

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA M. BENVIGNATI and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, Philadelphia, PA

*Docket No. 03-783; Submitted on the Record;
Issued July 16, 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 compensation for the accepted condition of lumbosacral strain; and (2) whether the incident of May 16, 2001 caused or contributed to increased end plate edema at L4-5, multiple radiculopathy involving the L5-S1 nerve root or a major depressive disorder.

On May 16, 2001 appellant, then a 43-year-old underwriter, sustained an injury in the performance of duty: "Shoe caught on torn carpet, tripped and twisted knee, grabbed chair and partition to stop direct fall, incurred at workstation." Appellant stopped work that day and did not return. The Office accepted appellant's claim for lumbosacral strain and paid benefits.

In October 2001 the Office referred appellant, together with a statement of accepted facts, to Dr. Anthony Salem, an orthopedist, for an opinion on her injury-related diagnosis and work restrictions.

On November 30, 2001 Dr. Salem related appellant's history, including major back surgeries twice in the past, once in 1997 and again in January 2000. He described his findings on physical examination and reviewed two prior magnetic resonance imaging (MRI) scans. An MRI scan dated November 29, 1999 showed disc degenerative changes at L3-S1, with the greatest at L4-S1. There was a right disc herniation, which appeared to be a free fragment and surrounded the postsurgical scar of L4-5, where it was hitting the right L5 nerve root. The MRI scan also showed degenerative bulging at L5-S1. An MRI scan dated February 24, 2000 showed an L5-S1 mass on the right side, probably scar tissue and recurrent disc, with marked hypertrophic arthritic changes in the apophyseal joint.

Dr. Salem noted that he did not see the MRI scan taken after appellant's May 16, 2001 employment injury but that the rather significant changes shown on the February 24, 2000 study could account for her pain pattern. He reviewed an August 20, 2001 note from appellant's attending internist, Dr. Ronald A. Codario, who stated that an MRI scan of the lumbosacral spine showed some end plate edema at L4-5. According to this record, Dr. Salem reported and

according to his physical findings, there were no objective changes in appellant as a result of her fall on May 16, 2001: “[Appellant] may have twisted her back and started an increase in her discomfort, but there is no way that this trip and fall created the clinical picture that I see.”

On the issue of work-related residuals, Dr. Salem stated:

“I feel that [appellant’s] present diagnosis is not the result of her tripping over the carpet. I do not think that there should be any work restrictions at this time due to her work injury. [Appellant] has worked for 26 years for [the employing establishment] and for the past 5 years has been an underwriter sitting at a desk. I see no reason why she could not continue that job at this time. [Her] accident did not create any further disc herniation, no broken bones and no objective changes.

“There may have been an aggravation of a preexisting condition, but this should have resolved within two months. A greater factor than the accident is her morbid obesity, the fact that she smokes over a pack of cigarettes a day and does not perform any exercises.

“Therefore, I feel that her preexisting condition is permanent, which is not related to this job and her subsequent accident was only temporary and as stated above, should have resolved in approximately two months, as there were no material changes to alter the course of her underlying disease.”

On January 3, 2002 the Office issued a notice of proposed termination of compensation on the grounds that the weight of the medical evidence, as represented by Dr. Salem’s report of November 30, 2001, established that appellant had recovered from the May 16, 2001 work injury. The Office allowed appellant 30 days to submit additional evidence or argument relative to this issue.

Appellant submitted additional information, including a January 22, 2002 report from Dr. Codario, who stated that she continued to be incapable of returning to work:

“As you know [appellant] has been under my care for a work-related accident on May 16, 2001. She has continued to experience back and leg pain since then despite analgesic therapy.... [Appellant] was attending physical therapy until this was not authorized by the Department of Labor, despite obtaining symptomatic relief.

“[Appellant] obtained an MRI on May 29, 2001 which revealed increased end plate edema at L4-5 which has progressed since the previous MRI (taken before the accident). This latest MRI also shows resolution of postoperative fluid collection in this area and decrease in post operative scar tissue. This increase in end plate edema is solely related to the trauma of the accident.

“An EMG (electromyogram) taken on November 15, 2001 was consistent with multiple radiculopathy involving the L5-S1 nerve root with a subacute component in addition to a chronic component. This is consistent with trauma to an already abnormal nerve segment, again in keeping with her work[-]related accident.

“I have read Dr. Anthony Salem’s report. This was rendered without reviewing the latest MRI and EMG. It is not surprising that without knowledge of this important data he rendered an incorrect evaluation.”

Appellant submitted copies of the May 29, 2001 lumbar MRI scan and November 15, 2001 EMG reports.

On February 20, 2002 the Office requested a supplemental report from Dr. Salem. The Office attached for his review a revised statement of accepted facts, the May 29, 2001 lumbar MRI scan and November 15, 2001 EMG reports, a May 29, 2001 right knee MRI scan report and Dr. Codario’s January 22, 2002 report.

On February 25, 2002 Dr. Salem responded as follows:

“It is inconceivable to me that Dr. Codario could state that the increase in end plate fluid is solely related to the trauma of the incident in May, 2001.

“[Appellant] has significant morbid obesity, two previous back surgeries and the fluid and scarring and problems that are visible were not created by this incident of May, 2001.

“The EMG was done by Dr. Bandera on November 15, 2001, which was six months after the injury, is consistent with multiple-level radiculopathy, which is consistent with her multiple-level degenerative disc disease and apophyseal joint changes. These changes are chronic in nature with a subacute component, but this in no way is secondary to the incident of May, 2001.

“The MRI that was taken on May 29, 2001, which was performed just a few weeks on the right knee after this alleged injury, showed articular cartilage damage, which is longstanding and I am certain is due to her obesity over a period of many years.

“There are no acute changes in this knee by MR [scan]. Therefore, I do not feel that these changes are secondary to that alleged injury.

“I have reviewed the report of the [o]pen MRI [scan] of her lumbar spine, dated May 29, 2001, which was also taken several weeks after her alleged injury. Again, it shows multiple levels of disc desiccation and loss of disc space height and inflammation, but there are no acute changes. There are no objective signs of anything that changed as a result of this incident.

“Dr. Frederick Simeone’s operative report of January 11, 2000 shows foraminotomies and laminotomies at L4-5-6 and S1. There are multiple changes of degenerative disease in her spine, which would account for her clinical picture.

“The operative note of May 7, 1997, when Dr. Simeone went in and excised the extruded fragment, is just another confirming factor of her multiple levels of disc disease.

“I feel that it is commendable that [appellant] did work as long as she did with her morbid obesity and her arthritic spine, but I do not feel that this accident in any way changed her clinical picture or is a reasonable reason for [her] to be put out on disability at this time.

“In summary, these additional medical records in no way change my opinion regarding the nature of this incident and the fact that it caused her increasing difficulty.”

Appellant submitted a March 11, 2002 report from Dr. Harry A. Doyle, a psychiatrist, who found that appellant was totally disabled by her physical and psychiatric conditions:

“It is my opinion, within a reasonable degree of medical certainty, based upon psychiatric evaluation, diagnostic and psychological test results and record review, that [appellant’s] psychiatric diagnosis is [m]ajor [d]epressive [d]isorder, [s]ingle [e]pisode, [m]oderate and that the depressive disorder is directly related to the work injury of May 16, 2001, as documented in the [s]tatement of [a]ccepted Facts. Although [appellant] recovered satisfactorily from two prior back surgeries and returned to full time work without restrictions, her prior history of lumbar surgeries made her especially vulnerable to the development of chronic pain and related disabilities in response to additional lumbar injury. [Appellant’s] physical condition has not responded to conservative medical treatment and she continues to experience significant residual pain and physical limitations. She developed signs and symptoms of a depressive disorder subsequent to the work injury, directly related to chronic pain and functional impairment and because there is no prior history of depressive disorder or psychiatric impairment, her present psychiatric condition is directly related to the work injury.”

In a decision dated April 1, 2002, the Office terminated appellant’s compensation benefits. The Office found that the weight of the medical evidence rested with the opinion of Dr. Salem, who reported that appellant had recovered from her May 16, 2001 work injury. The Office found that her physician, Dr. Codario, failed to address appellant’s obesity and preexisting degenerative disc disease, prior back surgeries or the fact that her job was sedentary. The Office also noted that his medical rationale related mainly to appellant’s subjective complaints. The Office found that the issue of appellant’s diagnosed depression was moot, as the weight of the medical opinion established that appellant’s current complaints were related to preexisting degenerative disc disease and obesity, not to residuals of appellant’s work injury.

Appellant requested a review of the written record by an Office hearing representative.

In a decision dated January 27, 2003, the hearing representative affirmed the Office’s April 1, 2002 decision terminating appellant’s compensation benefits. The hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Salem and supported that appellant’s work injuries had resolved and that her current problems were due to conditions unrelated to her employment. The hearing representative discounted the psychiatric opinion of Dr. Doyle because the medical evidence established that the affects of the work injury had resolved: any pain appellant continued to suffer was unrelated to the injury, so

any psychiatric problem resulting from the pain was likewise unrelated to the May 2001 injury. The hearing representative also noted that Dr. Doyle's based his conclusion in part on the fact that appellant experienced no emotional difficulties prior to the work incident, which was not sufficient rationale to establish causal relationship.

The Board finds that the Office properly terminated compensation for the accepted condition of lumbosacral strain.

Once the Office accepts a claim it has the burden of proof to justify termination or modification of compensation benefits.¹ 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.²

The Office accepted that appellant sustained a lumbosacral strain on May 16, 2001 and, therefore, bears the burden of proof to justify the termination of compensation benefits for that condition. The Office has no such burden of proof with respect to conditions that are not accepted, including increased end plate edema at L4-5, multiple radiculopathy involving the L5-S1 nerve root and major depressive disorder.

With respect to the accepted condition of lumbosacral strain, the weight of the medical opinion evidence rests with the opinion of Dr. Salem, the Office referral orthopedist. He reported on November 30, 2001 that appellant may have twisted her back and experienced an increase in discomfort on May 16, 2001, when she caught her shoe on a torn carpet, but there was no way the accident created the clinical picture he currently saw on examination. There was no further disc herniation, no broken bones and no objective changes. The greater factor, Dr. Salem reported, was appellant's morbid obesity, the fact that she smoked over a pack of cigarettes a day and performed no exercises. He explained that the preexisting changes of degenerative spine disease would account for her clinical picture. Although there might have been an aggravation of a preexisting condition, Dr. Salem reported that this should have resolved within two months. The Office provided Dr. Salem additional medical records, but he reported that the information in no way changed his opinion regarding the nature of the incident or its consequences.

Dr. Salem's opinion is based on a proper factual and medical history and is sufficiently rationalized to support that residuals of the accepted lumbosacral strain had ceased. Further, there is no reasoned medical opinion to the contrary. Appellant's attending internist, Dr. Codario, disagreed with Dr. Salem on whether the May 16, 2001 incident caused or aggravated other lumbar conditions, but he offered no diagnosis of lumbosacral strain and made no argument that appellant continued to suffer from that condition. There is no conflict with respect to the accepted condition and as the weight of the medical opinion evidence supports that

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

residuals of the accepted condition ceased, the Board will affirm the Office's January 27, 2003 and April 1, 2002 decisions on the issue of termination.

The Board also finds that this case is not in posture for decision on whether the incident of May 16, 2001 caused or contributed to increased end plate edema at L4-5 or multiple radiculopathy involving the L5-S1 nerve root. A conflict in medical opinion exists with respect to these conditions, warranting further development pursuant to 5 U.S.C. § 8123(a).

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁴ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁵

The Office has not accepted that increased end plate edema at L4-5 or multiple radiculopathy involving the L5-S1 nerve root is causally related to the employment incident of May 16, 2001. Appellant bears the burden of proof to establish causal relationship with respect to these medical conditions.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁶

Dr. Codario, appellant's attending physician, reported that the MRI [scan] of May 29, 2001 showed an increase in end plate edema at L4-5 "which has progressed since the previous MRI [scan] (taken before the accident)." Noting a resolution of postoperative fluid collection in this area and a decrease in postoperative scar tissue, he attributed the increase in end plate edema solely to the incident on May 16, 2001. Dr. Codario also reported that the EMG of November 15, 2001 showed multiple radiculopathy involving the L5-S1 nerve root with a subacute component in addition to a chronic component, which he stated was consistent with trauma to an already abnormal nerve segment, again in keeping with her work-related accident.

Dr. Salem, the Office referral physician, reviewed Dr. Codario's opinion, together with copies of the May 29, 2001 MRI scan and November 15, 2001 EMG and disagreed. The MRI [scan], he stated, showed no acute changes, no objective signs of anything that changed as a result of the May 16, 2001 employment incident. The EMG, he stated, showed changes that were chronic in nature with a subacute component, "but this in no way is secondary to the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

incident of May, 2001.” It was inconceivable to Dr. Salem that Dr. Codario could attribute the increase in end plate fluid solely to the trauma of May 2001, as appellant had significant morbid obesity, two previous back surgeries and preexisting multiple changes of degenerative spine disease that would account for her clinical picture.

Section 8123(a) of the Act provides in 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.”⁷

The Board will set aside the Office’s January 27, 2003 and April 1, 2002 decisions on the issue of nonaccepted lumbar conditions. To resolve the conflict in opinion between Dr. Codario and Dr. Salem, the Office shall refer appellant, together with the medical record and a statement of accepted facts, to an appropriate impartial medical specialist for an opinion on whether the incident of May 16, 2001 caused or contributed to increased end plate edema at L4-5 or multiple radiculopathy involving the L5-S1 nerve root and if so, the length of any resulting disability for work. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on the issue of causal relationship.

The Board also finds that the evidence is insufficient to establish that the incident of May 16, 2001 caused or contributed to a major depressive disorder.

Dr. Doyle, a psychiatrist, reported on March 11, 2002 that appellant’s depressive disorder was directly related to the work injury of May 16, 2001. He stated that two prior back surgeries had made her especially vulnerable to the development of chronic pain and related disabilities in response to additional lumbar injury. From a purely theoretical standpoint this proposition does not appear unreasonable, but Dr. Doyle offered no specific evidence to demonstrate that prior surgeries had in fact rendered appellant especially vulnerable. Further, that appellant had no prior history of depressive disorder or psychiatric impairment is not a sufficient basis for concluding that a causal relationship exists between the work incident and the subsequent psychiatric diagnosis. The Board has held that, when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.⁸ While supportive of appellant’s claim, Dr. Doyle’s opinion is of diminished probative value because it lacks sufficient psychiatric rationale to establish that the incident of May 16, 2001 caused or contributed to a major depressive disorder.⁹

Appellant has not met her burden of proof to establish that the incident of May 16, 2001 caused or contributed to a major depressive disorder. The Board will affirm the Office’s January 27, 2003 and April 1, 2002 decisions on the issue of appellant’s psychiatric condition.

⁷ 5 U.S.C. § 8123(a).

⁸ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

⁹ In addition, the Board notes that because residuals of the accepted lumbar condition ceased and because any causal relationship to other lumbar conditions is not yet established, it cannot yet be said without speculation that the chronic pain to which Dr. Doyle refers arose from appellant’s federal employment.

The January 27, 2003 and April 1, 2002 decisions of the Office of Workers' Compensation Programs are affirmed on the issues of termination of compensation for the accepted condition and denial of compensation for the psychiatric condition. The decisions are set aside on the issue of nonaccepted lumbar conditions and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
July 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member