

**United States Department of Labor
Employees' Compensation Appeals Board**

JEAN A. PERRYMAN, Appellant)
)
and) **Docket No. 04-1204**
) **Issued: November 9, 2004**
DEPARTMENT OF THE NAVY, NAVAL)
HOSPITAL, Lemoore, CA, Employer)

Appearances:
Jean A. Perryman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 31, 2004 appellant filed a timely appeal of an April 2, 2003 decision affirming the March 12, 2002 decision of the Office of Workers' Compensation Programs' hearing representative terminating appellant's benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case. Pursuant to the same regulation, the Board also has jurisdiction over a March 5, 2004 nonmerit decision wherein the Office denied reconsideration.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation benefits effective March 12, 2002; (2) whether appellant met her burden of proof to establish that she had any disability after March 12, 2002 causally related to her federal employment; and (3) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On March 11, 1997 appellant, then a 40-year-old coordinator, filed a traumatic injury claim alleging that on February 26, 1997 the heel of her shoe got caught on some gum which caused her to trip and fall. Her claim was accepted for right hip and leg injury. The Office later accepted that appellant sustained a lumbosacral sprain on February 26, 1997.¹

In a November 10, 1999 report, Dr. P. James Nugent, a treating Board-certified orthopedic surgeon, diagnosed lumbar degenerative disc disease and disabling pain in appellant's lumbar spine. He indicated that she had a permanent partial disability based on subjective complaints of pain which he believed were consistent with a frequent slight to moderate pain and collaborated by objective findings of decreased range of motion and x-ray, magnetic resonance imaging (MRI) scan and discography results. Dr. Nugent indicated that appellant was prophylactically restricted from repetitive bending, lifting, pushing and pulling more than 20 pounds. He noted that her permanent partial disability was casually related to her industrial injury of February 26, 1997.

By letter dated October 20, 2000, appellant was referred to Dr. Thomas Dorsey, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated November 21, 2000, Dr. Dorsey diagnosed a resolved lumbar musculoligamentous sprain/strain. He reported a normal neurological examination and indicated that appellant's limitation of motion was voluntary. Dr. Dorsey further opined:

“[Appellant] does not suffer residuals of the February 26, 1997 episode. At most, she would have a mild lumbar musculoligamentous sprain/strain as a result of that episode. The known natural history of resolution of such a condition is complete resolution of such within 30 days. Her orthopedic examination and review of objective findings indicates that she has no ongoing lumbar condition of significance and certainly no orthopedic condition related to the events of February 26, 1997.”

Dr. Dorsey further noted that there was no basis to believe that appellant had degenerative disc disease connected to the events of February 26, 1997, but rather, that this was the result of the natural aging process. He noted that appellant did not require any further treatment on any orthopedic basis and that she had no restrictions on an orthopedic basis.

By letter dated December 4, 2000, the Office sent a copy of Dr. Dorsey's report to Dr. Nugent for comment. By letter dated January 2, 2001, Dr. Nugent stated his disagreement, noting evidence of degenerative disc disease and that this had a causal relationship to the February 26, 1997 injury. He noted that prior to this time, appellant was asymptomatic.

On September 25, 2001 the Office issued a notice of proposed termination of compensation. Appellant responded to the proposed termination by letter dated October 17, 2001. At this time, she submitted an August 22, 2001 report by Dr. David L. Drake,

¹ Appellant also filed claims for an emotional condition and a November 9, 1998 back injury which were denied by the Office.

a Board-certified orthopedic surgeon, who provided a diagnosis of degenerative disc disease of the lumbar spine and set limitations on appellant's activities with regard to her lumbosacral spine pain.

By decision dated March 12, 2002, the Office terminated appellant's monetary and medical compensation as of that date.

By letter dated March 27, 2002, appellant requested an oral hearing. At the hearing held on February 5, 2003 she submitted a January 22, 2003 medical report of Dr. John B. Dorsey, a Board-certified orthopedic surgeon, who conducted a physical examination and noted that she exhibited limited back motion with pain. He reviewed appellant's medical records and diagnosed lumbosacral spine sprain/strain with aggravation of degenerative disc disease and bilateral lower extremity radiculopathy. Dr. John Dorsey concluded:

“[Appellant] has a lower back condition which, in my opinion, began when she fell at work in February 1997 and has continued. In my opinion, [appellant] is unable to perform full-time work activities and is restricted to sedentary work on a part-time basis. This concurs with the prior medical reports reviewed by Dr. Thomas Dorsey and certainly his report contradicts reasonable medical understanding. [Appellant] clearly has degenerative disc disease on MRI scan studies, has restricted range of motion with complaints of pain as described by Dr. Thomas Dorsey in his examination.”

By decision dated April 2, 2003, the hearing representative affirmed the Office's March 12, 2002 decision.

By letter dated December 8, 2003, appellant, through her attorney, requested reconsideration and submitted a June 26, 2003 report from Dr. John Dorsey, who stated that it is a well-established fact that a degenerative condition generally begins with a traumatic episode unless there is a generalized condition involving the entire spine. He noted that appellant's specific levels of involvement at L4-5 and L5-S1 were not the type of degenerative condition that one would expect to see in a 46-year-old patient unless there had been some type of precipitating trauma as was the case when appellant was injured in February 1997. Dr. John Dorsey further indicated that her restrictions were causally related to her work injury and concluded:

“Dr. Thomas Dorsey is completely glossing over the situation, in my opinion, and [appellant] does have a disability based upon the incident which occurred in February 1997. My opinions are unchanged from my report of January 22, 2003.”

By decision dated March 5, 2004, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation

without establishing that the disabling condition ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁵

ANALYSIS -- ISSUE 1

In the present case, Dr. Nugent, an attending Board-certified orthopedic surgeon, produced a November 10, 1999 report in which he diagnosed appellant with lumbar degenerative disc disease and disabling pain in her lumbar spine. When asked for a further comment with regard to his conclusion, he noted that appellant's degenerative disc disease was causally related to the February 26, 1997 injury because prior to that time, appellant was asymptomatic. However, the Board has held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting rationale to establish causal relationship.⁶ Dr. Nugent provided no further rationale to explain his conclusion.

Dr. Thomas Dorsey, an attending Board-certified orthopedic surgeon, who served as an Office referral physician, submitted a well-rationalized medical report dated November 21, 2000 wherein he indicated that appellant's lumbar musculoligamentous sprain/strain had resolved and that her degenerative disc disease was not connected to the employment injury of February 26, 1997, but was the result of the natural aging process. He noted that appellant's MRI scan results were consistent with other individuals in her age group. Dr. Thomas Dorsey further indicated that appellant's mild lumbar musculoligamentous sprain/strain should have resolved within 30 days. He noted that her minimal degenerative changes do not represent any significant lumbar pathology and noted that her physical examination showed no evidence of orthopedic abnormality. Therefore, Dr. Thomas Dorsey's opinion that appellant no longer suffered from the effects of the February 26, 1997 injury was supported by objective tests, appellant's history and her physical examination.⁷ Accordingly, the weight of the medical evidence is represented by his well-rationalized opinion. The Office, therefore, properly terminated appellant's benefits effective March 12, 2002.

² *David W. Green*, 43 ECAB 883 (1992).

³ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ *Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁷ Appellant also submitted an August 22, 2001 report in which Dr. Drake, an attending Board-certified orthopedic surgeon, addressed appellant's limitations as a result of her history of degenerative disc disease of the lumbar spine. However, he did not state whether appellant still had residuals from her February 26, 1997 injury.

LEGAL PRECEDENT -- ISSUE 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had a continuing medical condition causally related to the accepted injury.⁸ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.⁹

ANALYSIS -- ISSUE 2

After the Office terminated appellant's benefits on March 12, 2002, she submitted a January 22, 2003 report by Dr. John Dorsey, wherein he concluded that her lower back condition had continued. He reasoned that appellant clearly had restricted range of motion with complaints of pain. Dr. John Dorsey opined that, Dr. Thomas Dorsey's opinion contradicted reasonable medical understanding as it was clear that appellant had a restricted range of motion as evidenced by her complaints of pain. Dr. John Dorsey's opinion does not constitute a rational critique of Dr. Thomas' Dorsey's opinion. Although Dr. John Dorsey implied that Dr. Thomas Dorsey found no evidence of degenerative disc disease, in fact, Dr. Thomas Dorsey attributed these degenerative changes to the aging process and not the February 26, 1997 injury. Furthermore, the report of Dr. John Dorsey does not discuss the etiology of appellant's degenerative disc disease. Accordingly, she has failed to establish that she had any disability after March 12, 2002 causally related to her federal employment.

LEGAL PRECEDENT -- ISSUE 3

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act, the Office's regulation provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁰

ANALYSIS -- ISSUE 3

Appellant's attorney neither showed that the Office erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument. The only medical evidence submitted was a June 26, 2003 report of Dr. John Dorsey. He did not provide any new medical tests or raise any new argument that was not already considered in the previous decisions. In fact, Dr. John Dorsey stated that his opinion was unchanged from his earlier opinion, an opinion that was already reviewed and considered by the Office. The Board has held that the submission

⁸ *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Id.*

¹⁰ 20 C.F.R. § 10.606(b)(2)(i-iii).

of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹¹ Accordingly, the Office properly denied appellant's request for reconsideration.

CONCLUSION

The Office properly terminated appellant's compensation as of March 12, 2002. She did not present sufficient evidence to establish that she had any continuing disability after March 12, 2002. The Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 5, 2004 and April 2, 2003 are hereby affirmed.

Issued: November 9, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).