

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA R. DIGAN and U.S. POSTAL SERVICE,
POST OFFICE, Schenectady, NY

*Docket No. 02-992; Submitted on the Record;
Issued April 24, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective January 10, 2001, on the grounds that appellant no longer had any residuals of her September 10, 1984 employment injury; and, if so (2) whether appellant has any continuing disability or residuals after January 10, 2001, the date the Office terminated her compensation benefits.

On September 10, 1984 appellant, then a 25-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her back and right knee due to a dog attacking her.¹ The Office accepted the claim for lumbosacral strain and authorized an exploratory laminectomy with decompression at the right L4-5 and L5-S1. Appellant returned to limited duty on April 2, 1985, sustained various recurrences of disability and was subsequently placed on the periodic rolls for temporary total disability by letter dated June 3, 1987.

In a report dated February 22, 1999, Dr. Hooshang Hooshmand, an attending Board-certified neurologist, noted appellant's employment injury occurred when she was bitten by a dog above her left knee while delivering mail and that she fell back against the house. Subsequent injuries noted by Dr. Hooshmand include falling out of a tree house in 1988 or 1999 and landing on her back and right shoulder, a car accident in June 1998 where she was diagnosed with whiplash and falling on stones while riding a moped and cutting her right arm below the elbow in 1997. He diagnosed advanced stage reflex sympathetic dystrophy in the upper and lower extremities. Dr. Hooshmand based this diagnosis on a February 22, 1999 infrared thermograph imaging test. He opined that this testing confirmed "advanced, moderately severe sympathetic disturbance," but provided no opinion as to whether this was caused by her employment injury.

¹ The Board notes that none of the contemporaneous medical and factual evidence mention appellant falling down any steps. The contemporaneous medical and factual evidence support that the dog did bite appellant above her left knee.

On August 30, 1999 the Office referred appellant to Dr. Thomas H. Mason, a Board-certified neurological surgeon, for a second opinion evaluation on whether appellant continued to have any residual disability due to her accepted September 10, 1984 employment injury and whether she had reflex sympathetic dystrophy due to her accepted September 10, 1984 employment injury.

In a report dated September 8, 1999, Dr. Mason related the history of the injury as occurring when appellant was bitten by a dog, twisted around and fell down 13 steps. He diagnosed reflex sympathetic dystrophy in the right upper and lower extremities and concluded that she was totally disabled due to this condition. He also diagnosed failed back syndrome which he attributed to appellant's "two laminectomy procedures and numerous injection techniques in the spine including several epidurals, facet blocks, trigger point injections in the upper and lower limbs and coagulation of the right lumbar sympathetic chain." Dr. Mason, in a September 20, 1999 addendum letter, noted that he had "failed to include intractable right sciatic radiculopathy and spasmodic contracture of the right hand" in his report.

On October 4, 1999 the Office requested clarification from Dr. Mason as he noted that appellant related that she fell down 13 steps after the dog bit her which was not the mechanism of injury listed in the statement of accepted facts. The Office stated Dr. Mason failed to answer the questions asked and that he must support his conclusion with medical rationale.

In a December 15, 1999 addendum, Dr. Mason responded to the Office's request for clarification. He opined that appellant had reflex sympathetic dystrophy or myofascial pain syndrome and that she was totally disabled.

The Office found Dr. Mason's response to be nonresponsive to the initial questions submitted by the Office on January 13, 2000 and by letter dated February 1, 2000, the Office referred appellant to Dr. John Buckner, a Board-certified orthopedic surgeon, for a second opinion regarding the status of appellant's disability due to her accepted September 10, 1984 employment injury.

In a report dated February 17, 2000, Dr. Buckner stated that appellant related the injury as occurring when she was attacked by a dog and she fell down 13 stairs. Current complaints were noted as right leg pain, back pain and difficulty bending and walking. Dr. Buckner diagnosed lumbar strain, an unrelated left knee injury, drug addiction and preexistent fall with extensive scarring in the right forearm. Physical examination revealed that appellant was able to walk without any ambulatory aid and that she "walks normally with a limp that is exaggerated." The muscles in the upper extremity were symmetric in size, texture and tone with no wasting. There was normal sensation and motor testing both upper and lower extremities and her skin was symmetric to temperature. Regarding lower extremities, he noted that the left thigh was an inch smaller than the right thigh with symmetric girth in the caves. Dr. Buckner concluded that appellant was capable of performing her usual duties as a letter carrier with no restrictions. He found no residuals due to appellant's act of twisting 14 years ago as there were "no objective signs for a lumbosacral sprain at this time and no signs of reflex sympathetic dystrophy."

On December 6, 2000 the Office issued a proposed notice to terminate appellant's compensation benefits on the basis that she no longer had any residuals or continuing disability due to her accepted employment injury, relying upon the opinion of Dr. Buckner.

In a letter dated December 17, 2000, appellant responded to the proposal to terminate her benefits. She argued that Dr. Buckner was biased and she submitted reports dated February 6, 1987 and April 7, 1989 by Dr. G. Robert Cooley, an attending physician. Appellant also submitted information on the drugs methadone and valium.

On January 10, 2001 the Office finalized the termination of benefits effective January 10, 2001 on the basis that appellant no longer had any disability or any residuals due to her accepted employment injury.

In a letter dated February 23, 2001, appellant requested reconsideration and submitted a January 31, 2001 report by Dr. Hooshmand, in support of her request. Dr. Hooshmand, in his January 31, 2001 report, concluded that appellant's reflex sympathetic dystrophy was due to her September 10, 1984 employment injury. In support of this conclusion, he noted:

“The rhizotomy and release of adhesions not only did not help the condition, but also initiated the onset of RSD (CRPS). Obviously, the original lumbosacral sprain of September 10, 1984 led to the chain of events in the form of the first of all lumbosacral sprain (sic), secondly the need for lumbar disc surgery and rhizotomy and removal of scars over the sciatic nerve, purely and exclusively due to the lumbosacral sprain (sic).”

Dr. Hooshmand also noted that prior to the accepted employment injury appellant was asymptomatic and “there was no other disease or injury that could have caused this problem except for the injury.” In conclusion, he opined that appellant's pain originated from her lumbosacral injury and was “augmented by two surgical procedures.”

In a May 31, 2001 merit decision, the Office denied appellant's request for reconsideration on the basis that Dr. Buckner's report constituted the weight of the medical evidence, as Dr. Hooshmand failed to provide any rationale to support his opinion that appellant continued to suffer residuals from her accepted employment injury.

The Board finds that the Office did not properly terminate appellant's compensation benefits effective January 10, 2001, on the grounds that she no longer had any residuals of her September 10, 1984 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² 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.³ The Office's burden of proof includes the necessity of furnishing rationalized

² *Gloria J. Godfrey*, 52 ECAB ___ (Docket No. 00-502, issued August 27, 2001).

³ *Lynda J. Olson*, 52 ECAB ___ (Docket No. 00-2085, issued July 11, 2001).

medical opinion evidence based on a proper factual and medical background.⁴ However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁶

In the instant case, the Office relied on the opinion of the second opinion examiner, Dr. Buckner, as the weight of the medical evidence in establishing that appellant had no residuals of her accepted September 10, 1984 employment injury. However, his report is unrationalized and conclusory. Dr. Buckner noted appellant's complaints of back pain, right leg pain and difficulty bending and walking; he noted that he reviewed medical records including a statement of accepted facts and a report by Dr. Mason without commenting on any of them; he conducted a physical examination without discussing his findings or their meaning; and he diagnosed lumbar strain resolved, without any explanation. Dr. Buckner opined that he found no residuals due to appellant's act of twisting in 1984 as there were "no objective signs for a lumbosacral sprain at this time." He also concluded that there was no objective evidence to support a diagnosis of reflex sympathetic dystrophy without any supporting explanation or rationale. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.⁷ Consequently, Dr. Buckner's opinion is not sufficiently rationalized to meet the Office's burden of terminating benefits.⁸

⁴ *Manuel Gill*, 52 ECAB ___ (Docket No. 99-915, issued March 2, 2001).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Franklin D. Haislah*, 52 ECAB ___ (Docket No. 01-208, issued August 1, 2001).

⁷ *William C. Thomas*, 45 ECAB 591 (1994); *Marilyn D. Polk*, 44 ECAB 673 (1993).

⁸ In view of the Board's disposition of the first issue, the issue of whether appellant has any continuing disability or residuals after January 10, 2001, the date the Office terminated her compensation benefits, is moot.

Accordingly, the May 31, 2001 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
April 24, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member