

**United States Department of Labor
Employees' Compensation Appeals Board**

JOYCE N. RIDDICK, Appellant

and

**U.S. POSTAL SERVICE, WAKEFIELD
STATION, Bronx, NY, Employer**

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**Docket No. 05-537
Issued: July 7, 2005**

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On December 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 4, 2004, finding that appellant had no continuing disability after April 4, 2000, causally related to her June 1, 1998 accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant had any continuing disability after April 4, 2000, the date the Office terminated her compensation benefits, causally related to her June 1, 1998 accepted employment injury.

Appellant's counsel presents three questions for determination: (1) whether the Board properly terminated appellant's benefits in its January 7, 2003 decision; (2) whether the weight of medical evidence establishes that appellant remains disabled as a result of injuries and conditions causally related to the June 1, 1998 accepted employment incident; and (3) whether the denial of appellant's claim by the Office and the Board constituted clear evidence of error.

FACTUAL HISTORY

This case has been before the Board on two previous occasions. Appellant was injured on June 1, 1998 when her chair was hit from behind injuring her back. The Office accepted appellant's claim for low back sprain and herniated nucleus pulposus L4-5 and L5-S1. By decision issued on November 20, 2001, the Board affirmed the Office's decisions of April 14 and December 5, 2000, terminating appellant's compensation benefits, but, finding that there was a conflict in medical opinion between appellant's treating physician and two second opinion physicians, the Board remanded the case for further proceedings concerning her continuing disability.¹

On remand, the Office referred appellant for an impartial medical examination to Dr. Lawrence E. Miller,² who opined in a report dated January 29, 2002, that appellant had no disability with regard to the accepted work injury and was capable of pursuing employment on a full-time basis with no orthopedic restrictions. By decision dated February 13, 2002, the Office found that appellant had no continuing disability causally related to the June 1, 1998 accepted employment injury and by decision dated July 1, 2002, the Office denied modification of its previous decision.

By decision dated January 7, 2003, the Board affirmed the Office's February 13 and July 1, 2002 decisions, finding that appellant had no continuing disability after April 4, 2000, causally related to her June 1, 1998 accepted employment injury.³

On October 24, 2003 appellant, by counsel, requested reconsideration of the denial of her claim.⁴ In support of her request, appellant submitted reports dated March 11, 2002 and April 3, 2003 from Dr. Ralph Yung, a Board-certified internist and appellant's treating physician.⁵ In his March 11, 2002 report, Dr. Yung stated that he saw appellant 32 times between June 5, 1998 to February 28, 2002 and that her symptoms were compatible with the injuries sustained in her

¹ Docket No. 01-840 (issued November 20, 2001). The factual background of the case is hereby incorporated by reference.

² In its February 13, 2002 decision, the Office stated that Dr. Miller was a Board-certified orthopedic surgeon; however, his credentials cannot be verified.

³ Docket No. 02-2324 (issued January 7, 2003). The factual background of the case is hereby incorporated by reference.

⁴ Appellant purported to request reconsideration of the Board's January 7, 2003 decision. However, the Office does not have jurisdiction to review a decision of the Board. Moreover, the January 7, 2003 decision became final 30 days following the entry of the order. Therefore, the Office properly interpreted appellant's pleading as a request to reconsider the merits of her claim that she had continuing disability or residuals after April 4, 2000, the date the Office terminated her compensation benefits, causally related to her June 1, 1998 accepted employment injury. As the Board noted in its January 7, 2003 decision, the Board had affirmed the termination of appellant's compensation benefits effective April 4, 2000, in its November 20, 2001 decision and the issue before the Office in its February 13, 2002 decision was continuing disability.

⁵ The Board stated in its January 7, 2003 decision, that Dr. Yung's March 11, 2002 report did not appear in the record. However, the Board now notes that the March 11, 2002 report appears in the record and is stamped as having been received on May 21, 2002. For reasons stated herein, the report lacks probative value.

work-related accident. He further indicated that while the results of the original magnetic resonance imaging (MRI) scan of the lumbar spine revealed only bulging, a more recent report had shown deterioration of the lumbar spine with definite herniation of the disc. Dr. Yung stated that appellant was unable to bend her neck or back to any marked extent and opined that appellant was 100 percent disabled due to her injury. In his April 3, 2003 report, Dr. Yung indicated that he had seen appellant 14 times between March 28, 2002 and March 24, 2003. He stated that he had been treating appellant for lower back pain since 1993, but that her problems had increased since the June 1998 work injury. Dr. Yung noted that while a June 11, 1998 MRI scan had shown muscle spasms in the lumbar region with disc bulging at L4-5 and L5-S1, a January 23, 2002 MRI scan had revealed disc herniation at C2-3, C3-4, C4-5 and C6-7 and a February 22, 2002 MRI scan had shown a discherniation at L4-5. He opined that appellant's progressive back pain was a result of the 1998 accepted work injury. Dr. Yung stated:

“The medical diagnosis is that [appellant] sustained an injury specifically on June 1998, as a result of which she continues to have progressive back pain. The initial x-ray report in 1996 did not substantiate any disturbance of her back, but subsequent to the injury, there seems to be a progression of the disorder at which time, we would note in June 1998, there was a bulging of the disc after the injury and in 2002, there was herniation of a disc in the lumbar area.”

Dr. Yung reiterated his opinion that appellant was totally disabled and would be unable to return to work in the future.

Appellant submitted a report dated September 5, 2002 from Dr. Afshan Khan, a Board-certified neurologist, which contained an addendum dated April 29, 2003. Dr. Khan's report provided a diagnosis of left C5 and C6 radiculopathy, bilateral carpal tunnel syndrome and left ankle and left knee arthropathy. Dr. Khan indicated the presence of paraspinal muscle spasm in the cervical and lumbar areas, that her gait was slow and that she walked with a cane. In the April 29, 2003 addendum, which was incorporated into the September 5, 2002 report, Dr. Khan opined “to a reasonable degree of medical certainty that the patient's low back injuries were causally related to the accident of June 1, 1998” and that “as symptoms have persisted since 1998 her injuries are permanent.”

Appellant submitted a report from Dr. A.V. Carella, a Board-certified orthopedic surgeon, dated July 21, 2003, which reflected that he had been treating appellant for pain in her ankle, knee, shoulder and back since May 23, 2002. Dr. Carella detailed a history of his treatment of appellant and reviewed all diagnostic studies, including reports of MRI scans dated January 23 and February 22, 2002, reflecting disc herniation. He stated that based upon appellant's complaints, clinical course and diagnostic studies, there was evidence of significant cervical and lumbosacral spondylosis. He opined that, assuming appellant was an accurate historian, then the degenerative process began with a 1991 accident and was aggravated by the 1998 accident. Dr. Carella indicated that “it is not possible to state that any one incident is the causative agent relative to degenerative changes and disc herniations as represented in the MRI [scan] studies.” He further opined that appellant was completely disabled due to severe pain in the neck, low back and left lower extremity.

Appellant also submitted numerous disability slips reflecting her inability to work due to pain in her back and neck.

In a merit decision dated October 4, 2004, the Office found that appellant had failed to establish a continuing disability related to the June 1, 1998 accepted injury.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,⁶ once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁷ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.⁸

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had continuing disability due to her accepted employment injury.⁹ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.¹⁰

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence supporting such a causal relationship.¹¹ Rationalized medical opinion evidence is medical evidence, which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's 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.¹² The weight of the medical evidence is determined by its reliability, probative value, convincing quality and the medical rationale expressed in support of the physician's opinion.¹³

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁸ *Id.*

⁹ See *Esmeralda B. Huell*, 56 ECAB ____ (Docket No. 04-786, January 5, 2005). See also *Gayle Harris*, 52 ECAB 319 (2001); *Manuel Gill*, 52 ECAB 282 (2001); *Lawrence D. Price* 47 ECAB 120 (1995).

¹⁰ *Howard Y. Miyashiro*, 51 ECAB 253 (1999).

¹¹ See *John D. Jackson*, 55 ECAB ____ (Docket No. 03-2281, issued April 8, 2004); *Manuel Gill*, 52 ECAB 282 (2001).

¹² *Steven S. Saleh*, 55 ECAB ____ (Docket No. 03-2232, issued December 12, 2003); *Claudio Vazquez*, 52 ECAB 496 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹³ *Duane B. Harris*, 49 ECAB 170 (1997).

ANALYSIS

In support of his request for reconsideration filed with the Office subsequent to the Board's January 7, 2003 decision, appellant's counsel presented legal argument and additional medical evidence.¹⁴ The Board finds that this case is not in posture for decision as to whether appellant had any continuing disability due to the June 1998 accepted employment injury.

The Board notes initially that its November 20, 2001 decision affirming the termination of appellant's compensation benefits effective April 4, 2000, became final 30 days after the issuance of the decision. Therefore, arguments made by appellant's counsel regarding the termination of appellant's benefits are not relevant to the issue before the Board, namely whether appellant had any continuing disability after April 4, 2000, causally related to her June 1, 1998 accepted employment injury.

In its November 20, 2001 decision, the Board determined that a conflict in medical opinion was created on whether appellant remained disabled due to her 1998 accepted low back sprain and herniated disc condition and remanded the case to the Office for further development. The Office properly referred appellant and the medical evidence of record to an impartial medical specialist, Dr. Lawrence E. Miller, to resolve the conflict. Dr. Miller found that appellant's subjective complaints were not supported by objective medical findings and opined that there was no evidence of a herniated disc in the lumbosacral spine. He opined that appellant had no disability with respect to the June 1, 1998 work injury and was capable of pursuing gainful employment on a full-time basis with no orthopedic restrictions or limitations. Dr. Miller stated that appellant wore a left ankle support, could not stand on her left toes and walked with a slight limp due to a 1991 injury. In its January 7, 2003 decision, the Board found that Dr. Miller's opinions were sufficiently well rationalized, were based upon his findings of an absence of objective symptomatology related to the back sprain and herniated disc and based upon a proper factual and medical background and, as such, they must be accorded special weight in establishing that appellant had no further disability requiring further treatment, causally related to the 1998 accepted employment injury.

As noted in its January 7, 2003 decision, upon termination of her compensation benefits, the burden of reinstating those benefits shifted to appellant,¹⁵ who, in order to prevail, must establish by the weight of the reliable, probative and substantial evidence that she had a disability related to her 1998 accepted injury, which continued after termination of compensation

¹⁴ Appellant's counsel argued that the Office failed to make additional inquiries of the referee medical examiner regarding his conclusion that appellant's existing symptoms were due to a 1991 injury and that the Board improperly referred to the 1991 injury as "nonwork related." The Board notes that the residuals identified by Dr. Miller (that appellant wore a left ankle support, could not stand on her left toes and walked with a slight limp) were unrelated to appellant's accepted condition of low back sprain and herniated nucleus pulposus L4-5 and L5-S1. The issue for determination is whether appellant had any continuing disability causally related to her June 1, 1998 accepted employment injury. Therefore, it is irrelevant whether or not her 1991 injuries were work related or nonwork related.

¹⁵ *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003).

benefits.¹⁶ The Board finds that, although appellant has failed to meet her burden of proof, she has presented additional medical evidence which warrants further development by the Office.

Appellant submitted reports dated March 11, 2002 and April 3, 2003 from Dr. Yung, her treating physician, whose reports lack probative value for several reasons. First, they largely reiterate the opinions expressed in his March 24, 2000 report, which created the conflict resolved by the impartial medical specialist, namely that her symptoms were compatible with the injuries sustained in her work-related accident; that her problems had increased since the June 1998 work injury; and that appellant was 100 percent disabled due to her injury. Moreover, as Dr. Yung was on one side of the conflict, his additional reports are insufficient to overcome the weight accorded to the impartial medical specialist or to create a new conflict.¹⁷ He emphasized that while a June 11, 1998 MRI scan had shown muscle spasms in the lumbar region with disc bulging at L4-5 and L5-S1, recent MRI scans had revealed disc herniation. However, Dr. Miller opined that appellant's "positive" MRI scan was not determinative, explaining that there was no clinical evidence of a herniated disc in the cervical spine, as none of the pains could be reproduced down either one of her arms. Finally, although Dr. Yung noted that appellant's condition had progressed from a bulging disc in 1998 to a herniated disc in 2002, he failed to provide a rationalized explanation as to how or why this occurred.

In a September 5, 2002 report, Dr. Khan provided a diagnosis of left C5 and C6 radiculopathy, bilateral carpal tunnel syndrome and left ankle and left knee arthropathy and indicated the presence of paraspinal muscle spasm in the cervical and lumbar areas. In an April 29, 2003 addendum to the September 5, 2002 report, he opined "to a reasonable degree of medical certainty that the patient's low back injuries were causally related to the accident of June 1, 1998" and that "as symptoms have persisted since 1998 her injuries are permanent." Dr. Khan's September 5, 2002 report lacks probative value in that it fails to provide a rationalized medical opinion regarding the causal relationship between appellant's current condition and her 1998 work-related injury. Although he indicated that appellant's gait was slow and that she walked with a cane, Dr. Khan provided no information as to any condition related to her low back injury that would render her totally disabled. Dr. Khan's April 29, 2003 addendum likewise lacks probative value. Although he stated that appellant is "totally disabled in her job as a letter carrier," and opined that her injuries were causally related to the 1998 accident, he gave no explanation, rationalized or otherwise, for his opinion. Moreover, there is no evidence that Dr. Khan performed an examination of appellant prior to submitting his April 29, 2003 addendum, diminishing further the value of the opinion.

Appellant submitted a report dated July 21, 2003 from Dr. Carella, reflecting that he had been treating appellant for pain in her ankle, knee, shoulder and back since May 23, 2002. Dr. Carella detailed a history of his treatment of appellant and reviewed all diagnostic studies, including reports of MRI scans dated January 23 and February 22, 2002, reflecting disc herniation. He stated that based upon appellant's complaints, clinical course and diagnostic studies, there was evidence of significant cervical and lumbosacral spondylosis. Dr. Carella explained that assuming appellant was an accurate historian, then the degenerative process began

¹⁶ See *Esmeralda B. Huell*, *supra* note 9.

¹⁷ See *Virginia Davis-Banks*, 44 ECAB 389 (1993).

with a 1991 accident and was aggravated by the 1998 work-related injury. He further opined that appellant was completely disabled due to severe pain in the neck, low back and left lower extremity. The Board finds that, although Dr. Carella's report is not sufficiently rationalized to establish by the weight of the reliable, probative and substantial evidence that appellant had an employment-related disability, which continued after termination of compensation benefits,¹⁸ it provides sufficient new information and rationale to warrant further development by the Office. Dr. Carella was somewhat equivocal in his discussion of causation and did not explain fully the physiological process whereby appellant's current condition is related to her June 1, 1998 accepted injury. However, he expanded the diagnosis for appellant's condition to include injuries to the cervical spine and discussed appellant's complaints, diagnostic studies and the degenerative process in that regard. Moreover, his opinion that appellant is totally disabled was based upon a review of the entire record and an examination of appellant subsequent to the January 29, 2002 impartial medical examination. Additionally, there is no evidence of record dated subsequent to the date of the impartial medical adviser's January 29, 2002 report, which is in conflict with Dr. Carella's opinion.

The Board notes that Dr. Miller found no clinical evidence of a herniated disc in the cervical spine at the time of his January 29, 2002 report. However, by September 5, 2002, Dr. Khan had provided a diagnosis of left C5 and C6 radiculopathy, as well as carpal tunnel syndrome and had noted the presence of paraspinal muscle spasm in both the cervical and lumbar areas. By July 21, 2003, Dr. Carella observed evidence of significant cervical and lumbosacral spondylosis. Thus, appellant has submitted medical evidence suggesting a worsening of her condition. Because proceedings under the Act are not adversarial in nature and the Office shares responsibility in the development of the evidence and has an obligation to see that justice is done,¹⁹ the Board will remand this case to the Office for further development.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant had continuing disability after April 4, 2000, causally related to her June 1, 1998 accepted employment injury.

¹⁸ See *Esmeralda B. Huell*, *supra* note 9.

¹⁹ *Lyle Dayberry*, 49 ECAB 369, 372 (1998).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action by the Office consistent with this decision.

Issued: July 7, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member