work injury appellant was diagnosed with internal contusion, fetal lowering, blood on the cervix and a back injury that was the direct result of the February 2, 1994 injury. He reported that Dr. Zimmerman overstated the importance of appellant's 1992 pregnancy, noting that appellant had only had spotting during the first trimester and no complications with delivery. Dr. Reed further stated that appellant was unable to assess the problems related to her back until she delivered her baby. He concluded that appellant was disabled from February 2, 1994 until the birth of her child due to the work injury and that, after the birth, appellant continued to be disabled due to ongoing back and leg pain causally related to the work injury.

On December 5, 1995 the case file was reviewed by Dr. Deborah K. Duello, a Board-certified obstetrician and gynecologist. In her report, Dr. Duello opined that appellant had been placed on bedrest due to her incompetent cervix and not as a result of complications from the February 2, 1994 work injury. She further opined that, while appellant may have had a back spasm following the work injury, that condition would have only lasted a few days and would not have caused appellant's current back symptoms or disability.

In a December 21, 1995 report, Dr. Allen G. Adams, a Board-certified orthopedic specialist and Office referral physician, stated that appellant was seen for evaluation of her

lumbar spine. He noted that appellant had normal physical findings and no objective signs on physical examination or x-ray of a back condition. Dr. Adams stated that lumbar x-rays performed on August 16, 1994 were normal and that appellant could work without restrictions. He concluded his report as follows: “although [appellant] may have been fully recovered prior to the date I examined her, all I can do at this point is to give her a date of full recovery as of today.”

In a decision dated February 2, 1996, the Office denied appellant’s entitlement to ongoing compensation on the grounds that the medical evidence failed to support that appellant’s claimed back condition or disability was causally related to the February 2, 1994 work injury.

Appellant requested a hearing, which was held on May 22, 1997.

In a July 9, 1997 decision, an Office hearing representative remanded the case for additional medical development and an examination by an impartial medical specialist in order to resolve the conflict in the medical evidence between Drs. Reed and Zimmerman.³

On remand, the Office referred appellant, along with a copy of the medical record and a statement of accepted facts to Dr. Jeffrey M. Dicke, a Board-certified obstetrician and gynecologist, for an impartial medical evaluation. In a September 26, 1997 report, Dr. Dicke discussed appellant’s medical records with respect to the ultrasound and her course of pregnancy after the work injury of February 2, 1994, noting that her delivery on June 10, 1994 showed no conditions or abnormalities secondary to her employment. He stated in response to questions posed by the Office as follows:

“If the patient’s pregnancy was aggravated by the incident of February 2, 1994, there is no evidence to suggest this would have any physical effect on the claimant’s delivery ... low back pain may be a consequence of pregnancy. There is nothing in the record to suggest fetal lowering occurred as a consequence of, or at the time of, the incident of [February 2, 1994]. The ultrasound images do not indicate an abnormally low position of the fetus in the uterus....

“There is no way for me to determine if the patient’s condition would have been the same irrespective of the work incident described....

“I did not examine the patient at the time of the incident in question. Based on my view of the medical records, the patient was not disabled from the job as a letter carrier for the remainder of her pregnancy. There is no physical or historical evidence to suggest a risk for pre-term delivery or other adverse obstetric outcome which would have been increased by her employment as a letter carrier. The patient did not have a history of pre-term deliveries and reported no signs or symptoms of pre-term labor, other than abdominal cramping immediately following the accident. The patient reports her prenatal course was

³ The Office hearing representative affirmed in part the Office’s decision with respect to appellant’s alleged back condition, finding that appellant failed to submit sufficient medical evidence to establish that she was disabled by a back condition causally related to the February 2, 1994 work injury.

subsequently unremarkable and there is no evidence to indicate otherwise. The significance of the ultrasound finding of fluid within the endocervix and possible incompetent cervix could have been assessed at that time by obtaining a follow-up ultrasound study within 1 [to] 2 weeks of the examination on [February 2, 1994] and correlating this with the patient's clinical course...

"My impression, based on review of all available medical records, is that an observation period of 1 [to] 2 weeks, to allow for recuperation from the low-back pain and abdominal contusion and to monitor her for any signs of symptoms of premature uterine contractions and assess for risk of pre-term delivery, would have been sufficient."

In a decision dated October 27, 1997, the Office denied appellant's claim for compensation on the grounds that the weight of the evidence established that appellant had no disability on or after "February 16, 1997" that was causally related to the February 2, 1994 work injury.

In a September 10, 1998 decision, an Office hearing representative affirmed the Office's October 27, 1997 decision on the merits of entitlement but modified the decision to reflect that appellant had no disability on or after "February 16, 1994" that was causally related to the February 2, 1994 work injury.

The Board has duly reviewed the record and finds that appellant failed to establish that she had continuing disability on or after February 16, 1994 that was causally related to her work injury of February 2, 1994.

A person who claims benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim including the fact that an injury occurred in the performance of duty as alleged and that disability for employment was sustained as a result thereof.⁵ To establish entitlement to continuation of pay or monetary compensation benefits, an employee must establish through competent medical evidence that disability from work resulted from the employment injury.⁶

In the instant case, appellant contends that she was unable to work and confined to bedrest for the remainder of her pregnancy as a result of the February 2, 1994 work injury. That period of time would be from February 2, 1994, the date of the work injury, until she delivered her baby on June 10, 1994. From June 10 through December 1994, appellant alleges that she was unable to work due to a back condition also related to the February 2, 1994 work injury. The Office has denied appellant's claim for continuing disability on or after February 14, 1994 based on the opinion of the impartial medical specialist that appellant's work injury on February 2, 1994 would only have disabled her from work for a two-week period. The Board

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁶ *Gerald S. Chase*, 44 ECAB 572 (1993).

finds that the Office acted properly in assigning special weight to the opinion of the impartial medical specialist.

Contrary to arguments advanced by appellant's counsel on appeal, it was not relevant to the issue of the case that neither the Office second opinion referral physician, Dr. Zimmerman, or the impartial medical specialist, Dr. Dicke, actually examined appellant during her pregnancy.⁷ The Board has held that resolution of a conflict under 5 U.S.C. § 8123(a) does not require the physical examination of an employee by an impartial medical specialist in cases where such an examination would add nothing to the completeness of accuracy of the impartial medical examiner's report.⁸ In the present case, the only issue to be resolved was causation of appellant's disability during her pregnancy. The impartial medical specialist had a thorough medical record before him and had the opportunity to question appellant during an examination as to her medical history. Although appellant was not pregnant at the time of her examination with the impartial medical specialist, he considered himself competent to state that appellant's pregnancy had not been compromised by the February 2, 1994 injury, citing the results of the ultra-sound. He further indicated that, if appellant had been placed on bedrest to prevent premature delivery, that period of disability would have been attributable to complications of an incompetent cervix and not factors of appellant's federal employment.

Because the issue of the causal relationship between appellant's claimed disability from work and her employment injury was the primary issue to be addressed by the impartial medical specialist, the Board finds that a physical examination was not necessary for the completeness and accuracy of Dr. Dicke's report. The Board has held that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁹ The opinion of Dr. Dicke is found by the Board to be sufficiently well rationalized and based on proper factual backgrounds, therefore, it is entitled to special weight. Consequently, the Board finds that the Office properly found that appellant was not entitled to continuation of pay or wage-loss compensation on or after February 16, 1994.¹⁰

⁷ The Board also rejects appellant's argument that Dr Zimmerman's opinion was not sufficiently reasoned to create a conflict in the medical record. The Board does not find Dr. Zimmerman's opinion to be speculative.

⁸ See *Lola E. Reed*, 40 ECAB 259 (1988); *William C. Christian*, 39 ECAB 1114 (1988).

⁹ *Charles E. Burke*, 47 ECAB 185 (1995); *Roger Dingess*, 47 ECAB 123 (1995).

¹⁰ Although appellant properly filed a CA-1 claim for a traumatic injury, she was not entitled to continuation of pay for the full 45-day period if she was unable to establish her disability for work during that period as a result of the February 2, 1994 work injury.

The decision of the Office of Workers' Compensation Programs dated September 10, 1998 is hereby affirmed.

Dated, Washington, DC
December 5, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member