

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA J. LUXBACHER and U.S. POSTAL SERVICE,
POST OFFICE, New Bloomfield, PA

*Docket No. 01-446; Submitted on the Record;
Issued September 6, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any disability after May 12, 1998 causally related to her employment-related condition.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that she had any disability after May 12, 1998 causally related to her employment-related condition.

On January 2, 1998 appellant, then a 47-year-old rural letter carrier, filed an occupational disease claim, Form CA-2, alleging that her employment duties had aggravated her preexisting conditions of vaginal prolapse with cystocele, enterocele and rectocele.

On January 20, 1998 appellant underwent surgical correction of these conditions and did not return to work thereafter.

In a decision dated December 28, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence of record failed to establish a causal relationship between appellant's medical condition and any factors of her federal employment. By letter dated January 27, 1999, appellant requested an oral hearing before an Office representative, but subsequently amended her request to one for a review of the written record.

By decision dated January 6, 2000, an Office hearing representative set aside the Office's prior decision on the grounds that a conflict in medical opinion existed between appellant's treating physician, Dr. Frank C. D'Amico and Dr. Allen S. Wenger, the Office referral physician,

as to the causal relationship, if any, between appellant's diagnosed conditions and her employment.¹

By letter dated March 9, 2000, the Office properly referred appellant, together with a statement of accepted facts and medical records, to Dr. Madhukar R. Patel, a Board-certified urologist, for an impartial medical examination and evaluation in order to resolve the conflict in medical opinion.²

In a report dated May 12, 2000, Dr. Patel provided a history of appellant's condition, a summary of the medical records and findings on examination. He stated that appellant's long history of constipation, urinary incontinence, cystocele and rectocele were not directly related to her employment duties, but that these conditions could be aggravated if appellant was required to lift more than 30 pounds. Dr. Patel further added that such an aggravation would not be permanent, nor would any changes in appellant's condition be permanent, but that appellant's condition could recur if she were required to perform such heavy work again. He concluded that appellant could return to her usual work provided she was not required to lift more than 20 to 30 pounds.

Subsequent to the receipt of Dr. Patel's report, the Office determined that Dr. Patel had been provided with incorrect factual information regarding the physical requirement of appellant's job. The Office prepared a revised statement of accepted facts, which indicated that appellant was required to lift as much as 70 pounds and asked him to provide a supplemental opinion as to whether he believed appellant's employment had aggravated or otherwise contributed to her condition and, if so, to provide his opinion as to the duration of such aggravation.

In a June 9, 2000 addendum to his May 12, 2000 report, Dr. Patel stated that he believed that the lifting requirements of appellant's employment had aggravated her preexisting condition and contributed to her need for surgery. Dr. Patel further stated that appellant would have been totally disabled for a period of about two to three months following the surgery, but that appellant's treating physician could provide the exact length of appellant's recuperation. He also stated that while appellant continued to have persistent incontinence, he did not believe this was stress incontinence related to her work, as appellant had not worked since the surgery. Dr. Patel stated that appellant should not lift more than 30 pounds in order to prevent aggravation of her condition, but added that the exact physical restrictions appropriate for appellant should be determined by appellant's treating physician. Finally, he recommended that appellant undergo some additional testing.

¹ In his report dated February 15, 1998, appellant's treating physician, Dr. D'Amico, a Board-certified urologist, opined that appellant's job duties significantly contributed to her condition. In his report dated July 31, 1998, Dr. Wenger, a Board-certified urologist and Office referral physician, opined that it was appellant's failure to regularly utilize the available bathroom facilities which contributed to her condition.

² Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

By letter dated June 21, 2000, the Office informed appellant that in light of Dr. Patel's opinion, it had accepted her claim for aggravation of pelvic prolapse with cystocele, rectocele and enterocele, that the January 20, 1998 surgical repair of these conditions was also authorized, together with the additional testing recommended by Dr. Patel. The Office further informed appellant that as he stated that up to three months of total disability would have been appropriate following appellant's January 20, 1998 surgery, but recommended that the exact length of recovery be determined by appellant's treating physician, appellant should submit a Form CA-7 claim for compensation, together with support from Dr. D'Amico, for the period of disability claimed.

In response to the Office's request, appellant submitted a claim for compensation, Form CA-7, requesting wage-loss compensation for the period January 20, 1998 through July 7, 2000. In addition, appellant submitted two medical reports from Dr. D'Amico. In a narrative report dated August 30, 2000, he reiterated that appellant's pelvic prolapse was exacerbated by her job and outlined appellant's physical restrictions. In an August 28, 2000 attending physician's report, Form CA-20, Dr. D'Amico listed his diagnosis as pelvic prolapse and indicated that this condition was aggravated by repetitive lifting and twisting in appellant's job. Dr. D'Amico further indicated that appellant was totally disabled for a period of six weeks following her January 20, 1998 surgery and then was released to light duty under restrictions which still remained in effect at the time of his report.

In a decision dated November 21, 2000, the Office found that the weight of the medical evidence, as represented by the opinion of Dr. Patel, the impartial medical specialist, established that the employment-related aggravation of appellant's preexisting pelvic conditions was temporary and that appellant would have been totally disabled for work for up to three months following surgical correction of her condition on January 20, 1998. After reviewing Dr. D'Amico's most recent reports and the other remaining medical evidence of record, the Office settled on May 12, 1998 as the specific ending date of appellant's period of total disability. The Office explained that on May 12, 1998, appellant had been physically examined by Dr. Wenger, the Office second opinion physician, who stated in his report that appellant had "fully recuperated" from her surgery.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

The Board finds the thorough and well-rationalized reports of the impartial medical specialist, Dr. Patel, are entitled to special weight and these reports establish that appellant had a temporary employment-related aggravation of her preexisting pelvic prolapse condition, which necessitated surgery and a period of recuperative disability lasting approximately three months. While Dr. Patel opined that a return to heavy lifting would again aggravate appellant's condition and possibly cause a recurrence, as he also opined that the aggravation was temporary and had not resulted in permanent changes in appellant's condition, the Office properly found that

³ *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

compensation is not payable for periods after the aggravation ceased.⁴ Finally, in determining that appellant's period of recuperative total disability ended on May 12, 1998 the Office chose to rely on the date most favorable to appellant, granting appellant a period of total disability longer than that suggested by either appellant's treating physician or the independent medical examiner.

The November 21 and January 6, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 6, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ The Board in *James L. Hearn* held that, where employment factors cause only a temporary aggravation of an underlying condition, leaving no permanent residual, compensation is not payable for periods after the aggravation has ceased. This holds true even if the employee is found medically disqualified because of the effect, which employment factors might have on the underlying condition. In those cases, the disqualification of the employee is due to the underlying condition without any contribution by the employment; *see Gary R. Sieber*, 46 ECAB 215 (1994); *Laymon C. Christie*, 35 ECAB 389 (1983); *Russell E. Kimball*, 35 ECAB 310 (1983).