

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILFREDO CRUZADO and U.S. POSTAL SERVICE,
POST OFFICE, Bayshore, NY

*Docket No. 99-429; Submitted on the Record;
Issued December 4, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant had any continuing disability or residuals due to her accepted injury on or after January 18, 1996, the date the Office of Workers' Compensation Programs terminated his compensation benefits.

On March 9, 1990 appellant filed a traumatic injury claim for an injury sustained on March 8, 1990 to his lower back and spine when he slipped and fell on ice in the parking lot. The Office accepted the claim for a low back strain. Appellant stopped work on March 8, 1990, returned to limited duty, sustained several recurrences, followed by a return to limited duty until he stopped work on March 5, 1993.¹ Appellant was then placed on the automatic rolls for temporary total disability.

In a June 29, 1993 fitness-for-duty evaluation, Dr. William A. Healy, Jr., a Board-certified orthopedic surgeon, reported upon a physical examination, employment injury and medical history and opined that appellant was capable of performing his usual employment duties with a restriction of no lifting over 50 pounds. He noted that appellant had been involved in a motor vehicle accident on May 23, 1991 and that he was overweight. Dr. Healy stated that appellant had recovered from the low back sprain due to appellant's March 8, 1990 employment injury.

In a July 28, 1994 fitness-for-duty report, Dr. Stanley Feingold, a Board-certified orthopedic surgeon, based upon a physical examination, employment injury and medical history, concluded that appellant had made a complete recovery from his accepted March 8, 1990 employment injury and did not require any further medical treatment due to the injury. He opined that appellant was capable of returning to his usual employment without any restrictions or physical limitations.

¹ Appellant was terminated from the employing establishment effective March 29, 1996.

In a June 15, 1995 letter, Dr. Kenneth S. Glass, appellant's attending Board-certified orthopedic surgeon, noted that appellant had "continued and ongoing pain with limitation of range of motion at the area of the lumbar spine" and that appellant had "a significant spinal sprain due to the work injury of March 8, 1990."

By letter dated August 18, 1995, the Office requested Dr. Glass to submit a more comprehensive report including an opinion as to whether appellant's continuing disability was due to his accepted employment injury with supporting objective findings and medical rationale.

On September 21, 1995 the Office referred appellant, together with a statement of accepted facts, list of questions and medical records, to Dr. Edward A. Toriello, a Board-certified orthopedic surgeon, for a second opinion as to whether appellant has any continuing disability or residuals due to his accepted employment injury.

In a letter dated September 26, 1995, Dr. Glass indicated that he disagreed with the opinions of Drs. Feingold and Healy. He opined that appellant remained totally disabled due to his spinal sprain.

In an October 3, 1995 report, Dr. Toriello, based upon a physical examination, review of the medical records, employment injury history and statement of accepted facts, concluded that appellant's accepted employment injury had resolved. Dr. Toriello noted that appellant's range of motion was full and pain free, "examination of the lumbosacral spine reveals decreased flexion of 70 degrees" and appellant ambulated normally and independently. Dr. Toriello diagnosed a resolved lumbar and found that appellant had no objective evidence of any continued disability due to his March 8, 1990 employment injury. He opined that appellant was capable of performing his usual duties as a letter carrier.

By letter dated October 12, 1995, Dr. Glass opined that appellant "has a continued, ongoing disability secondary to persistent pain with spasm at the area of the lumbar spine" and that appellant remains totally disabled due to his chronic low back spinal sprain.

On November 13, 1995 the Office issued appellant a notice of proposed termination of compensation.

By decision dated January 18, 1996, the Office finalized the proposed notice of termination of compensation benefits effective January 18, 1996. The Office terminated both wage-loss and medical benefits on the basis that appellant had no residual disability due to his accepted employment injury.

In a September 19, 1996 report, Dr. Glass indicated that he has been treating appellant since March 8, 1990 for a thoracic and lumbar spine injury and that appellant "has a continued, ongoing disability secondary to persistent and severe pain at the area of the lumbosacral spine with spasm."

Appellant requested an oral hearing, which was held on September 23, 1996 at which appellant was allowed to testify and submit evidence.

By decision dated January 31, 1997, the hearing representative determined that appellant had no continuing disability or residuals due to his accepted employment injury. The hearing representative found Dr. Toriello's opinion as representing the weight of the medical opinion evidence. The hearing representative found that Dr. Glass's opinion was not sufficiently rationalized as the physician failed to support his conclusion that appellant remained totally disabled by any objective evidence or medical rationale.

In a letter dated April 28, 1997, appellant requested reconsideration and submitted an April 7, 1997 report from Dr. Glass in support of his request.

In his April 7, 1997 report, Dr. Glass noted that he had treated appellant since his March 8, 1990 employment injury, noting that appellant had been doing well with his physical therapy until a motor vehicle accident in 1991. In conclusion, Dr. Glass diagnosed severe spinal injury with severe sprains and that appellant was totally disabled from working in his usual employment.

By decision dated June 11, 1997, the Office denied modification of its prior decision finding that the evidence submitted was insufficient to warrant modification of the prior decision.

Appellant's counsel requested reconsideration on June 5, 1998 alleging that the Office erred in failing to find a conflict in the medical opinion evidence. Appellant also submitted evidence in support of his request for reconsideration.

By decision dated August 18, 1998, the Office denied modification, after merit review, finding that the evidence was insufficient to warrant modification of the prior decision. The Office rejected appellant's argument that there was a conflict in the medical opinion evidence and found that the weight of the evidence rested with the well-rationalized opinion of Dr. Toriello, the second opinion physician. Furthermore, the Office determined that the opinion of Dr. Glass, appellant's treating physician, was unsupported by adequate findings or medical rationale such that it would create a conflict with Dr. Toriello's opinion.

The Board finds that appellant did not have continuing disability or residuals causally related to his accepted low back strain on or after January 18, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has been 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.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To

² *Lawrence D. Price*, 47 ECAB 120 (1995).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁵

With respect to the Office's decision to terminate appellant's compensation and wage-loss benefits effective January 18, 1996, Dr. Toriello, the Office referral physician upon whom the Office relied in terminating appellant's benefits, provided a detailed report based upon his own physical and neurological examination of appellant, relied on the statement of accepted facts, as well as appellant's personal history and medical records, and concluded that appellant's lumbar strain had resolved and appellant was capable of working full time. Dr. Toriello noted that appellant's objective examination, and the examination of appellant's lumbar spine revealed a normal range of motion, which was full and pain free.

Although Dr. Glass, appellant's treating physician, stated that appellant had an ongoing condition of thoracic and lumbar spine injury, he did not discuss her objective findings pertaining to the accepted condition or offer any medical rationale explaining how appellant's pain symptoms were causally related to the original injury. He merely provided generalized statements that appellant's disability was due to his accepted employment injury. While Dr. Glass stated that appellant's lumbar spinal injury with severe sprain resulted in continuing total disability, he did not explain what convinced him with regards to appellant's situation that his current condition remained related to the 1990 employment injury other than asserting a general proposition. Dr. Glass, in his October 12, 1995 report, merely reiterated his opinion that appellant remained totally disabled due to his low back sprain without providing any explanation with specificity why the 1990 injury was still causing appellant total disability or why appellant required medication for his symptoms on a continuing basis. His reports are of diminished probative value. Accordingly, the Office properly determined that Dr. Toriello's October 3, 1995 report constituted the weight of the medical evidence under the circumstances in this case. The Board has held that in assessing medical opinion evidence, the weight to be accorded such medical 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 analysis manifested, and the medical rationale expressed in support of the physician's opinion are factors which enter into this evaluation.⁶ The Office, therefore, met its burden of proof to terminate appellant's compensation benefits on January 16, 1996 on the grounds that Dr. Toriello's report constituted the weight of the medical evidence.

Dr. Glass' subsequent report of April 7, 1997 is insufficient to overcome the weight of Dr. Toriello's report. Although Dr. Glass continued to opine that appellant was totally disabled due to his 1990 employment injury, he failed to furnish sufficient medical rationale to support his opinion as to how appellant's condition is related to his work and the impact of the 1991 automobile accident. Accordingly, his report is insufficient to overcome the weight of Dr. Toriello's report.

⁵ *Id.*

⁶ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

The decision of the Office of Workers' Compensation Programs dated August 18, 1998 is hereby affirmed.

Dated, Washington, DC
December 4, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member