

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARNELL H. QUINONES and U.S. POSTAL SERVICE,
POST OFFICE, Vancouver, WA

*Docket No. 03-2101; Submitted on the Record;
Issued November 26, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that she had no further disability of her work-related injury; and (2) whether appellant met her burden of proof to establish that she had any disability after August 30, 2002 causally related to her employment injury.

On September 26, 1998 appellant, then a 41-year-old postal clerk, filed a claim for traumatic injury alleging that, on September 14, 1998, she pulled a hip muscle while pulling a tub of mail in the performance of duty. On December 3, 1998 the Office accepted appellant's claim for lumbar strain. Appellant returned to a limited-duty assignment as a distribution clerk.

On June 23, 2000 Dr. Marlene Dietrich, Board-certified in psychiatry and neurology, examined appellant based on her persistent symptoms and recommended a neurological evaluation. In a consultant's report dated January 10, 2001, Dr. Norman C. Rokosz, a neurosurgeon, stated that appellant had sciatica with unknown etiology and possible piriformis syndrome for which physical therapy was recommended. On February 6, 2001 the Office referred the case to an Office medical adviser to determine if appellant's current condition was the cause or the result of her 1998 work-related injury.

In a report dated February 14, 2001, Dr. Barbara S. Mallett, a Board-certified anesthesiologist, noted that appellant underwent a left L3 nerve root block with a 75 percent post-block pain relief across her back and leg "indicating that the L3 nerve root is a major contributor to her pain symptomology." In a report dated February 22, 2001, the Office medical adviser recommended that appellant be referred to a back specialist before additional treatments were attempted.

On April 26, 2001 Dr. Rokosz noted that appellant had been placed on permanent light duty effective September 14, 1998. On the same day, Dr. Rokosz stated that appellant's complaints did not support a disc condition at L3-4 and ruled out surgical intervention.

On August 10, 2001 Dr. Dietrich stated that appellant had low back pain extending bilaterally into the buttocks and radiating down the right leg. She requested authorization for a myelogram noting that sacroiliitis would not account for her right lower extremity pain. In a report dated September 25, 2001, Dr. Dietrich stated that appellant had chronic low back pain, bilateral lower extremity pain, degenerative lumbar spine changes and possible L3 nerve root impingement. She placed appellant off work until November 1, 2001 to determine if time off would help her conditions. Dr. Dietrich also requested authorization to refer appellant to Dr. Randall Chestnut, a spine surgeon, for evaluation. Appellant stopped work on September 26, 2001.¹

On October 4, 2001 the Office referred appellant, her medical records, a statement of accepted facts and a list of specific questions to Dr. Paul Williams, a Board-certified neurological surgeon, for a second opinion evaluation.

In a report dated October 7, 2001, Dr. Dietrich stated that appellant had work-related back strain, bilateral sacroiliitis by a July 10, 2001 bone scan, leftward L3-4 disc protrusion by a July 2, 2001 magnetic resonance imaging scan and a September 10, 2001 myelogram, chronic low back pain and bilateral leg pain. Dr. Dietrich placed appellant on total disability from September 26 to November 1, 2001.

In a report dated October 25, 2001, Dr. Williams stated that appellant's September 14, 1998 work-related lumbar strain had resolved within two to three months from the date of injury and did not cause additional injuries. He advised that appellant's continued complaints were related to her preexisting degenerative condition.

In her December 17, 2001 reply to the second opinion evaluation, Dr. Dietrich stated that Dr. Williams evaluated only appellant's lumbar strain "and elected not to address the issue of the disc herniation," for which appellant was being treated by Dr. Chestnut. On January 3, 2002 Dr. Mallett advised that a discography was positive at L3-4.

By letter dated January 15, 2002, the Office issued appellant a notice of proposed termination of benefits on the grounds that the residuals of her work-related injury had resolved.

In a report dated February 7, 2002, Dr. Chestnut, based on the results of the January 3, 2002 discogram, recommended a spinal fusion at L3-4. He noted that, although appellant had a preexisting degenerative disease in her spine, "a specific activity ... caused the crucial entry to the disc that has now resulted in discogenic back pain." The Office, on February 11, 2002, denied appellant's request for authorization for a spinal fusion. In a reply to the Office dated the same day, Dr. Chestnut advised that the direct onset of symptoms on September 14, 1998 established a causal relationship between the L3-4 disc and appellant's employment injury.

On February 13, 2002 the Office advised that, due to a conflict in medical opinion between the Office's second opinion physician and Dr. Chestnut, the case would be referred to an impartial medical examiner for review. On May 6, 2002 the Office referred appellant, a

¹ On September 28, 2001 appellant claimed that she sustained a recurrence of her work-related injury on September 26, 2001. The Office denied this claim on January 23, 2002.

statement of accepted facts and her medical records to Dr. Wilson Reed, a Board-certified neurologist, for an impartial medical evaluation.

In a report dated May 29, 2002, Dr. Wilson stated that he reviewed the medical record, examined appellant and found that her lumbar strain resolved from two to three months after the work-related injury. He also noted appellant's "egregious behavior," particularly in magnifying her back pain symptoms, specifically noting positive Waddell's signs, Marxer's test and Hoover's signs for nonorganic pain behavior. Dr. Wilson advised that appellant could return to work in a light-duty capacity with restrictions.

By letter dated July 8, 2002, the Office issued appellant a notice of proposed termination of compensation benefits.

On July 9, 2002 appellant submitted a narrative regarding her claim. On August 30, 2002 the Office terminated appellant's compensation benefits effective that day.

On September 17, 2002 appellant requested an oral hearing. Appellant submitted a September 1, 2002 report from Dr. Chestnut in which he repeated his opinion that appellant's L3-4 condition was causally related to her September 14, 1998 work injury. A hearing was held on February 11, 2003. By decision dated May 2, 2003, an Office hearing representative affirmed the Office's August 30, 2002 decision terminating appellant's benefits.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as of August 30, 2002.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.² After it has determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ 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 proper factual background, must be given special weight.⁴

In this case, the Office found a conflict in medical opinion between the Office's second opinion physician, Dr. Williams, who found that appellant's September 14, 1998 work-related injury had resolved, and Dr. Chestnut, who stated that appellant's L3-4 condition was causally related to her work-related injury. The Office referred the case to Dr. Wilson Reed, a Board-certified neurologist, for an impartial medical evaluation. In his May 29, 2002 report, Dr. Wilson noted appellant's egregious pain behavior, slow gait and exaggerated left leg limp. He opined that appellant's clinical examination demonstrated no signs of residual affects of appellant's lumbar strain. Upon examination, he noted appellant's range of motion findings as

² *Jorge E. Sotomayor*, 52 ECAB 105 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

follows: flexion, 45 degrees; extension, 15 degrees; right rotation, 5 degrees; left rotation, 10 degrees; right lateral bending, 10 degrees; left lateral bending, 20 degrees, all producing back pain. Waddell's rotation tests were positive, indicating symptom magnification and overreaction, Waddell's vertex compression tests and Marxer's test for nonorganic pain behavior were also positive. Calves and lower extremity reflexes were symmetrical and brisk and her plantar response was normal. Dr. Wilson noted appellant's left leg sensitivity to touch, pinprick, vibration and temperature. He also noted a diffuse give-away weakness in the lower extremities which was not organic and also noted a positive Hoover's sign. Both legs bent bilaterally, hip rotation was painful bilaterally in rotation, straight leg raising was 20 degrees on the right and 10 degrees on the left which was inconsistent with full knee extension in the sitting position. Dr. Wilson noted no back spasm, but indicated that appellant was tender throughout her back. He stated that appellant's current conditions were lumbar strain, lumbar spondylosis, and possible lumbar radiculopathy but that her lumbar strain of September 14, 1998 had healed after two to three months after onset. Dr. Wilson noted that appellant's lumbar strain was insufficient to cause or aggravate her lumbar disc or related conditions because the preexisting disc condition was not significant enough prior to the work-related injury to be identified. Further, he advised that there were no current findings to indicate that the L3-4 disc was symptomatic and that any L3-4 disc abnormality would be insufficient to explain appellant's "entire symptom complex." Dr. Wilson recommended that appellant lose weight and enter an exercise program and recommended against surgery. In a work capacity evaluation dated May 29, 2002, Dr. Wilson advised that appellant could return to an eight-hour light-duty position with restrictions effective that day.

The Board finds that the Office properly found that Dr. Wilson's referee opinion negating a causal relationship between appellant's claimed current conditions and disability and her September 14, 1998 employment injury and that she no longer had any residuals from the employment injury was sufficiently probative, rationalized and based upon a proper factual background and that, therefore, the Office acted correctly in according Dr. Wilson's opinion the special weight of an independent medical examiner.⁵ Accordingly, the Board finds that Dr. Wilson's opinion constituted sufficient medical rationale to support the Office's August 30, 2002 decision, terminating appellant's compensation.

The Board further finds that appellant failed to meet her burden of proof to establish that she had any disability after August 30, 2002 causally related to her employment injury.

In a September 9, 2002 report, Dr. Chestnut did not provide countervailing, probative medical evidence that appellant continued to have residual disability from her accepted September 14, 1998 injury. Dr. Chestnut, whose opinion represented one side of the conflict resolved by Dr. Wilson's report, merely reiterated his impression of the discogram results and indicated that appellant's conditions were work related and that she required fusion surgery.

This report did not satisfy appellant's burden of proof to establish that she had any disability after August 30, 2002 causally related to the September 14, 1998 employment injury.

⁵ Gary R. Seiber, 46 ECAB 215 (1994).

The decisions of the Office of Workers' Compensation Programs dated May 2, 2003 and August 30, 2002 are affirmed.

Dated, Washington, DC
November 26, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member