

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. REED and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, MD

*Docket No. 98-2439; Submitted on the Record;
Issued July 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability commencing January 7, 1994, causally related to her February 8, 1993 low back strain injury.

The Office of Workers' Compensation Programs accepted that appellant, a 54-year-old management analyst, sustained a lumbosacral strain on February 8, 1993. The Office also accepted the condition of temporary aggravation of degenerative disc disease in the lower back. Concurrent disability not due to injury was noted to include degenerative arthritis and anterior spurring of L4-5 and L5-S1 with facet changes at L5-S1.

Appellant returned to light-duty work in a sedentary position for four hours per day in January 1994.

On March 11, 1994 appellant filed a claim for a recurrence of disability on or after January 7, 1994 which she attributed to her February 8, 1993 injury. She described the recurrence as "continued pain since the original injury," appellant stopped work on January 27, 1994 and did not return. Her supervisor indicated that he was not aware of any recurrence or reinjury as appellant reported nothing to him or to the second line supervisor.

In support of her claim, appellant submitted a January 12, 1994 report from Dr. Paul Gertler, a Board-certified rheumatologist, which stated that appellant remained under his care for "post-traumatic back pain" and that, although she continued to have problems, there had been enough improvement for her to return to work on a part-time basis from January 3 until March 31, 1994.

The Office sought a second opinion examination. By report dated January 13, 1994, Dr. James R. Kunec, a Board-certified orthopedic surgeon, reviewed appellant's history, noted that she was working four hours per day of sedentary duty, performed a physical examination, and noted that there were no objective physical findings at that time. He indicated that clinical

neurological examination was completely normal and that a magnetic resonance imaging (MRI) scan and computerized tomography (CT) revealed no significant disc abnormalities and diagnosed resolving lumbar strain. Dr. Kunec reviewed appellant's regular duties and opined that he did not believe appellant would be disabled from performing any of her regular duties. He opined that appellant could be returned to full duties at any time. Dr. Kunec also noted that appellant's work incident served as an aggravating influence to her preexisting lower back degenerative changes, but indicated that her difficulties would have been temporary with a full return to normal function expected without any sequelae. He reiterated that her clinical examination was essentially normal and that radiographic films suggested no significant abnormalities.

By report dated January 28, 1994, Dr. Gertler noted that as of that date appellant was diagnosed with "an exacerbation of her back and leg pain as a result of the half-day return to work." He noted that appellant was being taken off work and sent back for therapy and rest.

By report dated March 11, 1994, Dr. Gertler opined that appellant's recurrence occurred as a result of prolonged sitting and minor activities such as getting up from a chair and limited walking. He noted tenderness throughout the lumbar spine and back and left leg pain upon straight leg raising and diagnosed post-traumatic lumbosacral strain related to appellant's attempts to return to work due to prolonged sitting and recurrent activities of arising from a seated position and walking in an office environment.

In a March 15, 1994 statement, appellant indicated that between January 13 and 14, 1994 she began experiencing strong lower back pains, that during January 17 through 12, 1994 she was in bed with severe lower back pain and that she attempted to work January 24 through 27, 1994 with continued aggravation of pain. Appellant attributed the cause of her claimed recurrence to continued sitting, frequency of having to get up and down, consistent twisting and turning and walking more than usual.

By report dated April 12, 1994, Dr. Gertler noted that lumbosacral tenderness with paralumbar spasm, limitation of spinal range of motion, pain on straight leg raising and a positive Fabre's test. He opined that the injury appellant sustained as a result of her lifting the box in February 1993 had left her unable to do prolonged sitting.

By decision dated May 26, 1994, the Office denied appellant's recurrence of disability claim finding that the evidence of record failed to support that the claimed recurrence on or after January 7, 1994 was causally related to her February 8, 1993 work injury. The Office found that Dr. Kunec's opinion constituted the weight of the medical opinion evidence.

Appellant requested reconsideration by letter dated June 22, 1994.

In support appellant submitted a June 1, 1994 report, from Dr. Gertler which noted his treatment history of appellant, noted that he saw appellant on January 28, 1994 and diagnosed with post-traumatic lumbar strain, then did not see her again until April 12, 1994 with another flare-up of pain. He diagnosed acute low back strain flare and possible radiculopathy and noted that no laboratory studies had been done in relation to the current problem. Dr. Gertler diagnosed post-traumatic low back strain/low back contusion, sacroiliac dysfunction and lumbar

spinal stenosis, noted that and appellant remained unable to perform her usual work due to this condition, noted that her disability for work was a direct result of the medical condition and opined that the employing establishment was unable to make reasonable accommodations for her medical condition.

By report dated April 20, 1994, Dr. Charles J. Lancelotta, a Board-certified neurological surgeon who had previously seen appellant, noted that his previously done CT and MRI scans showed no definite surgical problem, that currently there was no history of true clear cut radicular symptoms down either leg, that supine straight leg raising was negation bilaterally, that motor, reflex and sensory examinations were negative for lesions and that appellant's findings at that time were not significantly different from his October 1993 examination. He opined that appellant had just had some flare-ups of low back spasms.

By decision dated October 28, 1994, the Office denied appellant's claim finding that the evidence submitted in support was insufficient to warrant modification of its May 26, 1994 decision. The Office found that Dr. Kunec's report still constituted the weight of the medical evidence as it was based upon objective findings and because he was a Board-certified orthopedic surgeon.

Appellant appealed to the Board. By decision dated May 19, 1997, the Board remanded the case to the Office finding a conflict in medical opinion evidence was created between Dr. Gertler and Dr. Kunec.¹

Upon remand the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the complete case record to Dr. Donald Burke Haskins, a Board-certified orthopedic surgeon, for resolution of the conflict.

By report dated March 18, 1998, Dr. Haskins reviewed appellant's history, noted her present complaints, performed a thorough examination and reviewed the radiographic evidence and medical records. He diagnosed "History of lumbosacral strain, chronic low back syndrome, degenerative disease, lumbar spine, obesity [and] hypertension" and indicated that there were no objective findings to substantiate appellant's disability. Dr. Haskins opined that "while [appellant] may have low back pain as a result of degenerative disease, it is unrelated to the February 8, 1993 [incident]." He opined that appellant may have sustained a lumbar strain, which would be transient in nature, but that her current complaints were not on the basis of this and were more likely related to degenerative disease. Dr. Haskins opined that appellant was capable of full-duty work as a management analyst, which was a sedentary position and required her to handle and process forms.

On April 13, 1998 Dr. Haskins was asked to address the relationship of appellant's condition beginning January 7, 1994 to her February 8, 1993 employment injury.

In a supplemental report dated April 30, 1998, Dr. Haskins indicated that appellant's disability as a result of her February 8, 1993 employment injury would have been transient and

¹ Docket No. 95-997, issued May 19, 1997.

temporary. He concluded that appellant's current complaints were unrelated to the injury in question and most likely unrelated to her disability commencing in 1994.

By decision dated May 18, 1998, the Office denied appellant's recurrence of disability claim finding that the weight of the medical evidence failed to support that her condition on and after January 1994 was causally related to her February 8, 1993 employment injury.

The Board finds that appellant has failed to established that she sustained a recurrence of disability commencing January 7, 1994, causally related to her February 8, 1993 low back strain injury.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.²

In the instant case, the conflict in medical opinion evidence arose between Dr. Gertler and Dr. Kunec and the Office properly referred appellant, together with a statement of accepted facts, questions to be resolved and the complete case record, to Dr. Haskins for an impartial medical examination and for resolution of that conflict. In his thorough and well-rationalized report and supplemental statement he found that there were no objective findings to substantiate appellant's disability, that her low back pain was the result of degenerative disease and was not related to the February 8, 1993 employment incident and that appellant's accepted lumbar strain would have been transient in nature and temporary. He opined that appellant was capable of full-duty work as a management analyst and that her current complaints were unrelated to the February 8, 1993 injury or the January 7, 1994 disability.

As an impartial medical examiners report is entitled to special weight if sufficiently well rationalized and based upon a proper factual background and as Dr. Haskins' reports were sufficiently well rationalized and were based upon a proper factual and medical background, his reports are entitled to that special weight, which results in his opinions constituting the weight of the rationalized medical opinion evidence of record. Because the weight of the rationalized medical evidence of record fails to establish that appellant sustained a recurrence of disability commencing January 7, 1994, causally related to her February 8, 1993 lumbosacral soft tissue muscular strain injury, appellant has failed to meet her burden of proof to establish her recurrence of disability claim.

² *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

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

Dated, Washington, D.C.
July 20, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member