United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 06-1862**
	)	**Issued: July 10, 2007**
DEPARTMENT OF THE AIR FORCE, BROOKS AIR FORCE BASE, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 9, 2006 appellant filed a timely appeal from the May 4, 2006 merit decision of the Office of Workers' Compensation Programs which terminated her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the termination.

ISSUE

The issue is whether the Office properly terminated appellant's compensation effective May 14, 2006.

FACTUAL HISTORY

On June 23, 2000 appellant, then a 43-year-old financial management technician, sustained an injury in the performance of duty when she tried to avoid a wet spot on the floor. She stubbed her toe, twisted her back, but did not fall. Appellant felt low back pain. The Office accepted her claim for lumbosacral strain and paid compensation for disability on the periodic rolls.

On October 8, 2004 Dr. Daniel J. Boyle, II, appellant's osteopathic physician specializing in physical medicine and rehabilitation, diagnosed lumbar strain-sprain, lumbar disc bulge, lumbar radiculitis, muscle spasm, myositis and sacroiliac joint subluxation. He reported that appellant's problems were due to a subluxation of the left sacroiliac joint with posterior rotation and pelvic unleveling. "This is certainly consistent," he stated, "with the mechanism of injury. I do not believe that the mechanism of injury is consistent with disc pathology which has been identified." Dr. Boyle reported that appellant was medically unable to perform her usual job. On March 10 and April 7, 2005 he dropped the diagnoses of radiculitis and myositis but continued to keep appellant off work.

The Office referred appellant, together with the case file and a statement of accepted facts, to Dr. James W. Simmons, Jr., a Board-certified orthopedic surgeon, for a second opinion. On April 26, 2005 Dr. Simmons diagnosed low back pain and sciatica (injury June 23, 2000), right sacroiliac joint dysfunction, right S1 radiculopathy and exogenous obesity. He reported that appellant's primary injury was a sacroiliac sprain of the right sacroiliac joint. Dr. Simmons stated that, while the signs and symptoms of this injury had not resolved, appellant had no functional impairment related to her pathology other than those related to the resulting pain syndrome. He stated that she should have no problem functioning in her job as a financial management technician:

> "[Appellant] can progress to regular duty considering the job description of a [f]inancial [m]anagement [t]echnician. The pain syndrome resulting from the sacroiliac joint dysfunction can be and probably is quite incapacitating itself. The sacroiliac joint dysfunction can present as an excruciatingly painful problem, however, in most situations the pain syndrome can be controlled with nonsteroidal anti-inflammatory medications, analgesics and muscle relaxants with occasional rehabilitation including sacroiliac joint manipulation."

Dr. Simmons added:

> "Quite extensive documentation of [appellant's] problem has been reviewed and it does not appear that [she] has had a specific diagnosis of S1 joint dysfunction prior to Dr. Boyle's office note of 8 October 2004. This is significant in that the pain syndrome is of a chronic nature which enhances the recommendation for a noninvasive pain program with pain medication to the level that she can work understanding that the work is not going to make her condition any worse and that she must participate in a weight loss program for any long-term benefit."

The Office determined that a conflict existed between Dr. Boyle and Dr. Simmons on the extent of appellant's work-related disability. To resolve this conflict, the Office referred appellant, together with the case file and a statement of accepted facts, to Dr. Eradio L. Arredondo, a Board-certified orthopedic surgeon.

On October 11, 2005 Dr. Arredondo related appellant's history and current complaints. He reviewed a number of records, including those from Dr. Boyle and Dr. Simmons. Dr. Arredondo described his findings on physical examination:

> "The examination revealed a 5'7 tall female who weighs 295 pounds. Her blood pressure was 110/80, pulse 84 and temperature 97.
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> "[Appellant's] gait is normal. The range of motion of the lumbosacral spine is normal. Being able to bring [appellant's] fingertips to mid legs. Her straight leg raising is negative bilaterally. [Appellant] has no gross motor or sensory loss of the lower extremities. Reflexes at knees and ankles are hypoactive, but present and equal bilaterally. Palpation of the lumbar area is unremarkable. Stressing the sacroiliac joint does not elicit pain."

After noting the rather extensive records of diagnostic testing available for review, Dr. Arredondo diagnosed nonspecific low back pain. He concluded:

> "There is no objective documentation that would keep [appellant] from going back to gainful employment, with only the restrictions that someone her age, weight and degree of physical conditioning should have, but none because of her so-called low back strain, which by definition should have cleared up in 6 to 10 weeks. Her pain syndrome is not due to physical injury.
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> "The medications [appellant] is on are appropriate. Her clinical picture is based on self-report and so are the exacerbations when she has gone back to work. None of them can be attributed to anything that one can demonstrate objectively."

Asked whether residuals of the accepted work injury (lumbar and sacroiliac sprain) had resolved, Dr. Arredondo answered "yes" and repeated his diagnosis of nonspecific low back pain. Asked whether the effects of the work injury persisted and whether they prevented appellant from returning to the job performed when injured, Dr. Arredondo stated: "The symptoms persist. I see no reason to keep [appellant] in a no work status as a result of the 'injury' in question." Dr. Arredondo reported that she could resume regular hours for that job without a work hardening or work condition program.

Dr. Boyle continued to keep appellant off work.

In a decision dated May 4, 2006, after appropriate notice, the Office terminated appellant's compensation benefits effective May 14, 2006. The Office found that the opinion of the impartial medical specialist, Dr. Arredondo, represented the weight of the medical opinion evidence. It established that residuals of the work injury had ceased and that appellant was medically capable of performing her regular duties.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] Once the Office accepts a claim under the Act, it has the burden of proof to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to 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.[3] The Office may not terminate compensation without a positive demonstration by the weight of evidence that entitlement to benefits has ceased.[4]

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.[5] When 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.[6]

ANALYSIS

The Office did not accept appellant's claim for a subluxation of the left sacroiliac joint, sacroiliac joint dysfunction, disc pathology, right S1 radiculopathy or pain syndrome. The Office has no burden to negate a causal relationship between these conditions and the June 23, 2000 incident at work.[7] The only condition the Office accepted for compensation benefits was lumbosacral strain. To justify the termination of benefits for this June 23, 2000 low back strain, the Office's burden is to establish that the accepted strain resolved or is no longer causing disability for work.

The attending osteopath, Dr. Boyle, diagnosed a lumbar strain/sprain but reported that appellant's problems were due to a subluxation of the left sacroiliac joint. The Office referral orthopedic surgeon, Dr. Simmons, also diagnosed a sacroiliac joint dysfunction with a resulting

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[1] 5 U.S.C. § 8102(a).

[2] *Harold S. McGough*, 36 ECAB 332 (1984).

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

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

[5] 5 U.S.C. § 8123(a).

[6] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

[7] It is appellant that bears the initial burden of proof to establish a causal relationship between the June 23, 2000 incident at work and any medical condition for which she seeks compensation. *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

pain syndrome. He did not disagree with Dr. Boyle on whether appellant continued to suffer residuals of the June 23, 2000 low back strain. Dr. Simmons stated that appellant's primary injury was a sacroiliac sprain, the signs and symptoms of which had not resolved. His disagreement with the attending physician was on whether appellant's employment injury continued to disable her from her date-of-injury position as a financial management technician. The Office properly referred appellant, therefore, to an impartial medical specialist to resolve the extent of her work-related disability.

The Office provided Dr. Arredondo with appellant's entire case record and a statement of accepted facts so that he could base his opinion on a proper factual and medical background. His findings on physical examination were unremarkable, including palpation of the lumbar area and stressing the sacroiliac joint. Clinically and diagnostically, he could find nothing objective. Further, he observed that a low back strain resolves by definition in 6 to 10 weeks. This all supports Dr. Arredondo's opinion that residuals of the accepted lumbar and sacroiliac sprain had resolved and that appellant could resume regular duty as a financial management technician without restrictions relating to a low back strain from June 23, 2000.

The Board finds that Dr. Arredondo's opinion is sufficiently well reasoned and based on a proper background that it must be accorded special weight in resolving the extent of appellant's injury-related disability. His opinion constitutes the weight of the medical opinion evidence, resolves the conflict between Dr. Boyle and Dr. Simmons and establishes no continuing disability for work as a result of the low back strain on June 23, 2000. The Board will affirm the Office's May 4, 2006 decision terminating compensation for wage loss.

As there was no conflict on whether appellant continued to suffer residuals of the accepted low back strain, Dr. Arredondo's opinion on the matter does not carry the special weight normally accorded the opinion of an impartial medical specialist. His status on this issue is that of a second-opinion or Office referral physician. The Board finds that his opinion is sufficient to support the Office's termination of medical benefits for the accepted low back strain. His unremarkable findings on physical examination, his inability to document any condition objectively and his observation on the nature of the accepted condition all support a resolution of the June 23, 2000 strain. The Office has met its burden of proof. The Board will affirm the Office's May 4, 2006 decision terminating medical benefits for the accepted low back strain effective May 14, 2006.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate appellant's compensation. Dr. Arredondo's opinion is entitled to special weight on the issue of continuing disability for work and is sufficiently probative on the issue of continuing residuals to justify the termination of medical benefits for the accepted low back strain.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2006 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: July 10, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board