U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSEMARY DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, South Suburban, IL

Docket No. 01-531; Submitted on the Record;
Issued November 6, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's disability causally related to her January 5, 1982 employment injury ended by March 27, 1999.

On January 6, 1982 appellant, then a 52-year-old part-time flexible mailhandler, filed a claim for an injury to her low back sustained on January 5, 1982 by lifting a heavy sack of mail. The Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral strain and a permanent aggravation of degenerative disc disease of the lumbosacral spine.

On February 16, 1999 the Office, which was paying appellant compensation for temporary total disability, issued a notice of proposed termination of compensation on the basis that her employment-related conditions had resolved. By decision dated March 26, 1999, the Office terminated appellant's compensation effective March 27, 1999 on the basis that her employment-related conditions had resolved.

By letter dated March 21, 2000, appellant requested reconsideration, and submitted a February 14, 2000 medical report from her attending physician.

By decision dated September 6, 2000, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation, effective March 27, 1999, but that the medical report subsequently submitted by appellant creates a conflict of medical opinion on the issue of whether appellant had any continuing disability causally related to the accepted injury

Once the Office accepts 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 met its burden of proof to terminate appellant's compensation effective March 27, 1999 with the September 29, 1998 report of Dr. Richard H. Sidell, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation. In this report, Dr. Sidell concluded:

> "This patient has spastic quadriparesis, secondary to cervical myelopathy and unrelated to a work injury to the lower back on January 5, 1982, accepted as a lower back strain. There is no evidence of any residuals from a lower back strain on that date.
>
> "I will now answer the questions posed.
>
> "1. The patient has evidence of continuing underlying degenerative disc disease of a permanent nature. There is no evidence to indicate any continuation of aggravation from the work-related condition. The patient has a generalized total spine spondylosis.
>
> "2. There is no evidence of lower back strain still present and superimposed. The patient's condition is secondary to the natural history of spondylosis and cervical myelopathy.
>
> "3. There are no residuals from the permanent aggravation of lumbar degenerative disc disease.
>
> "4. There are no objective findings on examination for continuing L5-S1 radiculopathy residuals based on the examination and history. There are no residuals of radiculopathy.
>
> "5. Concerning the claimant as a whole person, she is not capable of working in any capacity unless it allows for a wheelchair-dependent activity. There is no way that this patient, due to her age and underlying cervical myelopathy and spastic quadriparesis, could perform her date-of-injury job as described in the statement of accepted facts.
>
> "6. The nonwork-related medical factors preventing the claimant from actually working are the residuals of cervical myelopathy.
>
> "7. No continuing treatment is required for the work-related injury."

Although Dr. Sidell stated that he did not perform a thorough examination of appellant's low back, he explained that he did not believe such an examination was necessary given that appellant was having no complaints referable to the low back. He attributed appellant's

[1] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

significant weakness of her lower extremities to her cervical myelopathy. At the time of Dr. Sidell's report, there was no medical evidence indicating that appellant continued to have residuals of her January 1984 employment injury. Appellant's attending physician, Dr. Martin G. Luken, a Board-certified neurosurgeon, stated in a July 1, 1998 report that appellant "suffers a severe and permanent spinal cord impairment, technically what is referred to as a cervical myelopathy, which is by any reasonable reckoning, completely and permanently disabling from the standpoint of any gainful employment." This opinion is consistent with that of Dr. Luken in an August 13, 1993 report that appellant was "completely and permanently disabled due to cervical spondylitic myelopathy." It is also consistent with a June 14, 1989 report from Dr. James W. Ryan, a Board-certified orthopedic surgeon, stating that there was no evidence of radiculopathy on examination, and that appellant was capable of working solely from the lumbar spine. The Office met its burden of proof to terminate appellant's compensation effective March 27, 1999.

Subsequent to the Office's termination of appellant's compensation, appellant submitted a report from Dr. Luken dated February 14, 2000 who stated:

> "She indicates to me today that she continues to experience low back pain radiating into both of her legs, in addition to the long-standing spasticity of her arms and legs with which she has contended throughout my surgical management of her cervical spine. She indicates that her lower back pain has been more or less continuously present since her work-related injury of 1982, although, as you very astutely surmise in your letter, her lower back symptoms were largely overshadowed by the quite dramatic intercurrent developments involving compromise of her cervical spinal cord.
>
> "On examination today I found no clear change in her spastic quadriparesis. Straight leg raising on either side to 90 degrees elicits a twinge of lower back pain, but I found no segmental neurological deficit referable to her lumbar spine.
>
> "The bulk of the diagnostic materials in our office chart pertain to [appellant's] cervical spine, as one might anticipate in light of the fact that her neck has been the primary anatomical focus of my efforts on her behalf. Nonetheless, the following study reports contained within my office chart clearly document objective abnormalities of [appellant's] lumbosacral spine or spinal nerve roots, and are entirely consistent with her account of her ongoing lumbar spinal problem.
>
> "These studies include Dr. Anuradha Shivde's electrophysiologic study of July 9, 1987, in which she described 'abnormalities that are consistent with injury to the posterior primary rami bilaterally at the lower lumbar and upper sacral levels.' The same day [appellant] underwent a total myelogram at Michael Reese Hospital and Medical Center, which was described by Dr. Dushyant Patel as demonstrating 'a ventral extradural defect … at L4-5 which is mostly on the left … the findings are most likely secondary to disc herniation.' Finally, I have the report of an MRI [magnetic resonance imaging] scan of the lumbar spine which [appellant] underwent at Michael Reese Hospital on January 3, 1989, described by Dr. Steven

Blum as demonstrating 'small disc herniations at the level of L4-5 and L3-4 on the left side.'[2]

"While the documentation of [appellant's] lumbar problem in my records is less than comprehensive, in my opinion it leaves no practical doubt but that [appellant] has longstanding anatomical abnormalities of her lumbar spine, with corresponding neurologic compromise as conclusively demonstrated by her electrophysiologic studies. If, as you indicated in your letter, her lumbar injury of 1982 is elsewhere well documented and stipulated to by her workers' compensation carrier, the only reasonable conclusion in my opinion is that her lumbosacral spine problem has been continuously present ever since."

The February 14, 2000 report from Dr. Luken, contrary to Dr. Sidell's report, notes continuing low back pain radiating into appellant's legs and concludes, based on diagnostic testing previously done, that appellant's "lumbosacral spine problem has been continuously present ever since" her employment injury. While Drs. Luken and Sidell agree that appellant is totally disabled by her nonwork-related cervical myelopathy, the fact that appellant has a disabling nonwork-related condition does not necessarily lead to a conclusion that her injury-related impairment, in and of itself, no longer prevents her from performing the job she held when injured.[3] The Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for a reasoned medical opinion of whether appellant still had continuing disability causally related to her accepted employment-related conditions which include permanent aggravation of degenerative disc disease of the lumbosacral spine.

[2] The case record does not contain original reports regarding the July 9, 1987 myelogram or the January 3, 1989 MRI scan.

[3] *Marie Vavrecan*, 33 ECAB 350 (1981).

The decision of the Office of Workers' Compensation Programs dated September 6, 2000 is affirmed regarding the termination of compensation effective March 27, 1999 and is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
November 6, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member