

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY J. GERMANY and LIBRARY OF CONGRESS,
CONSERVATION OFFICE, Washington, DC

*Docket No. 00-2665; Oral Argument Held June 21, 2001;
Issued November 8, 2001*

Appearances: *Shirley J. Germany, pro se; Thomas G. Giblin, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective January 3, 1999.

The Office accepted appellant's claim for a lumbosacral strain resulting from her February 15, 1990 employment injury and paid appropriate benefits.

In a report dated April 26, 1996, appellant's treating physician, Dr. Daniel R. Ignacio, a Board-certified physiatrist, diagnosed ruptured lumbar disc, bilateral lumbar radiculopathy and spinal stenosis. He stated that the lumbar radiculopathy was related to appellant's February 15, 1990 employment injury. In a report dated December 30, 1997, Dr. Ignacio considered that appellant had ongoing pain in her back, muscle spasm and pain down her legs and opined that she was unable to work.

In a report dated November 18, 1997, the referral physician, Dr. James C. P. Collier, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed electromyogram (EMG) results. He found no residuals of appellant's February 15, 1990 employment injury and opined that appellant could return to work.

Dr. Collier stated that appellant had nonwork-related conditions of carpal tunnel syndrome on the right, "EMG evidence to the one on the left" and degenerative disc disease in the lower part of her back, which was compatible with her age. He found that the 1993 magnetic resonance imaging (MRI) scan showed a bulging disc. There were no objective findings of lumbosacral strain. Dr. Collier stated that he had no explanation for appellant's ongoing pain and disability and stated that a lumbosacral strain usually healed within a few months of the injury.

To resolve the conflict between Drs. Ignacio's and Collier's opinions, the Office referred appellant to an impartial medical specialist, Dr. Sidney W. Tiesenga, a Board-certified orthopedic surgeon. In a report dated June 11, 1998, he considered appellant's history of injury, performed a physical examination and reviewed x-rays and the 1993 MRI scan. Dr. Tiesenga diagnosed oblique take of the fifth lumbar vertebra resulting in a mild lumbar scoliosis and facet joint degenerative disease of L5-S1, moderate to marked, which were not work related. He also diagnosed chronic work-related lumbosacral spine strain, which had resolved.

Dr. Tiesenga stated that appellant continued to have bilateral low back pain and spasm with radiation into both legs and he felt that these symptoms were related to her degenerative disc disease and her facet joint arthritis of L5-S1. He stated that these conditions had "little or nothing" to do with appellant's February 1990 employment injury. Dr. Tiesenga stated that all muscular and soft tissue injuries "certainly would be expected" to resolve in a six-month period. He stated that appellant had objective findings of lumbar spasm bilaterally and decreased ankle jerks bilaterally but these were not related to her occupational injury. Dr. Tiesenga opined that appellant required restrictions but they were due to her degenerative disc disease and facet joint degenerative arthritis and not due to her occupational injury. He stated that appellant required no further treatment for her February 1990 employment injury although she did require treatment for her other conditions.

On October 30, 1998 the Office issued a notice of proposed termination of compensation, stating that Dr. Tiesenga's opinion constituted the weight of the evidence and established that appellant had no continuing disability as a result of the February 15, 1990 employment injury.

Appellant submitted a report from Dr. Ignacio dated November 16, 1998. In the report, he considered that appellant had increasing pains along her back and the pain in her legs was so severe that her legs gave way particularly on the right side. Dr. Ignacio performed a physical examination and reviewed an EMG dated August 10, 1998, which showed chronic multiple level lumbar radiculopathies, bilateral L5 and right S1 level. He diagnosed lumbar disc syndrome, lumbar spinal stenosis and lumbar radiculopathy versus lumbar myelopathy. Dr. Ignacio stated that appellant was totally disabled with guarded prognosis.

By decision dated December 21, 1998, the Office terminated benefits, stating that the weight of the evidence established that appellant's work-related disability ceased as of January 3, 1999.

By letter dated January 11, 1999, appellant requested reconsideration of the Office's decision. By decision dated January 27, 1999, the Office denied appellant's request for reconsideration.

By letter dated November 29, 1999, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of medical reports from Dr. Ignacio dated December 17, 1998 and November 29 and December 13, 1999 and from Dr. Heshmat Majlessi, a neurologist, dated November 18 and December 21, 1999. In his report dated December 17, 1998, Dr. Ignacio stated that appellant's pains along her back were more intense and the pain was so intense in her legs that they gave way on her. He performed a physical examination,

stated that he would treat her with nerve blocks or physical therapy and stated that appellant was totally disabled with guarded prognosis.

In his report dated November 29, 1999, Dr. Ignacio considered appellant's symptoms of pain, reviewed an MRI scan dated December 29, 1998 which showed a rupture at L4-5 with posterior protrusion and performed a physical examination. He diagnosed lumbar disc syndrome and lumbar radiculopathy and stated that appellant was disabled from November 29 to December 30, 1999 and prescribed treatment. In his December 13, 1999 report, Dr. Ignacio considered appellant's symptoms of back and leg pain, performed a physical examination and diagnosed lumbar disc syndrome and lumbar radiculopathy. He prescribed treatment and stated that appellant was disabled from December 13, 1999 to January 30, 2000.

In his report dated November 18, 1999, Dr. Majlessi considered appellant's history of injury, performed a physical examination and diagnosed chronic low back pain since back injuries at work 10 years ago with bulging discs and facet arthropathy reported in her 1993 lumbar MRI scan. He also diagnosed possible chronic radiculopathy, diabetes mellitus, peripheral neuropathy and knee arthropathy bilaterally. Dr. Majlessi prescribed treatment including physical therapy and stated that he planned to obtain an MRI scan. In a report dated December 21, 1999, Dr. Majlessi considered appellant's ongoing symptoms of lumbar pain, performed a physical examination and reviewed her old MRI scans which showed bulging discs and facet arthropathy. He stated that appellant's chronic low back pain was resistant to regular treatment and prescribed medication and treatment by Dr. Ignacio's pain clinic.

By decision dated February 3, 2000, the Office denied appellant's request for modification.

The Board finds that the Office properly terminated appellant's compensation benefits effective January 3, 1999.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.²

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³

¹ *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

² *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

³ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

In this case, to resolve the conflict between appellant's treating physician, Dr. Ignacio and the referral physician, Dr. Collier, the Office referred appellant to an impartial medical specialist, Dr. Tiesenga for another medical evaluation. In his June 11, 1998 report, he considered appellant's history of injury, performed a physical examination, reviewed x-rays and the 1993 MRI scan. Dr. Tiesenga opined that appellant had objective findings of lumbar spasm bilaterally and decreased ankle jerks bilaterally but these conditions were not related to appellant's occupational injury. He stated that all muscular and soft tissue injuries would be expected to resolve in a six month period. Dr. Tiesenga stated that appellant's bilateral low back pain, spasm and pain down both legs were due to her degenerative disc disease and her facet joint arthritis of L5-S1. He stated that appellant required restrictions and medical treatment for her degenerative disc disease and facet joint degenerative arthritis but not for her occupational injury. Dr. Tiesenga's opinion is complete and well rationalized and establishes that appellant has no residuals from her February 15, 1990 employment injury.

The evidence appellant submitted with her request for consideration consisting of Drs. Ignacio's and Majlessi's reports is insufficient to counter Dr. Tiesenga's opinion. In his December 17, 1998 report, Dr. Ignacio performed a physical examination, prescribed treatment and stated that appellant was totally disabled with guarded prognosis. In his November 29, 1999 report Dr. Ignacio stated that appellant had a ruptured disc at L4-5 based on an MRI scan dated December 29, 1998, diagnosed lumbar disc syndrome and lumbar radiculopathy and stated that appellant was disabled from November 29 to December 30, 1999. In his December 13, 1999 report, Dr. Ignacio reiterated that appellant was disabled for the period December 13, 1999 to January 30, 2000.

In none of these reports, however, does Dr. Ignacio provide a rationalized medical opinion explaining how appellant's lumbar disc syndrome, lumbar radiculopathy, or ruptured disc is causally related to the February 15, 1990 employment injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁴ Because Dr. Ignacio's reports do not contain a medical rationale relating appellant's current back and leg condition to her employment, they are not probative.

In his November 18 and December 21, 1999 reports, Dr. Majlessi considered that appellant had chronic low back pain, bulging discs and facet arthropathy and diagnosed possible chronic radiculopathy, diabetes mellitus, peripheral neuropathy and bilateral knee arthropathy. He failed, however, to provide a rationalized medical opinion explaining how appellant's present physical condition was related to her February 15, 1990 employment injury and, therefore, his opinion is not probative.⁵ As the impartial medical specialist, Dr. Tiesenga's opinion that appellant had no work-related condition resulting from the February 15, 1990 employment injury constitutes the weight of the evidence and justifies the Office's termination of benefits.

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997); *Ronald C. Hand*, 49 ECAB 113, 118 (1997).

⁵ Although at the oral argument, appellant stated convincingly that she had had back pain since her February 15, 1990 employment, the record does not contain the requisite medical evidence establishing that her chronic back pain is work related.

The decision of the Office of Workers' Compensation Programs dated February 3, 2000 is affirmed.

Dated, Washington, DC
November 8, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member