

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA L. PARKER and U.S. POSTAL SERVICE,
POST OFFICE, Spokane, WA

*Docket No. 03-322; Submitted on the Record;
Issued May 28, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective November 7, 2001.

On February 9, 2001 appellant, then a 51-year-old complaint and inquiry clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she aggravated her preexisting back condition in the performance of her federal duties. She wrote that on May 5, 2000 she first realized that long periods of sitting required by her position resulted in back pain. Appellant has not worked since May 5, 2000 when she had a back massage just prior to the onset of the aggravation and severe pain that caused her to stop working.

Appellant's relevant medical history included eight nonindustrial motor vehicle accidents; the first when she was very young and the last three in 1992, 1994 and 1997. She underwent back surgery in 1994. Appellant worked her entire career with the employing establishment, starting in 1968 and included time as a distribution clerk, a window clerk, a letter sorter and in the mailroom before her date-of-injury job. She indicated that her clerical duties put stress and strain on her back, especially the complaint and inquiry position due to the long periods of sitting and the stress of doing many activities.

In a February 20, 2001 letter, the employing establishment wrote that appellant was generally seated seven to eight hours a day and worked some overtime. In a July 11, 2000 report, Dr. John J. Demakas, a Board-certified neurosurgeon, wrote that appellant had ongoing pain in her back and axial concordant with pain at L4-5 and L5-S1 with degenerative changes and tears of annulus at L2-3 and L3-4. In an October 24, 2000 report, Dr. Karen Thykeson, an orthopedist, stated that appellant's job could have contributed to her low back and neck pain as her work seemed to involve significant amount of lifting, reaching and twisting and bending.¹

¹ Appellant's surname in some reports is Rabe. In a May 2, 2001 letter, appellant indicated she changed her surname to Parker.

In a January 16, 2001 report, Dr. Paula Lantsberger, a Board-certified specialist in occupational medicine, diagnosed appellant with multilevel lumbar degenerative disc disease at L3-4, L4-5 and L5-S1 with a current flare up. Appellant was being treated with medication, physical therapy and a chiropractor.

In a March 2, 2001 letter, the Office requested more information from appellant. In a March 16, 2001 letter, appellant responded that other than work, she spends much of her time doing stretching and strengthening exercises, seeing doctors, chiropractors, attending physical therapy and receiving massages for her back condition.

In a March 29, 2001 report, Dr. Lantsberger stated:

“I realize [appellant] does have preexisting problems from an unrelated motor vehicle accident and previous surgeries.... However, I do believe that there is aggravation of the preexisting condition as a result of her job duties. This is on a more probable than not basis. While I agree there are multiple causes for her back to have chronic pain, I believe a portion of her difficulties are due to work[-] related activities.... She does have permanent residuals of the disabling condition. These prevent her from being able to do even her sedentary former job duties. She has chronic pain and the job does not allow her to be able to do the alternate sitting, standing and potentially lying down that she would need to do....”

In an April 10, 2001 decision, the Office accepted appellant’s claim for an aggravation of preexisting lumbar degenerative disc disease. In an April 24, 2001 letter, the Office referred appellant for a second opinion referral.

In a May 9, 2001 report, Dr. Scott Linder, a Board-certified orthopedist, stated that appellant presented with chronic and constant low back pain with burning down both legs. Dr. Linder added that she did not, however, appear to be distressed. He opined that the proximate cause of her pain was degenerative lumbar disc disease that had been present for many years and was aggravated by multiple automobile accidents. Dr. Linder added that the nature of degenerative disc disease is that it gets progressively worse. He does not believe her work aggravated or accelerated her condition because, according to appellant, she was able to get up frequently throughout the day, her symptoms have gotten worse since she quit work; and sedentary computer work is often the occupation many people with back conditions are retrained to perform.

Dr. Linder further opined that appellant’s physical examination bordered on normal and that he could find no evidence of an underlying permanent aggravation or acceleration. He wrote that she could return to the full-time sedentary work she was doing at the time she stopped working.

In a May 16, 2001 letter, the Office proposed terminating appellant’s compensation based on the weight of Dr. Linder’s report. In a June 23, 2001 report, the Office forwarded to Dr. Linder appellant’s job description and clarified that she spent several hours a day seated. In

a July 13, 2001 report, Dr. Linder indicated that the additional information did not change his opinion.

In a July 26, 2001 letter, the Office found a conflict in the medical evidence between the reports of Drs. Lantsberger and Linder and referred appellant for an independent referee examination to resolve a conflict in the medical evidence.

In an October 17, 2001 report, Dr. Dean Ricketts, a Board-certified orthopedist, and Dr. Rich Mark, a Board-certified neurologist, conducted a physical examination and reviewed appellant's work and medical history, and test results including magnetic resonance imaging (MRI) scans from March 15, 1999 and December 26, 2000. They diagnosed appellant with degenerative disc disease that changed minimally between the two MRI scans. They found no objective evidence of radiculopathy and attributed her chronic low back pain to the natural slow progression of the degenerative disc disease and the multiple vehicular accidents. They indicated it was unlikely, on a probable or not basis, that any of her employment activities, whether immobile or active, would result in a permanent aggravation or worsen her preexisting condition. They added that her current symptoms are likely to recur whether she is home or at work. They felt appellant needed self-directed reconditioning, but she could return to sedentary position with restrictions of no repetitious twisting or bending at the waist and no lifting over 25 pounds.

In a November 7, 2001 decision, the Office terminated appellant's compensation relying on the report of Drs. Ricketts and Mark.

In a November 30, 2001 letter, appellant's representative requested a hearing arguing that Dr. Linder's reports were insufficiently rationalized to create a conflict, the report of Drs. Ricketts and Mark was not sufficiently rationalized to be the weight of the evidence and even if Drs. Ricketts' and Mark's report was acceptable, it only created a conflict. In particular the representative argued the reports of Drs. Lindner, Ricketts and Mark lack an explanation of what the impact of long periods of sitting would have on appellant's preexisting condition.

In support of her appeal, appellant submitted a February 8, 2002 report from Dr. William Weigel, a Board-certified neurologist, who stated that appellant has discogenic pain which is known to increase with sitting because sitting puts more pressure on the discs than does standing or lying. He added that appellant was not a candidate for surgery and while conservative treatment may reduce her pain, she could not work.

In a February 21, 2002 report, Dr. Lantsberger wrote that appellant had definitive objective findings of four level discograms, which showed a lack of integrity of the discs with extrusion of the contrast material. She added that appellant has difficulty functioning while sitting and that she is permanently disabled from ever returning to work.

In a September 12, 2002 decision, the hearing representative affirmed the November 7, 2001 termination.

The Board finds the Office properly terminated appellant's compensation.

In the present case, the Office determined that there was a conflict in the medical opinion between Dr. Lantsberger, appellant's attending physician, and Dr. Linder, an orthopedist, acting

as an Office referral physician, on whether appellant had continuing disability related to her employment-related occupational disease. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to Dr. Ricketts, a Board-certified orthopedist, and Dr. Mark, a Board-certified neurologist, for an impartial medical examination and an opinion on the matter.²

In situations where there exist 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 upon a proper factual background, must be given special weight.³

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Drs. Ricketts and Mark, the impartial medical specialists selected to resolve the conflict in the medical opinion. The October 17, 2001 report of Drs. Ricketts and Mark establish that appellant's accepted employment-related aggravation of her preexisting degenerative disc disease had resolved.

The Board has carefully reviewed the opinions of Drs. Ricketts and Mark and notes that it has reliable, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. The opinion of Drs. Ricketts and Mark is based on a proper factual and medical history in that they had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Drs. Ricketts and Mark provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁴ They explained that they had reviewed several MRI reports of appellant's back that confirmed a slow progressive degenerative disc condition and that progression of the disease did not indicate a progression by her employment factors. Drs. Ricketts and Mark provided medical rationale for their opinion by explaining that they could find no objective evidence of a permanent aggravation related to appellant's employment and they attributed her chronic low back pain to the natural slow progression of her degenerative disc disease and her multiple vehicular accidents. After reviewing appellant's medical history and job duties, they found it is unlikely, from a medical probability, that any activity of her work, whether immobile or active, resulted in a permanent aggravation or worsened her preexisting condition. They concluded that she could return to her sedentary and restricted date-of-injury position.

The Board finds the Office properly gave the weight of the medical evidence to Drs. Ricketts and Mark. The Office has met its burden of proof in terminating appellant's compensation.

² Section 8123(a) of the 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." 5 U.S.C. § 8123(a).

³ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁴ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

After the Office's November 7, 2001 decision terminating her compensation, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after November 7, 2001 due to residuals of her accepted employment injury. Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiners, Drs. Rickets and Marks, in terminating appellant's compensation effective November 7, 2001, the burden shifts to appellant to establish that she is entitled to compensation after that date.

The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her February 9, 2001 employment injury after November 7, 2001. In his February 8, 2002 report, Dr. Weigel wrote that appellant had discogenic pain which could be reduced through conservative treatment but she could not work. In her February 21, 2002 report, Dr. Lantsberger wrote that appellant had four discs lacking integrity with extrusion material, that she had difficult functioning while sitting and would never be able to work again. While these reports are supportive of appellant's position, they do not explain with sufficient rationale why or how appellant's pain is related to her employment. This is especially important in light of the numerous nonwork-related injuries she has sustained. Absent this rationale, appellant has not met her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated September 12, 2002 and November 7, 2001 are hereby affirmed.

Dated, Washington, DC
May 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member