

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN D. ADOLPHUS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER PHILADELPHIA,
Philadelphia, PA

*Docket No. 02-1801; Submitted on the Record;
Issued January 31, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's benefits effective April 17, 2000.

On February 16, 1999 appellant, then a 45-year-old clerk, filed a claim alleging that she slipped and fell twisting her lower back in the course of her employment duties. She stopped work on February 11, 1999 and did not return. The Office accepted the claim for aggravation of preexisting low back pain.

Appellant submitted treatment notes from Dr. Frederick B. Vivino, a Board-certified internist, dated February 15 to 24, 1999. Dr. Vivino noted a history of appellant's injury and recommended she stay out of work pending a magnetic resonance imaging (MRI) scan.

In a letter dated March 3, 1999, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted an MRI dated February 17, 1999; a computerized tomography (CT) scan dated March 16, 1999; treatment notes from Dr. Vivino dated March 10 to August 4, 1999; and a report from Dr. Carl H. Shin, Board-certified in physical medicine and rehabilitation, dated August 17, 1999. The MRI and CT scans revealed status post anterior and posterior fusion at L3-4; discogenic disease at L2-3; with no evidence of herniation. The treatment notes from Dr. Vivino dated March 10 to August 4, 1999 noted a history of appellant's back injury indicating that appellant's work injury caused a flare up of her back condition. He diagnosed appellant with lumbar spondylosis, lumbar radiculopathy and fibromyalgia and recommended injections to relieve her symptoms. In a duty status report dated May 11, 1999 and an attending physician's report dated August 4, 1999, Dr. Vivino noted appellant could not work because she was totally disabled. The work capacity evaluation report from Dr. Shin dated August 17, 1999

indicated that appellant could return to work subject to work restrictions of four hours per day, five days a week.

Appellant was referred to a second opinion physician, Dr. Steven J. Valentino, an osteopath. In a medical report dated September 9, 1999, Dr. Valentino indicated that he reviewed the records provided to him and performed a physical examination of the appellant. He noted a history of appellant's work-related injury. Dr. Valentino diagnosed appellant with resolved aggravation of preexistent low back pain. He opined that, based on his physical evaluation of appellant, a review of the medical records and diagnostic studies, appellant has recovered from any aggravation of her preexistent low back pain apportioned to the incident of February 10, 1999. Dr. Valentino noted the diagnostic studies revealed only age-related degenerative changes which were preexistent and bear no causal relationship to the employment injury. He noted appellant no longer suffered residuals from her work injury of February 10, 1999 and that she was capable of returning to her preinjury position full time. Dr. Valentino also noted that appellant had a preexistent history of depression which was not related by history to her work injury.

Thereafter appellant submitted various records from Dr. Vivino dated September 8 to November 10, 1999. Dr. Vivino's attending physician's reports noted that appellant was totally disabled as a result of her work-related injury. His report of September 24, 1999 indicated a history of treatment and noted that appellant had been under his care since 1995 for musculoskeletal pain; chronic low back pain; fibromyalgia, osteoarthritis, lumbar spondylosis; and lumbar radiculopathy. Dr. Vivino noted appellant was totally disabled and unable to return to part-time or full-time work.

On September 15, 1999 the Office offered appellant a light-duty position four hours per day, five days a week. The position conformed to the medical restrictions set forth by appellant's physician, Dr. Shin, in his report dated August 17, 1999. On September 22, 1999 appellant declined the limited-duty position offered on the grounds that her physician, Dr. Curtis Slipman, Board-certified in physical medicine and rehabilitation, indicated that she was unable to return to employment at this time. In a note dated September 21, 1999, Dr. Slipman indicated that appellant was unable to work at this time and recommended she undergo a discogram.

The Office determined that a conflict of medical opinion had been established between Dr. Slipman, appellant's treating physician, who indicated that appellant was disabled and experiencing residuals of her work-related injury and could not work and Dr. Valentino, an Office referral physician, who determined that there were no objective findings to support that appellant continued to suffer residuals from the work-related injury of February 10, 1999 and could return to work full duty in preinjury status.

To resolve the conflict, appellant was referred to a referee physician, Dr. E. Michael Okin, a Board-certified orthopedic surgeon, who indicated, in a report dated January 28, 2000, that he reviewed the records provided to him and performed a physical examination of appellant. Dr. Okin noted a history of appellant's work-related injury and noted appellant had a lumbar spine fusion at L3-4 in 1988 unrelated to her work injury. Upon physical examination, he noted gait and station were slow and hesitant; range of motion for the lumbar spine was 30 degrees for forward flexion with discomfort; extension was 5 degrees; lateral bending was 10 degrees;

sensory examination was intact; and motor function was 5/5 throughout. Dr. Okin indicated that appellant had “a significant amount of symptom magnification.” He diagnosed appellant with status post lumbar interbody fusion at the L3-4 level; chronic low back syndrome; and noted that appellant’s low back pain due to the incident of February 10, 1999 had resolved. Dr. Okin noted that there was no evidence of herniated disc present. He indicated that based on his clinical examination, the review of the records, diagnostic studies and consideration of the evidence of symptom magnification, there was no real objective findings of disability. Dr. Okin opined that appellant “had an aggravation of an underlying condition and that aggravation was temporary and would have ceased at this time.” He noted appellant had significant preexisting problems with the spine fusion.

Appellant continued to submit reports from Dr. Slipman dated April 22 to October 15, 1999; and Dr. Vivino dated January 12 to February 16, 2000 which continued to support total disability.

On March 15, 2000 the Office issued a notice of proposed termination of all compensation benefits on the grounds that Dr. Okin’s report dated January 28, 2000 established no continuing disability as a result of the February 10, 1999 employment injury.

Subsequently, appellant submitted reports from Dr. Vivino dated December 15, 1999 to February 16, 2000. Dr. Vivino’s notes from December 15, 1999 to February 16, 2000 noted a diagnosis of lumbar radiculopathy; lumbar spondylosis; chronic pain; and manic depression. The attending physician’s note of February 16, 2000 diagnosed appellant with lumbar radiculopathy; lumbar spondylosis; osteoarthritis; fibromyalgia; and right rotator cuff tendinitis. He noted appellant was totally disabled from February 10, 1999 for an indefinite period of time. The duty status report of February 16, 2000 noted appellant was totally disabled.

By decision dated April 17, 2000, the Office terminated appellant’s benefits on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her February 10, 1999 employment injury.

By letter dated May 2, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on November 7, 2000. Appellant testified that her back pain affected her ability to work even before the February 1999 work injury. She noted that at the time of Dr. Okin’s examination she was in severe pain and she indicated that she was currently on morphine to control the pain. Appellant submitted the results of a discogram study dated September 28, 1999; reports from Dr. Vivino dated March 8 to November 3, 2000; a report from Dr. Bruce W. Leslie, a Board-certified internist, dated February 28 to April 10, 2000; a report from Dr. Leo J. Scarpino, a Board-certified orthopedist, dated March 20, 2000; a report from Dr. Shin dated May 4, 2000; and a report from Dr. Joel A. Griska, a Board-certified internist, dated November 7, 2000.

In a decision dated January 16, 2001, the hearing representative affirmed the decision of the Office dated April 17, 2000.

In a letter dated January 15, 2002, appellant requested reconsideration and submitted an additional report from Dr. Vivino dated January 2, 2002. Dr. Vivino found appellant totally disabled and recommended she undergo the IDET procedure to alleviate her chronic pain.

In a decision dated April 2, 2002, the Office denied modification of the prior decision on the grounds that the evidence submitted was insufficient to justify modification of the previous decision.

The Board finds that the Office has met its burden of proof to terminate benefits effective April 17, 2000.

Once the Office accepts a claim, it has the burden of proof 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

In this case, the Office accepted appellant's claim for aggravation of preexisting low back pain and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant's attending physicians, Drs. Slipman and Vivino. Consequently, the Office referred appellant to Dr. Okin to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.³

The Board finds that, under the circumstances of this case, the opinion of Dr. Okin is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Dr. Okin reviewed appellant's history, reported findings, and diagnosed appellant with status post lumbar interbody fusion at the L3-4 level, chronic low back syndrome; and indicated that the aggravation of appellant's low back pain due to the incident of February 10, 1999 had resolved. He indicated that appellant had "a significant amount of symptom magnification." Dr. Okin noted that there was no evidence of herniated disc present. He indicated that, based on his clinical examination, the review of the record, diagnostic studies and consideration of the evidence of symptom magnification, there was no real objective findings of disability. Dr. Okin opined that appellant "had an aggravation of an underlying condition and that aggravation was temporary and would have ceased at this time." He noted appellant had significant preexisting problems with the spine fusion.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Aubrey Belnavis*, 37 ECAB 206 (1985).

Appellant submitted several reports from Dr. Slipman dated April 22 to October 15, 1999 and Dr. Vivino dated December 15, 1999 to February 16, 2000 which continued to support total disability. However, these reports were repetitive of other reports in the record and did not contain new findings or rationale upon which a new conflict might be based. Therefore, this report is insufficient to overcome that of Dr. Okin or to create a new medical conflict.⁴

The Board finds that, under the circumstances of this case, the opinion of Dr. Okin is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant's work-related condition has ceased. Dr. Okin indicated that appellant's aggravation of her preexisting condition was temporary and had ceased at this time.

After the Office properly terminated appellant's benefits, the burden of proof shifted to appellant.⁵ However, medical evidence submitted by appellant after termination of benefits either did not specifically address how any continuing condition was due to the February 10, 1999 work injury or other incidents or was duplicated evidence previously considered by the Office. Appellant submitted several reports from Dr. Vivino dated March 8, 2000 to January 2, 2002 which diagnosed lumbar radiculopathy; lumbar spondylosis; chronic pain; and manic depression. Dr. Vivino noted that appellant was totally disabled from February 10, 1999 for an indefinite period of time. His report of November 3, 2000 noted his disagreement with Dr. Okin and believed his opinion to be erroneous. Dr. Vivino noted that appellant had not recovered from her accident as she still complained of left leg radicular pain. He noted that appellant experienced constant pain which temporarily improved following nerve blocks or injections. Dr. Vivino's report dated January 2, 2002 indicated that appellant developed a severe flare-up of back pain with radiation to the leg following her work-related injury. He diagnosed appellant with L5-S1 radiculopathy due to internal disc disruption. Dr. Vivino found appellant totally disabled. Although his opinion somewhat supports causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support his opinion.⁶ Additionally, these reports are similar to Dr. Vivino's previous reports and provide no new medical reasoning or rationale in support of his position. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁷

Appellant also submitted reports from Dr. Leslie dated February 28 to April 10, 2000; Dr. Scarpino dated March 20, 2000; Dr. Shin dated May 4, 2000; and from Dr. Griska dated November 7, 2000. Dr. Leslie's reports dated February 28 to April 10, 2000 indicated that appellant was being treated for migraine headaches. He noted that appellant's return to work

⁴ See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

⁵ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; see *Howard Y. Miyashiro*, *supra* note 4.

⁶ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board has found that vague and unrationalized medical opinions on causal relationship have little probative value).

⁷ See *Daniel Deparini*, 44 ECAB 657 (1993).

was a significant factor for having recurrent neurological problems. However, the Office never accepted that appellant sustained a migraine headache as a result of her February 10, 1999 work injury and there is no medical rationalized evidence to support such a conclusion.⁸ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁹ Dr. Scarpino's report indicated that he treated appellant for a left shoulder injury which occurred while lifting mail tubs at work. The report from Dr. Shin dated May 4, 2000 noted that he treated appellant for back pain. He diagnosed appellant with internal disc disruption syndrome involving L2-3 and L5-1. However, the Office never accepted that appellant sustained a left shoulder injury or internal disc disruption syndrome as a result of her February 10, 1999 work injury and there is no medical rationalized evidence to support such a conclusion.¹⁰ Moreover, Dr. Shin did not provide a history of injury or indicate appellant's back condition was work related.¹¹ The report from Dr. Griska dated November 7, 2000 noted treating appellant for her chronic depression; bipolar disorder; fibromyalgia; chronic low back pain with bulging lumbar discs; and shoulder pain. He noted she was totally disabled. As noted above, the Office never accepted that appellant sustained chronic depression; bipolar disorder; fibromyalgia; chronic low back pain with bulging lumbar discs; and shoulder pain as a result of her February 10, 1999 work injury and there is no medical rationalized evidence to support such a conclusion.¹² The reports from Drs. Leslie, Scarpino, Shin and Griska failed to mention appellant's 1995 nonwork-related injury and did not attribute appellant's present condition to her employment injuries. The Board has found that a medical opinion based on an incomplete history is insufficient to establish causal relationship.¹³ Additionally, these reports did not include a rationalized opinion regarding the causal relationship between appellant's current condition and her accepted work-related injury of February 10, 1999.¹⁴ The Board has found that a vague and unrationalized medical opinion on causal relationship have little probative value. Therefore, the reports from Drs. Vivino, Leslie, Scarpino, Shin and Griska are insufficient to overcome that of Dr. Okin or to create a new medical conflict.¹⁵

Other medical records submitted by appellant did not specifically address how any continuing condition was causally related to the February 10, 1999 employment injury.

⁸ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁹ See *Theron J. Barham*, *supra* note 6.

¹⁰ *Id.*

¹¹ See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

¹² See *Theron J. Barham*, *supra* note 6.

¹³ See *Cowan Mullins*, *supra* note 11.

¹⁴ See *Theron J. Barham*, *supra* note 6.

¹⁵ See *Howard Y. Miyashiro*, *supra* note 4; *Dorothy Sidwell*, *supra* note 4. The Board notes that Drs. Vivino, Leslie, Scarpino, Shin or Griska's reports do not contain new findings or rationale upon which a new conflict might be based.

The Board finds that there is no medical evidence which supports that appellant's disability was causally related to her accepted work-related condition. Dr. Okin had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated he clearly opined that appellant had absolutely no work-related reason for disability. His opinion is found to be probative evidence and reliable. The Board finds that Dr. Okin's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated April 2, 2002 is hereby affirmed.

Dated, Washington, DC
January 31, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member