

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

MARVA D. REYNOLDS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 05-1155
Issued: October 24, 2005**

Appearances:

Thomas Martin, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 28, 2005 appellant filed a timely appeal from a January 18, 2005 merit decision of the Office of Workers' Compensation Programs affirming a decision terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective March 2, 2004 for her accepted orthopedic condition; and (2) whether appellant established that she had any continuing disability after March 2, 2004.

FACTUAL HISTORY

This is the second appeal in the present case. In an October 17, 1984 decision, the Board set aside an April 18, 1984 Office decision.¹ The Board determined that there was a conflict of

¹ The Office accepted that appellant sustained a myoligamentous back strain in the performance of his duties on October 21, 1972.

medical evidence between appellant's treating physician and an Office referral physician with regard to whether her psychiatric disability was causally related to her federal employment. The Board found that the Office failed to meet its burden of proof to terminate appellant's compensation benefits effective March 6, 1981. The facts and the circumstances of the case are set forth in the Board's prior decision and incorporated herein by reference.²

The Office referred appellant to several referee physicians, including Board-certified specialists in occupational medicine, orthopedics, psychiatry and neurology. In a report dated February 14, 1986, Dr. Paul M. Tsou, a Board-certified orthopedic surgeon, noted that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury and advised that there was no evidence of objective pathology. Dr. Tsou noted that the initial injury and the current condition was a soft tissue injury or a small disc protrusion. He opined that appellant's symptoms and disability were grossly amplified. Dr. Robert Freundlich, a Board-certified neurologist, indicated in a report dated February 21, 1986 that there was no true motor deficit but believed appellant's weakness was secondary to limitation of effort from pain. He did not recommend further neurological testing but recommended referring appellant to a multidisciplinary pain clinic and for psychiatric counseling. Dr. Larry Moss, a Board-certified psychiatrist, in a report dated April 28, 1986, diagnosed major depression with psychotic features and dependent personality disorder. He opined that appellant had been depressed since her work-related injury in 1972. Dr. Moss indicated that appellant accentuated a normal premorbid personality trait with her work-related injury and required intensive therapy. Dr. Richard Barber, Board-certified in occupational medicine, in a report dated May 6, 1986, diagnosed chronic myoligamentous sprain of the lumbosacral spine and major depression with psychotic features. He opined that appellant was not capable of performing her employment duties because of the subjective psychiatric condition. Dr. Barber opined that appellant continued to have residuals of the October 21, 1972 injury of lower back discomfort and major depression.

In a decision dated October 24, 1986, the Office expanded appellant's claim to include major depression.

Appellant came under the care of Dr. Donald W. Verin, a Board-certified psychiatrist, who noted treating appellant from July 13, 1987 to August 23, 1991 for a psychiatric industrial injury which occurred in October 1972. He diagnosed major depression with somatization, dependent personality and post-traumatic L5-S1 sprain with spina bifida occulta. Dr. Verin opined that appellant was totally disabled. In reports dated July 26, 1993 to October 31, 2001, Dr. Verin diagnosed major depression with psychotic features and psychological factors affecting physical condition, dependent personality and post-traumatic L5-S1 sprain and opined that appellant's level of functioning was poor and that she required further outpatient psychiatric treatment. Appellant was also seen by Dr. Charles M. Bosley, an orthopedic surgeon, on December 15, 1989 who noted a history of appellant's work-related injury of October 1972 and diagnosed chronic lumbosacral strain. He advised that the physical examination revealed no abnormalities. Dr. Bosley noted that the magnetic resonance imaging (MRI) scan revealed no evidence of a herniated disc or degenerative disc disease. He opined that appellant was

² Docket No. 84-1805 (issued October 17, 1984).

permanent and stationary six months after her injury and did not have any residual disability and could return to work without restrictions.

Also submitted was a report from Dr. Carroll M. Brodsky, a Board-certified psychiatrist and neurologist, dated May 10, 2000 who examined appellant's medical records upon the request of the medical adviser. He noted that appellant's disability was psychiatric in nature and there was no evidence of a physical disorder. Dr. Brodsky recommended referring appellant for a second opinion examination to determine whether she has any residuals of the accepted orthopedic disorder.

On August 22, 2001 the Office referred appellant to Dr. Lee B. Silver, a Board-certified orthopedist, for a second opinion evaluation. In a report dated September 25, 2001, he indicated that he reviewed the records provided to him and performed a physical examination of appellant. Dr. Silver noted that upon physical examination there were inconsistencies present with regard to appellant's orthopedic condition. He opined that appellant was not putting forth a maximal effort throughout the examination to provide an accurate representation of her true orthopedic condition. Dr. Silver observed no objective limitation of the lumbosacral range of motion, no paravertebral muscle spasm, no evidence of disc herniation or nerve root impingement, no atrophy and motor and reflex examinations were intact. He did not detect any truly objective residuals of her work injury. Dr. Silver opined that appellant made a satisfactory recovery following the actual effects of her work-related injury and he did not detect evidence of any ongoing orthopedic derangement warranting work restrictions or future medical care. He determined that appellant attained maximum medical improvement and could return to work without orthopedic restrictions or vocational retraining.

On August 22, 2001 the Office referred appellant to Dr. Donald S. Broder, a Board-certified psychiatrist, for a second opinion evaluation. In a report dated September 26, 2001, he noted that the mental status examination revealed no evidence of a thought process disorder and the Minnesota Multiphasic Personality Inventory-2 test revealed involuntional melancholia, depression and borderline psychosis. Dr. Broder diagnosed major depressive disorder and dependent personality. He opined that appellant's depression was precipitated by her October 1972 injury and has gotten chronically worse and she remained disabled from the depression. Dr. Broder found no evidence of malingering and no evidence that appellant could function at a higher level than what she has demonstrated. He opined that appellant was totally disabled and recommended continued psychiatric treatment.

On August 22, 2001 the Office referred appellant to Dr. Harriet Cokely, a Board-certified neurologist, for a second opinion evaluation. In a report dated September 28, 2001, she noted that appellant did not have objective neurologic findings related to the October 21, 1972 myoligamentous strain at work. Dr. Cokely noted that the amount of disability appellant claimed was out of proportion to the type of injury sustained. She further noted that the objective evidence including myelograms, x-rays of the back and electromyograms (EMG) showed questionable abnormality in 1973 and 1979 or were completely normal in more recent studies. Dr. Cokely advised that there was no objective evidence of myositis and neuritis and opined that appellant had no objective residuals of impairment and was not neurologically disabled and required no further neurological testing.

Appellant continued to submit reports from Dr. Verin dated April 25, 2003 to June 7, 2004 who continued to support total disability due to her diagnosed condition of major depression.

On January 30, 2004 the Office issued a notice of proposed termination of medical benefits for appellant's accepted myoligamentous back strain on the grounds that Drs. Silver and Cokely's reports dated September 25 and 28, 2001 established no orthopedic residuals of the work-related employment injury.

By decision dated March 2, 2004, the Office terminated appellant's medical benefits for the accepted myoligamentous back strain effective the same day on the grounds that the weight of the medical evidence established that appellant had no continuing orthopedic disability resulting from her accepted employment injury. The Office specifically noted that appellant remained entitled to compensation benefits for the accepted psychiatric condition of major depression.

On April 1, 2004 appellant, through her attorney, requested an oral hearing before an Office hearing representative. The hearing was held on November 16, 2004. Appellant submitted a report from Dr. Ali Haddadzadeh, a family practitioner, dated March 9, 2004, who diagnosed chronic back pain and radiculopathy. He noted that appellant was disabled due to her back injury and advised that she could not lift greater than five pounds, she could not stand for greater than 15 minutes and was unable to squat or bend due to back pain. A report from Dr. John B. Dorsey, a Board-certified orthopedist, dated December 6, 2004 noted an essentially normal physical examination with no palpable paravertebral muscle spasm or guarding, normal range of motion for the cervical spine, but restricted lumbosacral range of motion. He diagnosed perceived lumbosacral spine pain secondary to psychological imbalance. Dr. Dorsey noted that appellant had no objective evidence to indicate organic pathology from an orthopedic perspective and noted that appellant responded inappropriately to almost all modalities of examination. He opined that appellant had no evidence of an orthopedic impairment but has perceived pain and recommended psychiatric treatment.

In a decision dated January 18, 2005, the hearing representative affirmed the Office decision dated March 2, 2004.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223 (2001).

establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁵

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for a myoligamentous back strain in the performance of his duties on October 21, 1972. In August 2001, the Office referred appellant for a second opinion evaluation by Dr. Silver, an orthopedist and Dr. Cokely a neurologist. In his report dated September 25, 2001, Dr. Silver noted that appellant exhibited no objective complaints or definite abnormality in her orthopedic condition. He opined that appellant was not putting forth a maximal effort throughout the examination and he observed no objective limitation of the lumbosacral range of motion. Dr. Silver advised that appellant made a satisfactory recovery following the actual effects of her work-related injury. He opined that there was no evidence of any on-going orthopedic derangement warranting work restrictions or future medical care and determined that appellant could return to work without orthopedic restrictions or vocational retraining. In a September 28, 2001 report, Dr. Cokely noted that appellant did not have objective neurologic findings related to the October 21, 1972 myoligamentous strain at work. She noted that the amount of disability appellant claimed was out of proportion to the type of injury sustained in October 1972. Dr. Cokely advised that there was no objective evidence of myositis and neuritis and opined that appellant had no objective residuals of impairment and was not neurologically disabled and required no further neurological testing.

Appellant submitted numerous reports from Dr. Verin which addressed appellant's psychiatric condition but did not address her accepted myoligamentous back strain. The only other report submitted was from Dr. Bosley dated December 15, 1989 who diagnosed chronic lumbosacral strain. However, he did not support continuing disability due to the accepted myoligamentous back strain, rather he opined that appellant was permanent and stationary six months after her injury and did not have any residual disability and could return to work without restrictions.

The Board finds that the opinions of Drs. Silver and Cokely are sufficiently well rationalized and based upon a proper factual background. These reports represent the weight of the evidence and establish that appellant's work-related myoligamentous back strain has resolved. They indicated that appellant did not have residuals from the condition of myoligamentous back strain and that she could return to her regular duties.

For these reasons, the Office met its burden of proof in terminating appellant's benefits for the accepted myoligamentous back strain.

LEGAL PRECEDENT -- ISSUE 2

If 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 causally related to her

⁵ *Id.*; Leonard M. Burger, 51 ECAB 369 (2000).

accepted employment injury.⁶ 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 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.⁷

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her myoligamentous back strain causally related to her accepted employment injuries on or after March 2, 2004. Appellant submitted a report from Dr. Haddadzadeh dated March 9, 2004, who diagnosed chronic back pain and radiculopathy. He noted that appellant was disabled due to her back injury and advised that she could not lift greater than five pounds, she could not stand for greater than 15 minutes and was unable to squat or bend due to back pain. However, Dr. Haddadzadeh did not specifically address how any continuing condition or medical restrictions were causally related to the accepted October 21, 1972 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁸ Additionally, the Office never accepted that appellant sustained radiculopathy as a result of her October 21, 1972 work injury and there is no medical rationalized evidence to support such a conclusion.⁹ Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Dr. Dorsey dated December 6, 2004 diagnosed perceived lumbosacral spine pain secondary to psychological imbalance. He noted that appellant had no objective evidence to indicate organic pathology from an orthopedic perspective and noted that appellant responded inappropriately to almost all modalities of examination. Dr. Dorsey did not support continuing disability due to the accepted myoligamentous back strain rather he opined that

⁶ *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

⁷ *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

⁸ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁹ 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*, *supra* note 3.

appellant had no evidence of an orthopedic impairment but had perceived pain and recommended psychiatric treatment.

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related injury of October 21, 1972.¹⁰ The Board has found that vague and unrationalized medical opinion on causal relationship have little probative value. Therefore the Board finds that the reports from Drs. Haddadzadeh and Dorsey are insufficient to meet appellant's burden of proof.

On appeal, appellant asserted that a federal appellate court holding in a case involving a claim for Social Security benefits, supported her continued entitlement to benefits under the Federal Employees' Compensation Act for her back condition. However, this argument is without merit to establish entitlement to benefits under the Federal Employees' Compensation Act. The Board has held that decisions of federal courts, while instructive, are not binding on the Office or the Board.¹¹ The Board has also held that entitlement to benefits under another Act does not establish entitlement to benefits under the Federal Employees' Compensation Act.¹² The Board has noted that there are different standards for medical proof on the question of disability under the Federal Employees' Compensation Act and under the Social Security Act.¹³

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective March 2, 2004. The Board further finds that appellant failed to establish that she had any continuing disability after March 2, 2004.

¹⁰ See *Jimmie H. Duckett*, *supra* note 8.

¹¹ See *Anneliese Ross*, 42 ECAB 371 (1991).

¹² *Freddie Mosley*, 54 ECAB ____ (Docket No. 02-1915, issued December 19, 2002).

¹³ *Daniel Deparini*, 44 ECAB 657 (1993).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 18, 2005 is affirmed.

Issued: October 24, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board