

periodic compensation rolls effective September 22, 1991. Over the next 12 years, appellant continued to receive wage-loss compensation for total disability.

Dr. Robert A. Smith, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on February 20, 2003. During the course of examination, he noted that appellant had embellished her symptoms, particularly with respect to her right foot. Appellant's physical examination was essentially benign and revealed no spasm, atrophy or deformity. Dr. Smith reported that there were no objective findings to substantiate any ongoing soft tissue or neurological problem that could be referable to the April 1991 employment incident. He also completed a work capacity evaluation (Form OWCP-5c) wherein he noted that appellant had no work restrictions due to her accepted injury. According to Dr. Smith, appellant had reached maximum medical improvement in 1997 and was capable of performing her usual job.

Dr. Taghi Kimyai-Asadi, a Board-certified neurologist who began treating appellant in June 1991, provided a May 6, 2003 work capacity evaluation in which he indicated that appellant could not work at all and was permanently disabled due to her work-related medical condition. Appellant's reported physical limitations included occasional lifting of up to five pounds, 2 hours of walking, 10 minutes of standing, 3 to 4 hours of sitting, 1 hour of handling and grasping and 1 hour of reaching above shoulder. Additionally, Dr. Asadi precluded any bending, twisting, keyboarding, pulling, pushing, climbing and driving. His contemporaneous treatment notes included a diagnosis of lumbar back pain and sciatalgia. Dr. Asadi reported limited range of motion and tenderness in the lumbar spine. Appellant's active problems included lumbar back pain, anxiety, depression and breast cancer. Dr. Asadi also stated that appellant had recently been more depressed after being diagnosed with early-stage breast cancer.

On July 3, 2003 the Office advised appellant of its intention to terminate her wage-loss compensation based on Dr. Smith's February 20, 2003 examination findings. The Office afforded appellant 30 days to respond to the proposed termination of benefits.

In a July 20, 2003 letter, appellant advised the Office that a recent lumbar magnetic resonance imaging (MRI) scan revealed multilevel disc bulges and central spinal stenosis. She also expressed disagreement with the proposed termination of compensation and asked that she be permitted to consult with Dr. Charles J. Azzam, a Board-certified neurosurgeon. The Office subsequently received a July 29, 2003 report from Dr. Azzam who indicated that appellant had symptoms related to lumbar canal stenosis with L5 radiculopathy. Dr. Azzam noted that a June 2003 lumbar MRI scan revealed evidence of spondylosis and stenosis extending from L2-5, but most significant at the L4-5 level. Dr. Azzam advised appellant to consider a decompressive laminectomy and foraminotomy.

By decision dated September 9, 2003, the Office terminated appellant's wage-loss compensation effective October 5, 2003. Appellant, however, remained eligible for further medical treatment for her accepted condition.

On October 20, 2003 appellant requested reconsideration. She submitted a duplicate copy of Dr. Asadi's May 6, 2003 work capacity evaluation. Appellant also submitted an October 5, 2003 prescription pad note from Dr. Abhay V. Aggroia, a Board-certified internist. Although Dr. Aggroia did not specify what condition appellant was being treated for, he

indicated that she had been advised not to sit or stand for long periods of time. He also advised appellant not to lift or bend. As discussed *infra*, appellant's October 20, 2003 request for reconsideration would go unanswered for almost three years.

On February 7, 2005 appellant filed a claim for a schedule award. In support of her claim, she submitted an October 20, 2004 report from Dr. Allan H. Macht, a Board-certified surgeon, who found 20 percent permanent impairment of both lower extremities.

In a September 28, 2005 decision, the Office denied appellant's claim for a schedule award. The Office found that appellant was not entitled to a schedule award because she had previously refused an offer of suitable employment. The Office mistakenly believed that the September 9, 2003 decision terminating wage-loss compensation was based on appellant's refusal to accept suitable employment.

On October 17, 2005 appellant requested an oral hearing regarding both the September 28, 2005 decision denying her claim for a schedule award and the September 9, 2003 decision terminating wage-loss compensation. A telephonic hearing was held on February 10, 2006.

Appellant also submitted additional medical evidence, which included follow-up reports from Dr. Azzam dated October 17 and November 1, 2005. After reviewing recent x-rays and a lumbar MRI scan, Dr. Azzam reported evidence of mild spondylosis, minimal disc bulge at L4-5 with minimal stenosis and diffuse chronic disc bulge at L2-3. He indicated that appellant had symptoms related to lumbar spondylosis. According to Dr. Azzam, appellant would not consider any invasive treatment modalities and, therefore, he discharged her from his care. Appellant would continue conservative treatment and pain management with her primary care physician.

Appellant was also seen by Dr. Paymaun M. Lotfi, a Board-certified orthopedic surgeon. On February 15, 2006 Dr. Lotfi diagnosed axial low back pain and Grade 1 spondylolisthesis at L4-5. He recommended additional x-rays and another lumbar MRI scan. Dr. Lotfi also administered steroid injections and recommended that appellant be fitted for a lumbar brace. When he saw her in follow-up on March 8, 2006, he noted that recent x-rays revealed degenerative spondylolisthesis at L4-5. There was no significant scoliosis noted and appellant's MRI scan showed mild-to-moderate subarticular narrowing, but no significant central narrowing. Dr. Lotfi noted that appellant's symptoms were mostly back pain with some radiating leg pain. He recommended over-the-counter anti-inflammatory medication and home exercises.

By decision dated September 26, 2006, the Office hearing representative set aside the September 28, 2005 decision denying appellant's claim for a schedule award. The hearing representative found that there was no evidence that appellant refused an offer of suitable employment. Additionally, the hearing representative noted that there was an outstanding request for reconsideration regarding the September 9, 2003 decision terminating wage-loss compensation. The claim was remanded to the Office with instructions to consider appellant's October 20, 2003 request for reconsideration. The hearing representative also instructed the Office to render a decision on appellant's request for a schedule award.

In a decision dated October 11, 2006, the Office denied modification of the September 9, 2003 decision terminating wage-loss compensation.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.²

ANALYSIS

The Board finds that the Office met its burden to terminate appellant's wage-loss compensation. The Office accepted appellant's claim for an April 6, 1991 lumbar strain and subsequent myofascial pain syndrome. When Dr. Smith examined appellant some 12 years after her employment injury, he found evidence of symptom magnification and an essentially benign physical examination. He explained that there were no objective findings to substantiate any ongoing soft tissue or neurological problem associated with the April 1991 work injury. According to Dr. Smith, appellant was capable of resuming her regular employment duties without restrictions. In contrast, Dr. Asadi indicated on May 6, 2003 that appellant was totally and permanently disabled due to her work-related injury. However, he failed to explain how a 12-year-old soft tissue injury rendered appellant totally and permanently disabled. Dr. Asadi also did not identify any specific objective findings that supported his opinion that appellant was totally disabled. Dr. Aggroia's October 5, 2003 prescription pad note also fails to substantiate any ongoing employment-related disability. The limitations he imposed with respect to sitting, standing, lifting and bending are not specific to appellant's accepted employment injury. Thus, neither Dr. Asadi nor Dr. Aggroia provided probative medical evidence that outweighed Dr. Smith's findings.

Although the record includes objective evidence of multilevel disc disease involving the lumbar spine, this condition has not been demonstrated to be causally related to appellant's April 6, 1991 employment injury.³ Therefore, the subsequent x-rays and MRI scans along with the various reports from Drs. Azzam and Lotfi do not undermine the Office's decision to terminate wage-loss compensation based on Dr. Smith's February 20, 2003 examination findings.

CONCLUSION

The Office properly terminated appellant's wage-loss compensation effective October 5, 2003.

¹ *Curtis Hall*, 45 ECAB 316 (1994).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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