United States Department of Labor
Employees' Compensation Appeals Board

ALICE C. ROBINSON, Appellant	)	
and	)	**Docket No. 04-1740**
	)	**Issued: February 3, 2005**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Memphis, TN, Employer	)	

Appearances:
Alice C. Robinson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 29, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated March 31, 2004 terminating her compensation and medical benefits. Pursuant to 20 C.F.R §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation effective March 31, 2004. On appeal, appellant expressed her disagreement with Dr. Carl W. Huff, a Board-certified orthopedic surgeon's reports, concerning her disability and limitations and argued that her injury has become degenerative.

FACTUAL HISTORY

On March 8, 1991 appellant, then a 39-year-old nursing assistant, injured her back while helping a coworker turn a patient. The Office accepted appellant's claim for mild low back strain with normal x-rays. Appellant returned to full duties on April 15, 1991 and her treating

physician, Dr. Mark Harriman, a Board-certified orthopedic surgeon, reported no permanent partial impairment. Appellant changed positions and eventually became an Office manager for the employing establishment.

On May 21, 1991 appellant filed a recurrence claim stating that she continued to have on-going pain since her work injury of March 8, 1991. By decision dated May 9, 1996, the Board set aside the Office's decisions dated March 3, 1994 and November 9, 1993 denying appellant's recurrence claim and remanded the case for further development.[1] The facts and the case history as set forth in that decision are incorporated by reference herein. On July 22, 1996 the Office accepted the condition of an L4-5 herniated disc as causally related to the March 8, 1991 work injury.

Appellant continued to seek medical treatment for her back condition. On November 16, 2002 she requested that Dr. John R. Lindermuth, Jr., a neurosurgeon, serve as her treating physician. She noted that, although the Office had previously approved Dr. George Wood, Dr. Wood had declined her as a patient. On November 21, 2002 the Office advised that Dr. Lindermuth was recognized as the primary treating physician to care for appellant's accepted conditions of displacement of thoracic or lumbar intervertebral disc without myelopathy.

In an undated report, which the Office received on January 6, 2003, Dr. Lindermuth reported that, throughout appellant's history, there had never been an objective physical finding apart from radiographic studies. He noted his examination findings and provided an impression of back pain/leg pain. Dr. Lindermuth advised that appellant had stabilized and had actually improved from her worst condition. He stated that no further neurosurgical intervention either by way of testing or treatment was needed and that she did not have a permanent partial impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). No restrictions were placed on appellant's activity or any medications prescribed.

In a letter dated January 13, 2003, the Office requested that Dr. Lindermuth clarify his opinion. In a January 28, 2003 report, Dr. Lindermuth stated that appellant's symptoms, which she reported as pain from her lower back down to her left lower extremity to the knee, did not qualify as a radiculopathy. He noted that, in the absence of pain radiating below the knee, the pain, in and of itself, did not qualify as a radiculopathy. Dr. Lindermuth advised that appellant's neurological examination was normal with no evidence of weakness, atrophy, reflex change, spasm, muscle guarding, asymmetry of spinal motion, etc. He further advised that appellant did not indicate any symptoms of a cauda equina syndrome and that her history did not indicate any alteration of motion segments integrity. Taking all the above into consideration, Dr. Lindermuth opined that under the A.M.A., *Guides* appellant had a diagnosis-related estimate (DRE) lumbar category one, which is described as "no significant clinical findings, no observed muscle guarding or spasm, no documented neurologic impairment, no documented alternation in structural integrity and no other indication of impairment related to injury or illness; no fractures," and which equated to a zero percent impairment of the whole person. He opined that appellant's subjective complaints were related to her March 1991 injury. In a January 28, 2003

[1] Docket No. 94-1946 (issued May 9, 1996).

OWCP-5c work capacity evaluation form, Dr. Lindermuth opined that appellant was able to perform her regular job at six hours a day with routine breaks.

In a letter dated January 18, 2003, appellant expressed her disagreement and dissatisfaction with Dr. Lindermuth's examination and report. In a September 22, 2003 letter, appellant requested that her treating physician be changed to Dr. K. Blake Ragsdale, a Board-certified orthopedic surgeon. She indicated that Dr. Lindermuth was not interested in treating her chronic condition and that she was misinformed by his office when she originally selected him as her treating physician.

In an October 6, 2003 decision, the Office denied appellant's request to transfer medical supervision to a different attending physician. Appellant was advised that her attending physician was authorized to refer her to another appropriate specialist for an evaluation.

On October 6, 2003 the Office referred appellant, her medical records, a statement of accepted facts and a list of specific questions, to Dr. Huff, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 28, 2003 report, Dr. Huff noted his familiarity with the updated statement of accepted facts and appellant's past medical reports and diagnostic tests. Examination findings were reported, an x-ray of the lumbar spine showed slight narrowing of the interspace at L4-5 and L5-S1, consistent with degenerative disc disease; an x-ray of the pelvis showed normal hip joints and sacroiliac joints; and nerve conduction studies and electromyogram (EMG) studies of both extremities showed normal findings with no indication of peripheral nerve entrapment or peripheral neuropathy and no sign of any radiculopathy, plexopathy, or myelopathy. The electrodiagnostic findings were normal. An impression of degenerative disc disease lumbar spine with mechanical back pain was provided based on decreased range of motion and positive findings on x-rays. Dr. Huff advised that there were no residuals from the herniated disc at L4-5 and that her back condition was of a degenerative nature. He indicated that a review of the computerized tomography (CT) scans on May 22, 1991, June 23 and November 16, 1992 and January 26, 1993, as well as the magnetic resonance imaging (MRI) scan of the lumbar spine in September 1991, showed a resolving disc protrusion with no indication of nerve impingement. When the results of these tests were compared on a chronological continuum, Dr. Huff stated that it clearly showed resolution of the tissue pathoanatomical condition that had occurred; thus, there was no residual of the herniated disc condition. Dr. Huff opined that appellant had no medical restrictions as a result of the March 8, 1991 work injury. He further opined that appellant could not engage in heavy lifting due to the degenerative change of her spine.

In a November 20, 2003 letter, the Office requested that Dr. Lindermuth review the second opinion physician's findings and provide any comments. No response was received.

A July 16, 2003 progress note from a Dr. Wilcox was submitted, but did not address causal relationship.[2]

[2] Dr. Wilcox's credentials cannot be discerned from the record as there is no indication of the physician's first name.

In a December 11, 2003 letter, appellant advised the Office that Dr. Lindermuth refused to refer her to another physician for problems from her injury. Appellant requested that the Office provide her with another physician to handle her case. In a January 6, 2004 letter, the Office told appellant that she could select another treating physician.

In a January 7, 2004 letter, the Office requested Dr. Huff to clarify whether appellant's work-related herniated disc at L4-5 caused or aggravated the degenerative changes of her spine.

In a January 15, 2004 letter, appellant informed the Office that she had selected Dr. K. Blake Ragsdale, a Board-certified orthopedic surgeon, to manage her care, which the Office accepted on January 27, 2004.

In an undated addendum report, received February 11, 2004, Dr. Huff opined that the work-related herniated disc at L4-5 did not cause or aggravate the degenerative change in appellant's spine. He stated:

> "[T]he quality of the diagnosis in the first place is in doubt. Because of the varying imaging studies, CT and MRI scans, the herniated disc was there, or not there. This lady is 51 years old, and numerous patients of her age that I have seen over the years have lumbar spine changes that are very comparable. These patients do not have a history of herniated disc. There is no need to invoke the indefinite diagnosis of herniated disc at L4-5 in this patient to extrapolate a causal or aggravation relationship. In my review of the x-rays, she has equal degenerative changes at L5-S1, but that was not involved in the original diagnosis. Inasmuch as degenerative changes of her spine is not site specific and is not any different than those expected for patients of her age, there is no reason to say that the so-called herniated disc, if it in fact actually occurred, was causally related to her present degenerative condition of her spine."

On February 25, 2004 the Office issued a notice of proposed termination of compensation for wage-loss and medical benefits based on the second opinion reports of Dr. Huff who found no residuals of the March 8, 1991 work-related injury and no causal relationship to her existing degenerative condition of the spine.

In a March 25, 2004 letter, appellant advised that she still had a work-related disability as she could not function in the same capacity without experiencing problems. In a report dated March 8, 2004, Dr. Ragsdale noted the work injury and appellant's objective studies. He set forth his examination findings and noted that x-rays of the lumbosacral spine showed mild degenerative changes at L4-5 and at L5-S1 with mild facet degenerative changes. An impression of degenerative lumbar disc disease and degenerative lumbar facet disease was provided. He noted that appellant was working regular duty and stated that she could return to work that day.

By decision dated March 31, 2004, the Office terminated appellant's compensation for wage-loss and medical benefits effective the same date.

LEGAL PRECEDENT

It is well established that once the Office accepts a claim it has the burden of proof to justify termination or modification of compensation benefits.[3] After it is 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.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition or injury that requires further medical treatment.[5] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.[6]

ANALYSIS

The Office based its decision to terminate appellant's compensation on the reports of its second opinion physician, Dr. Huff, who stated, in his report of October 28, 2003, that appellant had degenerative disc disease of the lumbar spine with associated mechanical back pain as determined by decreased range of motion and x-ray findings. He opined that there were no residuals from the accepted herniated disc as a review of the MRI scan and CT scans showed a resolving disc protrusion with no indication of nerve impingement. In his addendum report, Dr. Huff further opined that appellant's work-related herniated disc at L4-5 did not cause or aggravate the degenerative change of her spine. Due to the varying quality of the imaging studies, he initially questioned whether the diagnosis of a herniated disc was correct. He further advised that the degenerative changes in appellant's spine were not site specific and that it was his clinical experience that numerous patients of appellant's age, without a history of herniated disc, had comparable lumbar spine changes.

The Board finds that Dr. Huff's opinion is sufficient to support the Office's termination decision in finding that appellant had no residuals of the March 8, 1991 work-related injury and that such injury had no causal relationship to her existing degenerative condition of the spine. Dr. Huff provided complete comprehensive report based on a review of the medical records, a statement of accepted facts and a complete examination. His reports are also sufficiently probative, rationalized and based upon a proper factual background. In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given each individual report.[7] Although, in his March 8,

[3] *John W. Graves*, 52 ECAB 160 (2000).

[4] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Mary A. Lowe*, 52 ECAB 223 (2001).

[5] *Manuel Gill*, 52 ECAB 282 (2001).

[6] *Id.*

[7] *See Connie Johns*, 44 ECAB 560 (1993).

2004 report, Dr. Ragsdale opined that appellant had degenerative lumbar disc disease and degenerative lumbar facet disease, he did not specifically support that appellant's current conditions were related to her March 8, 1991 work injury. Based on these facts, the Office properly found that Dr. Huff's opinions constituted the weight of the medical evidence.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective March 31, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2004 is affirmed.

Issued: February 3, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member