

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANLEY E. MARONE and U.S. POSTAL SERVICE,
POST OFFICE, Sterling Heights, MI

*Docket No. 99-1815; Submitted on the Record;
Issued January 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 10, 1997; and (2) whether appellant met his burden of proof to establish that his alleged disability after February 10, 1997 was causally related to his January 10, 1996 employment injury.

On January 10, 1996 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he slipped and fell on a wet porch. He stopped work on January 10, 1996. The Office accepted appellant's claim for contusion, lumbosacral and cervical strains, and mild right sciatica. On April 6, 1996 he was placed on the periodic rolls. Appellant returned to work on March 22, 1997.

Appellant submitted medical reports regarding his treatment from the date of injury. A March 12, 1996 electromyographic (EMG) study of the upper extremities by Dr. Nick Reina, Board-certified in physical medicine and rehabilitation, revealed no electrodiagnostic evidence of right or left cervical radiculopathy, right carpal tunnel syndrome or ulnar neuropathy. In a report dated April 5, 1996, Dr. Asad A. Mazhari, a neurologist, diagnosed L4-5 and L5-S1 disc herniation with severe spinal stenosis and severe cervical spinal stenosis at C4-5 and C5-6. In a May 14, 1996 report, Dr. Martha A. Frankowski, a Board-certified neurologist, found evidence of right L5 and left S1 radioculopathy with active denervation.

In a brief report dated June 12, 1996, Dr. Mazhari stated that a November myelogram showed a right-side herniated disc at L5-S1 and spinal stenosis at L4-5. He also stated that after the November myelogram appellant sustained a "bad fall" and developed leg pain and subsequent magnetic resonance imaging (MRI) scan showed mild stenosis at L4-5 and subligamentous disc herniation at L5-S1. Dr. Mazhari noted that appellant's EMG showed right-side L5 and left-side S1 radiculopathy. He suggested a bilateral lumbar discectomy at L5-S1.

In a June 26, 1996 report, Dr. Richard J. Zajac, a Board-certified internist, diagnosed L5 and S1 herniated discs with radioculopathy, L4-5 and L5-S1 spinal stenosis and C4-5, and C5-6 cervical stenosis with radioculopathy.

On July 22, 1996 the Office referred appellant to Dr. Michael P. Schmidt, an orthopedic surgeon, for a second opinion evaluation. In a report dated July 29, 1996, Dr. Schmidt provided a history of appellant's January 10, 1996 employment injury and preexisting conditions. He noted tremor which appellant related to his use of Norpramine. Dr. Schmidt diagnosed degenerative lumbar spine disease, degenerative cervical spine disease postcervical fusion and exacerbation of those conditions secondary to appellant's January 10, 1996 employment injury. He noted that there was no difference between appellant's pre and postinjury myelograms but he had a significant change in his symptom level since his January 10, 1996 employment injury. Dr. Schmidt determined that appellant was not medically capable of returning to his mail carrier position due to his tremor and could not work in any position requiring prolonged sitting or standing due to his radicular symptoms. He recommended that appellant consider surgical decompression at L5-S1.

In a supplemental report dated September 7, 1996, Dr. Schmidt stated that appellant should not return to any type of work activity because of medicinal side effects. He stated: "With the removal of the medication and resolution of those medication-related effects, I believe that [appellant] could successfully return to work with a sit/stand option with an initial return to work of a four-hour workday for three to four weeks, followed by a return to a full eight-hour workday, five days a week, sit/stand option." Dr. Schmidt stated that appellant would be permanently restricted from lifting more than 20 pounds, overhead use of his arms, stooping, twisting and bending.

By letter dated September 26, 1996, the Office requested that Dr. Mazhari provide a report addressing how Norpramine related to appellant's accepted conditions and whether the medication could be changed to allow appellant to return to work in a light-duty capacity.

In reports dated October 8 and 17, and November 19, 1996, Dr. Zajac stated that appellant could not return to work or change his medication. He also restricted appellant's physical activity.

By letter dated October 28, 1996, Dr. Joshua E. Adler, a Board-certified neurologist, responded to the Office's September 26, 1996 letter to Dr. Mazhari. Dr. Adler stated that he treated appellant with nonsteroidal anti-inflammatories and Norpramine for chronic pain, not as an anti-depressant. He also stated that Norpramine was effective and had the least side effects. Dr. Adler noted that he never detected a tremor while examining appellant and the day Dr. Schmidt examined him was the only day he experienced tremors. He opined that surgery was not necessary as medicinal treatment was effective, but if, appellant deteriorated or stopped improving, surgery was the next option.

By letter dated October 31, 1996, the Office found that a conflict in medical evidence existed between appellant's physicians and Dr. Schmidt and it referred appellant to Dr. Phillip J.

Mayer, a Board-certified orthopedic surgeon, for a referee examination.¹ In his report dated November 19, 1996, Dr. Mayer provided a history of appellant's January 10, 1996 employment injury and prior medical history. He noted tremulous activity, an extremely wide gait, and numbness in all ten fingers. Dr. Mayer also noted that appellant rapidly ambulated to his car without a limp following the examination. He stated: "Based on my review of his medical records, my history and independent physical examination, it appears that [appellant] has not had any change in his previously observed pathology which preexisted his slip and fall on January 10, 1996."

Dr. Mayer found that there was no objective evidence showing that appellant sustained any significant injury secondary to his January 10, 1996 employment injury and that inconsistencies in his examination indicated that appellant embellished his pain complaints. He stated that, because he did not find objective evidence of neurological or anatomic deterioration related to appellant's January 10, 1996 employment injury, he could not recommend continued passive modality management, physical therapy or other therapeutic intervention, or surgery. Dr. Mayer concluded that appellant could resume his duties without restrictions.

In a report dated November 21, 1996, Dr. Mayer discussed MRI scan, myelograms and computed tomography (CT) scans dated July 20, 1992 to January 11, 1996. Based on his examination of the films, he stated:

"It does not appear that [appellant] has sustained any acute anatomic lesion ... as the result of his slip and fall on January 10, 1996. He has longstanding narrowing at the L4-5 and L5-S1 intervertebral levels consistent with acquired spinal stenosis of a mild degree. The cervical spine abnormalities are longstanding. His examination did not reveal any objective evidence of abnormality which would indicated [sic] need for full restriction of his activities. He does not appear to have any objective abnormality which I can attribute specifically to his incidence of slip and fall in January 1996. I therefore recommend that he resume his work place activities at the same level as he was doing prior to his slip and fall in January 1996."

On January 16, 1997 the Office advised appellant that it proposed to terminate his benefits. The Office found that the weight of the medical evidence rested with Dr. Mayer's November 12, 1996 referee examination in which he opined that appellant was no longer disabled as a result of his January 10, 1996 employment injury.

Appellant disagreed with the Office's proposed termination and submitted additional medical evidence including a January 24, 1997 report from Dr. Harry N. Herkowitz, a Board-certified orthopedic surgeon, who stated that appellant's symptoms were present since his January 10, 1996 employment injury. Dr. Herkowitz noted cervical spine tenderness, bilateral trapezius discomfort, lower back discomfort and a wide gait. He also noted that x-rays showed cervical degenerative arthritis, solid fusion and mild degenerative lumbar arthritis and that an

¹ Both Drs. Schmidt and Mayer were provided with a statement of accepted facts, medical record and set of questions.

MRI scan revealed cervical spinal stenosis and mild lumbar stenosis at L4-5. Dr. Herkowitz also found hyperreflexia and cervical cord compression. Appellant also submitted a brief report from Dr. Herkowitz dated February 12, 1997 in which he diagnosed cervical and lumbar stenosis.

Appellant further submitted MRI reports from Dr. Clare Scheurer, a Board-certified diagnostic radiologist, dated February 4, 1997. In her cervical spine report, Dr. Scheurer made the following diagnosis:

“Post-operative changes with sagittal stenosis, the previous level of the C4-5 disc and C5-6 disc spaces. There is some cord atrophy suspected as well as a tiny focus of increased signal within the cord, possibly due to old trauma. Changes are stable since February 1996.”

In her lumbar spine report, Dr. Scheurer diagnosed spinal stenosis incident to severe discogenic disease, narrow disc space, diminished lumbar disc signal intensity, diffuse bulging discs and productive facet arthropathy.

By decision dated February 21, 1997, the Office terminated appellant’s benefits, effective February 21, 1997, on the grounds that appellant’s disability relating to his January 10, 1996 employment injury had ceased. The Office found that Dr. Herkowitz’s report did not conflict with Dr. Mayer’s conclusions and that he failed to discuss the causal relationship between appellant’s current medical condition and his January 10, 1996 employment injury, appellant’s work capacity or the second opinion or referee examiner’s reports.

By letter dated February 28, 1997, appellant requested a hearing before an Office hearing representative, which was held on December 12, 1997. At the hearing, appellant testified that in 1992 he underwent a cervical spine fusion at C4-5 and C5-6 and was disabled from work for about one year at which time he returned to full duty. He stated that he sustained work-related injuries in 1993, 1994 and 1995, and that, following his January 10, 1996 employment injury, his condition initially improved but “went downhill” when he returned to work.

Appellant disputed Dr. Mayer’s remark about his limp and alleged that Dr. Mayer confused him with another letter carrier he examined that same day. He denied that he told Dr. Mayer that his tremors were caused by Norpramine. Appellant stated that Dr. Adler prescribed Norpramine for pain management and he stopped taking Norpramine in January 1997 when the Office attributed it to his inability to work. He stated that he experienced slight tremors when he returned to work on March 22, 1997 and he still experienced them occasionally.

Appellant submitted a report dated October 8, 1996 in which Dr. Zajac stated that he treated appellant for lumbago, radiculopathy, herniated disc at L5-S1 and cervical radiculopathy. Dr. Zajac also stated:

“[Appellant] is not able to return to work, even light duty. We are not able to change any of the medications at this time. A tremendous amount of time, energy, and effort, trial and error was put into coming up with this regimen of medications that seems to help [appellant] the most. If we change this combination his condition will deteriorate significantly.”

Appellant also submitted a report from Dr. Zajac dated December 11, 1997. In his report, Dr. Zajac stated that appellant was under his care since October 20, 1994 and that he was "in his usual state of health" until his January 10, 1996 employment injury. He discussed reports by Drs. Adler, Schmidt and Mayer. Dr. Zajac disputed Drs. Schmidt and Mayer's assertions that there was no evidence of new injury and noted that a myelogram dated October 7, 1997 showed a "cut off of nerve L5," Dr. Frankowski's EMG showed right L5 radiculopathy and Dr. Mazhari supported an L5 nerve compression and L4-5 herniated disc diagnosis. He stated that appellant had to undergo a discectomy and that he required up to six months of postoperative rehabilitation.

Appellant further submitted a report from Dr. Mazhari dated December 9, 1997. In his report, Dr. Mazhari provided a history of appellant's January 10, 1996 employment injury and medical history. He found that appellant's October 7, 1997 myelogram showed a right-side L4-5 disc herniation, a cut-off nerve at L5 and cervical spondylosis. Dr. Mazhari stated that, on November 6, 1997, appellant had a right-side L4-5 discectomy. He stated:

"Post-operatively, the wound healed nicely and [appellant] is slowly improving. The pain has subsided but he has some back pain. He was seen only one time after surgery and continued to complain of some pain.... As far as prognosis and recommendations; he is still guarded. He is only a month after surgery and at least needs three to six months of rehabilitation.

By decision dated March 18, 1998, the hearing representative affirmed the Office's February 21, 1997 decision on the grounds that Dr. Mayer did not find objective evidence of residual disability secondary to appellant's January 10, 1996 employment injury. The Office found that Dr. Mayer's reports constituted the weight of the medical evidence as he provided the most rationalized medical opinion and had the most extensive knowledge of appellant's medical history.

By letter dated January 13, 1999, appellant requested reconsideration of the hearing representative's March 18, 1998 decision. In support of his request, appellant submitted a report dated November 10, 1998 from Dr. Mazhari. In his report, he stated:

"Regarding the question of [the Office's second opinion examiner] the L4-5 herniated disc was the result of the injury in January of 1996. We do n[o]t know if this is the same problem [appellant] had when he was in the Army or not and do n[o]t have any old x-rays of that. The question of whether his second surgery was necessary or not; yes, it was because he suddenly developed a different type of pain and his [magnetic resonance imaging] showed a new ruptured disc at the level of L5-S1. Surgery was necessary and he underwent fusion at the same time to take care of the problem. Regarding [appellant's] ability to work he is disabled for two or three years until the fusion is complete and then we will see how is he doing."

By decision dated April 6, 1999, the Office affirmed its decision dated March 18, 1998 on the grounds that the evidence submitted to support appellant's reconsideration request was insufficient to warrant modification of its prior decision. The Office conducted a merit review

and found that Dr. Mazhari's November 10, 1998 report was of diminished probative value as it lacked medical rationale supporting his opinion that appellant was disabled due to his June 10, 1996 employment injury and that his subsequent surgery was medically necessary.

The Board finds that the Office properly terminated appellant's benefits.

Once the Office accepts a claim, it has the burden of justifying a subsequent modification or termination of benefits. After it has determined that an employee has a disability causally related to his 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.² Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³

The Board finds that Dr. Mayer's comprehensive reports, dated November 12 and 21, 1996, are sufficiently well rationalized and are, therefore, still deserving of the special weight accorded to referee physicians.⁴ While appellant subsequently submitted reports from Drs. Mazhari, Adler, Herkowitz, Zajac and Scheurer, those are insufficient to overcome the special weight accorded to Dr. Mayer's opinion.

In his November 19, 1996 and December 9 and 11, 1997 reports, Dr. Zajac discussed his findings and asserted that appellant was disabled from work. He, however, did not provide a rationalized medical opinion explaining the relationship between appellant's alleged disability after February 10, 1997 and his January 10, 1996 employment injury. Dr. Zajac's December 11, 1997 report disputed Dr. Schmidt's and Dr. Mayer's findings and noted Dr. Frankowski's and Dr. Mahari's diagnoses, but Dr. Zajac did not address the causal relationship issue. Similarly, in his January 24 and February 4, 1997 reports, Dr. Herkowitz noted appellant's symptoms and diagnosed cervical and lumbar stenosis but did not relate those conditions to appellant's January 10, 1996 employment injury. In her February 4, 1997 report, Dr. Scheurer noted her MRI findings but did not address the issues of disability or causal relationship.

In his December 9, 1997 report, Dr. Mazhari discussed appellant's symptoms, noted his findings, and stated that appellant needed "three to six months of rehabilitation" but he did not relate appellant's alleged disability after February 10, 1997 to his January 10, 1996 employment injury. In his November 10, 1998 report, Dr. Mazhari opined that appellant would be disabled for two or three years. He, however, failed to include a rationalized medical opinion relating appellant's alleged disability to his employment injury.

² See *Jacquelyn L. Oliver*, 48 ECAB 232, 235(1996); *Harold S. McGough*, 36 ECAB 332 (1984).

³ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁴ *Id.*

As the medical evidence of record is insufficient to overcome the special weight accorded to Dr. Mayer's reports, the Office met its burden of proof to terminate appellant's compensation benefits on February 10, 1997.

The Board further finds that this case is not in posture for decision on the issue of whether appellant satisfied his burden of proof to establish that he was disabled after February 10, 1997.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that he had a disability causally related to his accepted employment injury.⁵ To establish a causal relationship between the condition, as well as any attendant disability claimed, and the accepted employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ Causal relationship is a medical issue⁷ and the medical evidence required to establish a causal relationship is rationalized medical evidence.

Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.⁸

In this case, the medical evidence of record does not adequately address the causal relationship issue, but, it does indicate that appellant's L4-5 herniated disc was related to his January 10, 1996 employment injury. In his November 19, 1996 and December 9 and 11, 1997 reports, Dr. Zajac opined that appellant was disabled from work. In his November 10, 1998 report, Dr. Mazhari stated that appellant's L4-5 herniated disc may have resulted from his January 10, 1996 employment injury and that he would be disabled for two or three years. Although Dr. Mayer's November 19 and 21, 1996 reports stated that appellant could resume work without restriction, his reports were made prior to appellant's March 22, 1997 return to work. Dr. Zajac's December 9 and 11, 1997 reports and Dr. Mazhari's November 10, 1998 report; however, were completed after appellant's return to work and indicated that his condition had deteriorated.

The fact that Dr. Zajac's and Dr. Mazhari's reports contain deficiencies preventing appellant from discharging his burden of proof does not mean that the Office may completely

⁵ See *George Servetas*, 43 ECAB 424 (1992).

⁶ See 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, *supra* note 3.

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁸ *Gary L. Fowler*, 45 ECAB 365 (1995); *Victor J. Woodhams*, 41 ECAB 345 (1989).

disregard them. It merely means that their probative value is diminished.⁹ Under such circumstances, the reports are sufficient to require further development of the record.¹⁰

On remand, the Office shall update the medical evidence of record to include reports containing rationalized medical opinion evidence addressing the causal relationship issue. After such further development as deemed necessary, the Office shall issue a *de novo* decision on the issue of whether appellant's alleged disability after February 10, 1997 is causally related to his January 10, 1996 employment injury.

The decision of the Office of Workers' Compensation Programs dated April 6, 1999 is hereby affirmed in part, and the case is remanded to the Office for further development.¹¹

Dated, Washington, DC
January 3, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ *Shirley A. Temple*, 48 ECAB 404, 409 (1997).

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. *Martha L. Street*, 48 ECAB 641 (1997). As appellant filed this appeal with the Board on May 12, 1999, the only decision properly before the Board is the Office's April 6, 1999 decision denying appellant's request for modification.