United States Department of Labor
Employees' Compensation Appeals Board

ANGELA T. FLOYD, Appellant	)	
and	)	**Docket No. 04-2018**
	)	**Issued: January 11, 2005**
FEDERAL TRADE COMMISSION, Washington, DC, Employer	)	

Appearances:
Frederick Iverson, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On August 10, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 17, 2004 terminating her wage-loss benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits on the grounds that disability causally related to her accepted September 26, 2002 employment injury had resolved.

FACTUAL HISTORY

On October 11, 2002 appellant, a 30-year-old attorney, filed a claim for traumatic injury (Form CA-1), alleging that, while packing her office on September 26, 2002, she sustained an injury to her back, which was aggravated as she unpacked on September 30, 2002. On

October 8, 2002 appellant stopped working. The claim was accepted for a lumbar sprain on April 2, 2003.

Appellant submitted a medical report dated December 3, 2002 from Dr. Dora So, a treating physician, reflecting that her back pain was due to her work-related injury. She also submitted medical reports dated November 22 and December 6, 2002 from Dr. William Lauerman, a Board-certified orthopedic surgeon, who opined that appellant "may have piriformis syndrome. Upon his recommendation, appellant had a magnetic resonance imaging (MRI) scan, which he reviewed and described as "essentially normal." Appellant provided medical reports dated February 28, March 19, June 12 and July 16, 2003, March 11 and April 27, 2004 from her treating physician, Dr. John E. Toerge, a Board-certified physiatrist, who diagnosed appellant's condition as "low back pain due to somatic dysfunction of the lumbosacral spine," which limited her capacity to "sit, stand, walk or even recline for protracted periods." Based upon his recommendation, appellant returned to work on a reduced schedule on June 16, 2003, gradually increasing her work hours to six hours per day, three days per week beginning November 17, 2003. In his letter dated March 11, 2003, Dr. Toerge advised increasing her schedule to one eight-hour day and two six-hour days, to be increased over two months to three eight-hour days and eventually to a full-time schedule.

At the request of the Office, appellant had a second opinion examination by Dr. Charles Lancelotta, Jr., a Board-certified neurologist, on March 16, 2004. Dr. Lancelotta agreed that lumbar strain was the appropriate diagnosis for the work injury of September 26, 2002. However, he stated that appellant's residual complaints of back pain should be addressed with "simple pain management with medications" and that there is no reason that appellant cannot perform the sedentary duties of an attorney without restrictions.

On April 2, 2004 the Office issued a notice of proposed termination, which incorporated the notice of proposed decision, proposing that appellant's compensation for wage loss be terminated because the medical evidence established that she was no longer disabled from work due to her accepted condition; that her light-duty assignment be terminated; and that she return to full-time full-duty work as an attorney. She was given 30 days to submit additional evidence.

Appellant submitted a letter of disagreement on April 8, 2004. On May 3, 2004 the Office issued a letter decision and notice of decision terminating appellant's benefits on the grounds that appellant had not submitted sufficient evidence to alter the recommendation to terminate her benefit. On May 6, 2004 the Office received a medical report from Dr. Toerge dated April 27, 2004 stating that appellant continued to have significant physical findings as a result of her "on-the-job injury," including increased muscle spasms, dysfunction of the right sacroiliac joint with posterior torsion of the ilium on the right side, accompanied by spasm in the gluteus medius muscle on the right side and increased tension in the iliotibial band on the right side.

On May 17, 2004 the Office reissued the letter and notice of decision terminating appellant's compensation benefits on the grounds that appellant had not submitted sufficient evidence to alter the recommendation to terminate her benefit. Referencing Dr. Toerge's medical report dated April 27, 2004, the Office concluded that the medical documentation failed

to support appellant's case for continuing compensation and, therefore, was of no probative value.[1]

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify a termination or modification of compensation benefits.[2] After it has determined that an employee has a 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.[3]

If there is disagreement between the physician making the examination for the Office and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[4] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[5]

ANALYSIS

Having accepted appellant's claim for a lumbar sprain on April 2, 2003, the Office terminated her compensation benefits effective May 16, 2004 on the grounds that the accepted disability had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.[6] The Board finds that the Office failed to meet its burden of proof.

A conflict in medical opinion arose between appellant's attending physician, Dr. Toerge, and the Office referral physician, Dr. Lancelotta, on whether appellant suffered disability causally related to her employment injury. Because there was a disagreement in opinion, the Office was required to refer the case to an impartial medical specialist for the purpose of resolving the conflict.[7] Instead of making such a referral, the Office relied on Dr. Lancelotta's report in terminating appellant's compensation benefits, deeming it to be the weight of medical evidence in the case. Such reliance was reversible error.

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[1] Several documents were received subsequent to the Office's May 17, 2004 decision. The Board's review is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board, therefore, cannot consider the untimely evidence.

[2] *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004); *see also Harold S. McGough*, 36 ECAB 332 (1984).

[3] *Willa M. Frazier, supra* note 2; *see also Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[4] 5 U.S.C. § 8123(a).

[5] *See Roger Dingess*, 47 ECAB 123, 126 (1995); *Glenn C. Chasteen*, 42 ECAB 493, 498 (1991).

[6] *See Willa M. Frazier, supra* note 2.

[7] 5 U.S.C. § 8123(a).

Although in its notice of proposed termination the Office discussed at length medical evidence dated prior to the acceptance of appellant's claim on April 2, 2003, the only medical evidence relevant to a finding of whether the Office properly terminated appellant's compensation benefits is evidence dated after acceptance of her claim. The Office's burden is to establish that appellant no longer suffers residuals of her accepted condition. A reexamination of medical evidence which predates the acceptance of her condition is not dispositive to this determination and could only assist the Office in rescinding its acceptance of appellant's condition. Since the Office terminated compensation benefits on the grounds that disability had ceased by a certain date, the Board will focus on medical evidence subsequent to April 2, 2003.[8]

Relevant medical reports were submitted from Dr. Toerge dated June 12 and July 16, 2003 and March 11 and 16, 2004. In his June 12, 2003 letter, Dr. Toerge referenced his five most recent office visits with appellant and her continuing low back pain due to somatic dysfunction of the lumbosacral spine, which limits her capacity to sit, stand, walk or recline for protracted periods. He described appellant's gradual improvement, which allowed her to tolerate sitting for up to four hours, in his opinion a prerequisite for her returning to work on a reduced schedule. Dr. Toerge opined that it would be important for her to advance her activities carefully to avoid "a major flare-up and setback." He stated that the prognosis was fair to good for appellant to return to full capacity, provided that she proceeded as recommended. In his report dated July 16, 2003, Dr. Toerge reaffirmed his position that appellant was not ready to increase her work schedule, which at that time was four hours per day, three days per week, due to her diagnosed condition. He indicated that he was seeing appellant on a weekly basis and intended to advance her to maximum medical improvement "as quickly as possible." In his report dated March 11, 2004, Dr. Toerge proposed that appellant advance her schedule to eight hours per day, three days per week over the following two months. He stated that while he was unclear exactly when she could return to a full-time schedule, it was likely to occur over the next several months as she built her tolerance for sitting and her general work schedule. He further offered that he would advance her activities as quickly as possible. Finally, in his letter dated April 27, 2004, Dr. Toerge responded with surprise that appellant's compensation benefits had been terminated. He stated that she continued to have significant physical findings as a result of her "on[-]the[-]job injury," including increased muscle spasms, dysfunction of the right sacroiliac joint with posterior torsion of the ilium on the right side, accompanied by spasm in the gluteus medius muscle on the right side and increased tension in the iliotibial band on the right side. Dr. Toerge further indicated that she continued to have a significant low back problem emanating from her on-the-job injury; that, though she had made progress both in pain tolerance and mechanical function, she continued to be "deconditioned" and therefore required a "progressive" return to work schedule; and that in his view a gradual move toward a full-time work schedule was medically necessary in order for appellant to function appropriately without injuring herself. The medical evidence from Dr. Toerge is well reasoned and, contrary to the Office's finding, supports appellant's case for continuing compensation.

[8] *See Willa M. Frazier, supra* note 2 (citing *John M. Pittman*, 7 ECAB 514 (1955) for the proposition that it is a denial of administrative due process requiring reversal for the Office to terminate compensation benefits on the ostensible grounds that a claimant no longer suffers residuals of an accepted condition, where the record supports that the real reason for the Office's action was that it had determined that the condition was not causally related to the claimant's employment and should not have been accepted as such).

In his report dated March 16, 2004, based upon his examination of appellant and review of the medical record and statement of accepted facts, Dr. Lancelotta stated that his examination revealed no palpable lumbar spasm or interlaminal tenderness. He further indicated that the motor examination was normal in both legs, and no abnormal reflexes were noted. In response to specific questions posed by the Office, Dr. Lancelotta stated that appellant did "appear to have sustained a lumbar strain" and that she did have residual complaints of back pain. However, he opined that no further physical therapy was indicated and that "simple pain management with medications "was called for. Finally, he stated his belief that because her position as an attorney would be "rated as sedentary or light-duty work," there was no reason that appellant could not perform her job without restrictions.

The Office stated in its notice of proposed decision that Dr. Lancelotta's report was comprehensive and well reasoned, taking into account previous medical records and, therefore, represented the weight of medical evidence. However, Dr. Lancelotta's report does not reflect a comprehensive review of the medical records or rationalized medical opinion. There were no references in his report to the numerous medical reports from any of appellant's doctors and particularly those from Dr. Toerge, which described in great detail appellant's condition and treatment and explained the doctor's rationale for continuing with a gradual move toward full-time employment. After stating that most lumbar strains do resolve within a period of nine weeks, Dr. Lancelotta asserted that he did not feel that any further physical therapy was indicated and that simple pain management with medications would be sufficient. He made statements that were clear and unequivocal, but he offered little if any medical reasoning to support his conclusion and made no references at all to the case record to demonstrate that he was drawing his conclusion from established medical facts. The certainty with which Dr. Lancelotta expressed his opinion cannot overcome the lack of medical rationale.

The Board has held that medical conclusions unsupported by rationale are of little probative value.[9] In *Willa M. Frazier*,[10] claimant, a 46-year-old medical supply technician, sustained an injury when she fell over an oxygen tank holder. The Office accepted her claim for bilateral medial meniscus tears with arthroscopies, temporary aggravation of degenerative joint disease in the right knee and permanent aggravation of chronic degenerative arthritis in the left knee. To resolve a conflict in the medical evidence, the Office referred appellant together with the medical record and a statement of accepted facts to a Board-certified orthopedic surgeon, who disregarded the statement of accepted facts and opined that there was no causal relationship between the claimant's condition and her work-related injury. Based upon his opinion, the Office terminated the claimant's benefits on the grounds that residuals of the accepted employment injury ceased by a certain date. The Board held that the Office had failed to meet its burden of proof to justify a termination of benefits, stating that the orthopedic surgeon's report lacked sufficient medical reasoning and therefore was of little probative value. The Board was particularly influenced by the surgeon's failure to refer to the case record to show that he had formed his opinion based upon established facts and the fact that his opinion was not in

[9] *Jimmy H. Duckett*, 52 ECAB 332, 336 (2001).

[10] *See Willa M. Frazier, supra* note 2.

keeping with the statement of accepted facts.[11] Similarly, in the instant case, Dr. Lancelotta's opinion lacks sufficient medical reasoning to serve as a basis for terminating appellant's benefits.

CONCLUSION

The Board finds that the Office has not met its burden of proof and improperly terminated appellant's compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2004 decision of the Office of Workers' Compensation Programs is reversed.

Issued: January 11, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[11] *Id.*