

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY S. ONG and U.S. POSTAL SERVICE,
POST OFFICE, Costa Mesa, CA

*Docket No. 02-348; Submitted on the Record;
Issued September 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits; and (2) whether appellant has established that she sustained recurrences of total disability from March 26 to April 15, 1997, from July 24 to August 22, 1997 and from January 20 to 23, 1998.

Appellant, a 47-year-old distribution clerk, filed a notice of occupational disease on November 20, 1990 alleging that on May 13, 1984 she became aware that her shoulder pain as well as upper and lower back pain was due to factors of her federal employment. The Office accepted appellant's claim for bilateral arm and shoulder strains as well as cervical, thoracic and lumbar back strains on March 17, 1992. Appellant returned to light-duty work on March 9, 1992 and again on June 9, 1993.

In a decision dated January 7, 1994, the Office found that appellant's light-duty position as a modified distribution clerk represented her wage-earning capacity. Appellant requested reconsideration of this decision and by decision dated January 12, 1995, the Office modified its January 7, 1994 decision to include the accepted conditions of bilateral arm and shoulder strains and pay differentials.

The Office accepted that appellant sustained a recurrence of her cervical, thoracic and lumbar strains on January 12, 1995. Appellant filed claims for compensation requesting wage-loss compensation on April 4, 1998 for the periods of March 26 through April 15, 1997, July 24 through August 22, 1997 and January 13 through 23, 1998.

In a letter dated May 12, 1999, the Office proposed to terminate appellant's compensation benefits on the grounds that she had no residuals of her accepted employment injuries. The Office also informed appellant that she had not established entitlement to compensation for recurrence of total disability for the periods requested.

By decision dated July 23, 1999, the Office terminated appellant's compensation benefits and denied her claims for recurrence of total disability. Appellant requested reconsideration of this decision on June 25, 2000, January 12 and July 5, 2001. The Office denied modification of its July 23, 1999 decision on July 11, 2000, April 19 and August 13, 2001 respectively.

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 proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

The Office referred appellant for a second opinion evaluation with Dr. Fredrick J. Lieb, a Board-certified orthopedic surgeon of professorial rank, who provided a detailed report including appellant's history of injury and medical history. Dr. Lieb provided his findings on physical examination noting that appellant performed her range of motion tests in a slow and cogwheel fashion and that she reported glove hypesthesia of the left upper extremity. He diagnosed degenerative disc disease of the cervical and lumbar spines as a result of the natural aging process. Dr. Lieb stated that appellant had no objective evidence of organic pathology involving the musculoskeletal system or the spinal axis. He stated: "In my opinion, there are no residuals of accepted work injury May 13, 1984. It is, in fact, my opinion that no work-related injury has occurred. The pain diagram is a rather classic distribution of pain that is never found in an organic condition." Dr. Lieb further stated: "This patient demonstrates a number of nonorganic findings consistent with symptom magnification, exaggeration and embellishment...." He listed these findings as: the slow and cogwheel fashion of range of motion activities; diffuse tenderness in the neck and back with no evidence of muscle spasm; tenderness upon light stroking of the skin; range of motion more limited during examination than that exhibited when not specifically examined; inconsistent grip strength with lack of evidence in contraction of the forearm musculatures; glove and stocking hyperesthesias which do not correlate with any dermatomal nor peripheral nerve pattern; and complaints of low back pain upon passive supine straight leg raising not accompanied by similar complaints in a sitting position. Dr. Lieb concluded that appellant had no condition related to her employment injury and no residuals as a result of the injury.

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

Appellant's attending physician, Dr. Chang-Zern Hong, a Board-certified physiatrist of professorial rank, submitted a report dated May 22, 1998 diagnosing traumatic arthropathy of the cervical thoracic and lumbar spine, discogenic lesion of the cervical and lumbar spine with chronic cervical and lumbar radiculopathy, traumatic arthropathy of bilateral shoulders, discogenic disease of the cervical and lumbar spine and post-traumatic myofascial pain syndrome. Dr. Hong stated that his diagnoses were based on physical examination and diagnostic studies including x-rays and magnetic resonance imaging (MRI) scans. He concluded that appellant's conditions were not degenerative disc disease as they were present when she was only 48 years old and attributed her condition to repetitive use of her bilateral upper extremities and heavy lifting and carrying while in the performance of her duties. Dr. Hong stated that appellant's limited range of motion was due to her myofascial pain syndrome which resulted in chronic diffuse pain and which was caused by her previously mentioned conditions. He stated that myofascial pain syndrome was a well-accepted disease entity and described the accepted causes of the condition including trauma such as a sprain or strain, inflammatory diseases and the cumulative effect of long-standing repetitive minor trauma or long-standing muscle tension. Dr. Hong explained that appellant's cogwheel way of moving was based on anticipation of producing pain, that her lack of muscle spasm did not preclude a diagnosis of myofascial trigger points and that the referred pain patterns resulting from the myofascial pain syndrome did not follow dermatomal nor peripheral nerve patterns. He concluded that Dr. Lieb was not familiar with the trigger point phenomena.

Section 8123(a) of the Federal Employees' Compensation Act,⁵ provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." Due to the disagreement between appellant's attending physician Dr. Hong, a Board-certified physiatrist, and the second opinion physician, Dr. Lieb, a Board-certified orthopedic surgeon, regarding the diagnosis of appellant's current condition, the causal relationship between that condition and her employment injury and the extent of her current disability, the Office determined that there conflict of medical opinion evidence which required referral to a impartial medical specialist.

The Office referred appellant to Dr. Donald A. Dinwoodie, a Board-certified orthopedic surgeon, to resolve the conflict. In his August 27, 1998 report, Dr. Dinwoodie noted appellant's history of injury and described her medical treatment. He performed a physical examination and reviewed x-rays. Dr. Dinwoodie listed his findings as including limited range of motion of the cervical thoracic and lumbar spines, which appeared to be voluntarily restricted with no complaints of pain, muscle spasm, or protective behavior. He noted that appellant demonstrated voluntary relaxation to manual motor testing. Dr. Dinwoodie stated that appellant's motor effort was indicative of such weakness that even basic daily functions would be impossible. He noted that based on her history appellant did perform such functions. Dr. Dinwoodie noted that appellant had a cogwheel pattern of relaxation, exaggerated complaints of pain with light pressure and other substantial features of symptom magnification. He diagnosed history of cervical, thoracic and lumbar strains, bilateral shoulder and arm strains. Dr. Dinwoodie stated that appellant could have continued residuals in the form of minimal periodic back pain. He

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).

diagnosed cervical and lumbar degenerative disc disease as found on x-ray and concluded that these conditions preexisted appellant's employment injuries. Dr. Dinwoodie stated that appellant did not require additional treatment for her employment injuries and that future care would be limited to that of the natural progression of her degenerative disc disease.

The Office requested a supplemental report on December 16, 1998 and asked that Dr. Dinwoodie address whether there was objective medical evidence of a medical condition causally related to her employment. On April 5, 1999 Dr. Dinwoodie responded and stated that appellant's findings of decreased motion and minimal spinal pain were a residual of the natural progression of her degenerative disease and not from the May 13, 1984 employment injury. He stated:

“There is no objective evidence of continued residuals of the musculoskeletal strains as had been a result of the May 13, 1984 injury. The x-ray and MRI findings, minimal pain and loss of spinal motion are related solely to the degenerative disease of the spine. There is no objective medical evidence that the patient's continued employment affected the normal progression of this degenerative spinal disease. The patient's status would have returned to baseline level within approximately four to six months of the May 13, 1984 injury as evidenced by the medical records.”

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.⁶ Dr. Dinwoodie provided a detailed report with a history of injury, review of medical records and findings on physical examination. In both his initial and supplemental reports he concluded that appellant did not have residuals of her accepted employment injury and did not have any disability related to her accepted conditions. He concluded that appellant's minimal pain and loss of spinal motion were related solely to her degenerative disc disease and that appellant's employment did not contribute to this condition. Dr. Dinwoodie described appellant's give way response on testing and her cogwheel range of motion and concluded that she had symptom magnification. As Dr. Dinwoodie found no objective medical evidence of appellant's continued disability or medical residuals due to her accepted condition, the Office properly relied on his report to terminate appellant's compensation benefits.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted employment injury.⁷ To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's

⁶ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁷ *George Servetas*, 43 ECAB 424, 430 (1992).

diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

Following the Office's termination decision on July 23, 1999, appellant submitted additional medical evidence from Dr. Stuart L. Silverman, a Board-certified rheumatologist of professorial rank. In a report dated December 1, 1999 and amended May 15, 2000, Dr. Silverman noted appellant's history of injury, and reviewed her diagnostic tests. He performed a physical examination and concluded that appellant developed cervical radiculitis and probably lumbar disc herniation during the course of her employment. He diagnosed fibromyalgia and stated, "I believe her fibromyalgia developed as a direct consequence of the pain from her 1984 injuries. I would consider her current fibromyalgia as a progression of the continued residual of her musculoskeletal injuries from the 1984 accident."

On December 1, 2000 Dr. Silverman stated that appellant's reactions and pain were typical of someone suffering from fibromyalgia and chronic myofascial pain. He stated that the nonorganic findings in Dr. Dinwoodie's report were consistent with myofascial pain. Dr. Silverman stated that the slow way that appellant moved was an attempt to avoid producing pain and that the greater than expected subjective complaints were consistent with a diagnosis of fibromyalgia where patients have an altered pain threshold. He concluded that appellant's current condition was due to a myofascial pain syndrome of her cervical, thoracic and lumbar spine in the setting of someone with underlying degenerative osteoarthritis and that the myofascial pain syndrome was a direct result of her 1984 employment injury as well as continuous trauma related to her work in the employing establishment. Dr. Silverman concluded, "It is likely that the chronic persistent pain due to her myofascial pain condition related to her continued working acted as a pain generator which then resulted in fibromyalgia."

In a report dated January 28, 2001, Dr. Silverman diagnosed fibromyalgia based on the subjective report of widespread pain and the objective findings of 14 out of 18 tender points with negative control points. He provided work restrictions.

Dr. Silverman initially provided a diagnosis of fibromyalgia and offered an opinion that this condition developed as a result of cervical radiculitis and lumbar disc herniation. However, the Office has not accepted that appellant sustained either of these conditions as a result of her accepted employment injuries of cervical, thoracic and lumbar strains. Dr. Silverman then stated that appellant developed fibromyalgia through the development of a myofascial pain syndrome as a result of her employment injuries which the Office accepted as bilateral arm and shoulder strains as well as cervical, thoracic and lumbar back strains. However, he failed to provide medical reasoning explaining how appellant's back strains resulted in the development of the myofascial pain syndrome. The only accepted conditions in this case were various strains and

⁸ *James Mack*, 43 ECAB 321 (1991).

Dr. Silverman has not provided any medical rationale explaining how he reached his diagnosis of fibromyalgia as a result of the accepted conditions. Without a clear opinion on the causal relationship between appellant's accepted conditions and her current diagnosed condition, Dr. Silverman's reports are not sufficient to meet appellant's burden of proof in establishing continuing disability and residuals due to her 1984 employment injury.

The Board further finds that appellant has failed to establish that she sustained recurrent periods of total disability after March 26, 1997 due to her accepted employment injuries.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁹

Appellant alleged that she sustained intermittent periods of disability from March 26 through April 15, 1997, from July 24 through August 22, 1997 and January 13 through 23, 1998. She used approximately an hour and a half of leave on March 26, 1997. Appellant used eight hours of leave each day on March 27, 1997 and from March 31, 1997 through April 15, 1997 claiming total disability for these periods.

Dr. Jiun-Rong Peng, a Board-certified orthopedic surgeon, completed a report on April 4, 1997 noting that appellant reported a sudden onset of excruciating pain in her left shoulder on March 26, 1997 while at work. Dr. Peng provided his finding on physical examination including hypesthesia in the neck posteriorly, bilateral shoulder girdles and entire back. He found a trigger point tenderness in appellant's left posterior scapula and diagnosed left shoulder pain as well as chronic neck pain, bilateral shoulder pain and entire back pain. He stated that appellant was temporarily totally disabled for another week.

This report is not sufficient to establish appellant's total disability for the period of March 26 through April 15, 1997 as Dr. Peng did not provide an opinion on the causal relationship between appellant's increased shoulder pain and her accepted employment-related conditions. Furthermore, Dr. Peng did not provide any discussion of the change of the nature and extent of appellant's injury-related condition. Without a discussion of the accepted conditions and any change in these conditions which resulted in appellant's increased pain and consequential disability for work, Dr. Peng's report is not sufficient to meet her burden of proof of establishing a recurrence of total disability due to her employment-related injuries.

On July 24, 1997 appellant used more than six hours of leave due to total disability. Appellant worked at least four hours a day on July 29, 1997 and August 11 through August 22, 1997, and she claimed disability for the remaining hours. She claimed total disability from July 30 through August 8, 1997. In regard to her alleged period of disability from July 24 to August 22, 1997, appellant submitted medical evidence from Dr. Hong, a Board-certified

⁹ *Terry R. Hedman*, 38 ECAB 222 (1986).

physiatrist of professorial rank, who completed a note on August 9, 1997 and stated that appellant had an episode of severe exacerbation with severe pain in the left shoulder on July 24, 1997. He provided his findings on physical examination and found that appellant had traumatic arthropathy of the cervical, thoracic and lumbar spine, traumatic arthropathy of her shoulders bilaterally, discogenic disease of the cervical and lumbar spine and post-traumatic myofascial pain syndrome. Dr. Hong recommended that appellant work part-time four hours a day with restrictions for one week. While this note supports appellant's claim for partial disability as Dr. Hong indicates that appellant could only work four hours a day, it is not sufficient to meet appellant's burden of proof in establishing a causal relationship between her current condition and her accepted employment condition of shoulder strain. Dr. Hong did not offer any medical reasoning explaining why appellant would experience an exacerbation of a shoulder strain and did not clearly relate her current shoulder condition to her accepted employment injury.

On August 16, 1997 Dr. Yuhan Lan, a Board-certified physiatrist, noted that appellant was working four hours a day. In an August 23, 1997 note, Dr. Lan provided a history of severe shoulder pain in April 1997 and noted that appellant was working four hours a day. These notes provide a consistent diagnosis and work restrictions, but do not discuss how appellant's accepted condition of shoulder strain would result in additional periods of disability many years after the initial diagnosis and while performing a limited-duty position. Without a medical opinion discussing a change in the nature and extent of appellant's employment-related condition, these reports are not sufficient to support appellant's claim for disability.

Appellant used leave on January 13, 1998 for a doctor's visit and used eight hours of sick leave on January 20, 21 and 22, 1998 and claimed total disability on January 23, 1998. On January 3, 1998 Dr. Hong indicated that appellant should continue to work light duty eight hours a day. In a January 24, 1998 note, Dr. Lan noted appellant's symptoms of pain and stiffness in the neck, shoulders and upper back which was more severe on the left. He stated that appellant should return to light duty on January 26, 1998 and noted that appellant had been unable to drive. Dr. Lan listed appellant's diagnosed conditions as traumatic arthropathy of the cervical, thoracic and lumbar spine, traumatic arthropathy of the shoulders bilaterally, discogenic disease of the cervical and lumbar spine and post-traumatic myofascial pain syndrome. He did not provide an opinion that appellant had sustained a change in the nature and extent of her injury-related condition, did not offer any medical reasoning in support of his recommendation for total disability until January 26, 1998 and did not provide a diagnosis of an additional condition or any medical rationale in support of the change in appellant's disability status. For these reasons this report is not sufficient to meet appellant's burden of proof in establishing a recurrence of total disability for the period claimed.

The August 13 and April 19, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 6, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member