

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

MARLAINA A. JEFFERIES, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Albuquerque, KY, Employer**

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**Docket No. 04-904
Issued: August 10, 2005**

Appearances:
Marlaina A. Jefferies, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 22, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated November 24, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden to terminate appellant's compensation benefits for the accepted conditions of right lateral and left medial epicondylitis and cervical strain/sprain; and (2) whether appellant has established that she has myofascial pain syndrome and reactive depression which are causally related to the accepted employment injury.

FACTUAL HISTORY

This is the fourth appeal before the Board. On July 15, 1992 appellant, a 27-year-old mail clerk, filed a Form CA-2 claim alleging that she developed degenerative conditions in her arms causally related to factors of her employment. The Office accepted the claim for right

lateral epicondylitis and left medial epicondylitis and cervical strain/sprain. By decision dated August 1, 1995, the Office terminated appellant's compensation. In an April 27, 1998 decision,¹ the Board reversed the Office's termination decision, finding that the opinion from Dr. Emmett Altman, a Board-certified orthopedic surgeon and the referral physician on whom the Office relied, required clarification as to whether appellant had any residuals from her employment-related injuries. The Board further found that appellant had submitted uncontradicted evidence that she had developed myofascial pain syndrome with reactive depression as a result of her accepted employment injuries. On remand, the Office was directed to obtain a supplemental opinion from Dr. Altman regarding whether the conditions of myofascial pain syndrome and reactive depression were causally related to her employment.

On remand, based on a supplemental report from Dr. Altman, the Office, in a decision dated March 26, 1999, terminated benefits on the grounds that the accepted conditions had resolved. In a November 7, 2001 decision,² the Board reversed the Office's March 26, 1999 decision, finding that Dr. Altman's reports were not sufficient to meet its burden of proof to terminate compensation. The Board also found that the case was not in posture for decision on the issue of whether appellant met her burden of proof to establish that she has any additional medical conditions causally related to or aggravated by her accepted employment injury. The Board found a conflict in medical opinion existed between Dr. Altman and appellant's physicians, Dr. Teresa Balcomb, Dr. David Bernstein and Dr. Ben J. Klein, regarding whether the additional claimed condition of myofascial pain syndrome, which became her primary medical complaint and led to the onset of reactive depression. The Board remanded the case for further medical development. The Board instructed the Office to prepare an updated statement of accepted facts and refer this and appellant, together with the complete medical record, to an impartial medical specialist to resolve the conflict in the medical opinion evidence.

The Office referred appellant to Dr. Robert L.C. McRoberts, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a May 7, 2002 report, Dr. McRoberts noted that appellant related that her symptoms had continued despite physical therapy, pain management, changes in her job position, steroid injections, exercise programs, massage therapy and acupuncture. He stated that numerous diagnostic studies including EMG/nerve conduction studies, x-rays and MRI scan studies all failed to provide etiology for her ongoing symptomology. Dr. McRoberts concluded that appellant had no objective evidence of medial or lateral, right or left epicondylitis or cervical strain/sprain currently active or disabling. He opined that, if appellant's date-of-injury job was satisfactorily modified, she could probably return to work. Dr. McRoberts stated that there was no objective evidence that she was totally disabled and was capable of performing work for the employing establishment for 40 hours per week.

By decision dated June 3, 2002, the Office found that the weight of the medical evidence was represented by the impartial medical opinion of Dr. McRoberts and terminated appellant's compensation.

¹ Docket No. 96-113 (issued April 27, 1998).

² Docket No. 99-1802 (issued November 7, 2001).

In an August 1, 2003 decision,³ the Board reversed the Office's June 3, 2002 decision, finding that Dr. McRoberts' report was not sufficiently rationalized to meet its burden of proof to terminate appellant's compensation benefits. As he did not fully address the questions posed by the Office, the Board found that his report was incomplete and insufficient to resolve the conflict in medical opinion. The Board also found that the case was not in posture for a decision on the issue of whether appellant had met her burden of proof to establish that she had any additional medical conditions casually related to or aggravated by her accepted employment injury. The Board noted that Dr. McRoberts only addressed the issue of whether appellant's accepted employment-related condition had ceased. The Board directed the Office to prepare an updated statement of accepted facts and refer back to Dr. McRoberts for a supplemental opinion on whether her condition of myofascial pain syndrome and the onset of reactive depression was causally related to or aggravated by appellant's employment or her accepted employment injury. The facts of this case, as set forth in the Board's prior decisions are herein incorporated by reference.

By letter dated September 30, 2003, the Office requested that Dr. McRoberts clarify his opinion by addressing the following questions:

“(1) The [O]ffice accepted the claim for the conditions of right lateral epicondylitis, left medial epicondylitis and for a cervical sprain/strain. Is there any objective evidence that any of these conditions are currently active and causing disability to the claimant? If there [is] any evidence that any of these symptoms are active at this time and causing any type of disability, is this disability a total disability or a partial disability? Do these symptoms alone prevent [appellant] from returning to her date[-]of[-]injury job or to any form of gainful employment or is she unable to return to any kind of work due to any other condition(s)? Presently, if there are any symptoms present, are they related to the work[-]related factors to which she was exposed in 1992? Please cite and explain the evidence that supports your conclusion.

“(2) At this time [appellant] is claiming that she is suffering from myofascial pain syndrome due to her work[-]related conditions and this condition has [led] to a reactive depression. Is there any evidence that the claim myofascial pain syndrome exists? If so, is this condition related or aggravated in any form by the work[-]related injury of July 1, 1992? If there was an aggravation present, has the employment[-]related aggravation ceased? If his condition is still present and is related to [appellant's] employment in any form, please advise whether or not this condition is causing any type of disability at [the] present. Please explain your answer and provide the medical rationale that would support your answer.”

* * *

“(3) If she is disabled at present, is [appellant's] current disability due to any other nonwork[-]related conditions that [the Office] might not be aware of? If so,

³ Docket No. 99-1802 (issued November 7, 2001).

please explain how these conditions are causing and/or contributing to the persistence of her disability.

“(4) Can [appellant] return to her date[-]of[-]injury job with restrictions? If she cannot return to her date[-]of[-]injury job, would she be able to work as a part-time or full-time employee either for her employ[ing] [establishment] or for the private industry if the employer can fit her restrictions? If [appellant] cannot work full time at this time, how many hours can she work on a workday? If she cannot return to any kind of employment at this time, please provide the reasons for this and the medical rationale behind them.

“(5) If [appellant] is still totally disabled and cannot return to any kind of employment at this time, please advise what form of treatment would you recommend in order to help her return to a productive lifestyle and how long do you think it will take her to return to a productive lifestyle?”

In a report dated October 16, 2003, Dr. McRoberts responded to the Office’s questions:

“(1) As of May 7, 2002, in my opinion, [appellant] exhibited no objective evidence that her previously diagnosed right lateral epicondylitis, her left medial epicondylitis or her ‘cervical sprain/strain’ were ‘currently active or causing disability to the claimant.’

“In my opinion, symptoms relating to her right lateral epicondylitis, left medial epicondylitis and ‘cervical sprain/strain’ do not prevent her from returning to her date[-]of[-]injury job or to any form of gainful employment....

“When seen on May 7, 2002, it was my opinion that [appellant] was asymptomatic. As mentioned in my report of May 7, 2002, [she] was experiencing ‘multiple joint complaints, including her elbows, shoulders, neck, low back and bilateral lateral hip discomfort.’ I was unable to attribute these symptoms to her work-related ‘conditions’ that were noted [on] July 1, 1992.”

* * *

“(2) In my opinion, [on] May 7, 2002, [appellant] was not experiencing symptoms secondary to ‘myofascial pain syndrome....’ In my opinion, there was no evidence of fibromyalgia or symptoms consistent with ‘myofascial pain syndrome’ [on] May 7, 2002.” Because, in my opinion, a ‘myofascial pain

syndrome' did not exist when examined by me as of May 7, 2002, I do not feel that, logically, this could lead to a 'reactive depression.'

“Because [appellant’s] ‘myofascial pain syndrome’ did not exist in my opinion, it could not be related to a work-related injury of July 1, 1992 ... the diagnosis of ‘myofascial pain syndrome’ did not exist [on] May 7, 2002.”

* * *

“(3) In my opinion, [appellant] was not disabled as per my review of her records and my examination performed on May 7, 2002.

“(4) Yes, in my opinion [appellant] can return to her date[-]of[-]injury job with restrictions. This opinion was stated in my second opinion evaluation letter of May 7, 2002, wherein it is stated ‘I feel that [appellant] is capable of performing work for the [employing establishment], working an 8-hour workday, 40-hour week, in a modified work position....’ It was also my opinion that she should undergo a functional capacity evaluation to more accurately determine her work capabilities.

“(5) As noted above, ... [appellant] is not disabled and is able to return to gainful employment at this time, providing appropriate restrictions are in place that will allow her to continue to work without the prospect of reinjury....

“Once [appellant’s] work capability has been determined, I would think it would only take a number of weeks for appropriate restrictions to be in place before [she] would be ready to return to work for the [employing establishment].”

By decision dated November 24, 2003, the Office terminated appellant’s compensation benefits based on the opinion of Dr. McRoberts.

LEGAL PRECEDENT – ISSUE 1

Once the Office accepts a claim it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ 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.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ *Id.*

establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁶

ANALYSIS -- ISSUE 1

In the present case, regarding the accepted conditions of epicondylitis and cervical strain/sprain, Dr. McRoberts noted in his first report dated May 7, 2002 that appellant had pursued a plethora of conservative medical treatment options ranging from steroid injections to acupuncture, but that appellant did not report any improvement in her symptoms. He further reported that appellant had undergone a variety of medical evaluations including EMG/nerve conduction, x-ray and MRI scans but that none of these objective medical evaluation modalities revealed an etiology for her complaints. Dr. McRoberts concluded that appellant's accepted conditions of right lateral and left medial epicondylitis and cervical strain/sprain had resolved and that she could return to work. In his supplemental report dated October 16, 2003, Dr. McRoberts explained that regarding the accepted conditions, appellant was asymptomatic when he examined her on May 7, 2002. He reiterated that there was a lack of objective evidence to substantiate that her accepted conditions were currently active or disabling.

As Dr. McRoberts' reports thoroughly noted appellant's complaints and medical history; and thereafter carefully evaluated the objective medical evidence, his opinion that appellant's accepted conditions of right lateral, left medial epicondylitis and cervical strain/sprain had ceased is entitled to great weight and constitutes the weight of the evidence in this case.

LEGAL PRECEDENT -- ISSUE 2

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in the original report.⁷

ANALYSIS -- ISSUE 2

Regarding the issue of whether appellant's myofascial pain syndrome and reactive depression were causally related to the accepted injury, Dr. McRoberts had been selected to act as the impartial medical specialist in this case. In the August 1, 2003 decision, the Board directed the Office to prepare an updated statement of accepted facts and refer appellant to Dr. McRoberts for reexamination and a rationalized supplemental report regarding the issue of whether her alleged myofascial pain syndrome and reactive depression were causally related to factors of her federal employment. In her appeal to the Board, appellant noted that the Office failed to adhere to the Board's instruction. She argued that the Office improperly stated that his October 16, 2003 medical report was based on "currently obtained objective evidence," which was erroneous because Dr. McRoberts had not examined her since May 7, 2002. She contended that the Office had erred by relying on Dr. McRoberts' October 16, 2003 report. Although the

⁶ John F. Glynn, 53 ECAB 562 (2002).

⁷ Richael O'Brien, 53 ECAB 234 (2001).

Office did refer the case record, questions and updated statement of accepted facts to the physician, it did not schedule another examination by Dr. McRoberts. The Office did not comply with the Board's directions on remand. The Board will, therefore, set aside the November 24, 2003 decision in order for it to schedule an examination of appellant by Dr. McRoberts. Upon completion of this examination, he should submit a supplemental report addressing the issue of whether appellant's claimed condition of myofascial pain syndrome reactive depression are causally related to or aggravated by her employment or accepted injury. Accordingly, the November 24, 2003 Office decision is set aside and the case is hereby remanded for further development in accordance with the instructions stated above. After such development as it deems necessary, the Office shall issue a *de novo* decision.

CONCLUSION

The Board will affirm the November 24, 2003 Office termination but remands the case to the Office to obtain a supplemental opinion from Dr. McRoberts in accordance with the instructions stated above regarding the conditions of myofascial pain syndrome and reactive depression.

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed, in part, regarding the termination of compensation for the accepted conditions, and remanded for further evaluation of the additional claimed conditions.

Issued: August 10, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board