

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERYLE B. DIXON and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, Ill.

*Docket No. 96-2545; Submitted on the Record;
Issued December 3, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant had any disability or injury residuals after May 28, 1996, the date the Office of Workers' Compensation Programs terminated her compensation entitlement, causally related to her July 16, 1984 lumbosacral strain employment injury.

The Office accepted that on July 16, 1984 appellant sustained a lumbosacral strain with acute sciatica. Concurrent disability not due to injury was noted to include degenerative disc disease, a bulging disc, and hypertension. Appellant was off work for four years. She returned to work in May 1988 to light duty but experienced a recurrence of back pain and stopped work again. Appellant was treated with a weight reduction diet, which was unsuccessful; she weighed 337 pounds and was considered to be morbidly obese.

By report dated November 9, 1987, Dr. Michael R. Triester, a Board-certified orthopedic surgeon, found no significant objective pathology except for appellant's size and hypertension and he opined that she could be working, and had no impairment. On June 17, 1988 appellant's treating general practitioner, Dr. Jia H. Hwang, opined that she could work 4 hours per day with a 10-pound lifting limit. On November 8, 1988 Dr. Triester opined that appellant's problems were functional, that there was nothing that needed treatment, and that he saw no reason why she should not be working full duty. However, in April 1989 Dr. Hwang found that appellant was again totally disabled due to low backache from a diagnosed disc herniation. In 1990 Dr. Hwang continued to support that appellant remained totally disabled due to low backache from a diagnosed disc herniation. However, in 1991 Dr. Hwang opined that appellant could work 4 hours per day with a 10-pound lifting limit. In 1991 appellant was enrolled in vocational rehabilitation. In 1992 Dr. Hwang opined that appellant was unable to return to work. In 1993 Dr. Hwang reported that appellant's chief problem was her obesity, which prevented her from returning to work by magnifying her back problems. In 1994 Dr. Hwang approved a job offer to appellant for a four-hour per day position, for a day-time position only. Appellant, however, did not return to work.

On May 1, 1995 Dr. Hwang indicated that appellant could work zero hours per day. On November 9, 1995 the Office requested that Dr. Hwang clarify appellant's work restrictions and hours, explain why she could only work the day shift, explain why she remained incapacitated from work, and provide a rationalized explanation as to why a lumbosacral strain from 11 years before still had not improved. Dr. Hwang replied: "Things not changed. Patient just is willing to work for four hours per day." Regarding why appellant should work the day shift, Dr. Hwang stated: "Only my personal opinion, she is not suitable to work at evening shift for safety and social reasons." Regarding the Office's question about appellant's obesity being her problem, Dr. Hwang replied: "Somebody must be kidding." Finally, regarding the question as to why appellant's lumbosacral strain had not improved, Dr. Hwang replied: "Different opinion. Sometimes super doctor may give opinion after one examination."

In 1995 the Office determined that a second opinion evaluation of appellant was necessary, and on December 15, 1995 it referred appellant, together with a statement of accepted facts, to Dr. Leonard R. Smith, a Board-certified orthopedic surgeon.

By report dated February 6, 1996, Dr. Smith reviewed appellant's history, reviewed her records and x-rays, examined appellant, and replied that she may have incurred a sprain of the lumbar spine perpetuated by poor posture and extreme weight. He opined that she was only limited by her obesity to lifting 25 pounds occasionally and 20 pounds frequently, and limited kneeling and squatting due to obesity. Dr. Smith opined that appellant could work eight hours per day and was only limited by functional restrictions due to her weight. He noted that any other limitations were on the basis of her other conditions such as rheumatoid arthritis, hypertension, sleep disorder and possible angina. Dr. Smith opined that appellant had reached maximum medical improvement insofar as her lumbar sprain was concerned, that none of her work limitations were due to the employment injury, and that weight loss was imperative.

On February 28, 1996 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical evidence established that she no longer suffered residuals of her lumbosacral strain injury. The Office advised that if appellant disagreed with the proposal, she should submit argument or evidence relevant to the issue within 30 days.

By letter dated March 25, 1996, appellant argued that Dr. Smith's examination lasted only 10 minutes and that no tests were conducted, that her radiographic evaluations revealed that she was suffering from a bulging disc, that she had to stop the Office-recommended therapy running on a tread mill because the pain was too intense, and that she gained even more weight from the liquid diet recommended by the weight loss program. Appellant argued that late-night duty was not suitable to her rheumatoid arthritis condition, and that she was prepared to return to work beginning with only four hours per day on limited duty. In support of her response, appellant submitted a March 23, 1996 report from Dr. Hwang which noted that appellant could return to work part time with "limited restrictions" only four hours per day, and that these restrictions included no lifting over 10 pounds, and no stooping, bending, reaching over her head or prolonged sitting or standing. A chair with a back support was also recommended. No diagnosis was offered, no disability was identified or discussed, and no rationale for these work restrictions was presented.

By decision dated May 9, 1996, the Office terminated appellant's compensation entitlement effective May 28, 1996 finding that the weight of the medical opinion evidence supported that she no longer suffered from any residuals of her July 16, 1984 lumbosacral strain injury. The Office noted that Dr. Hwang's report was insufficient to support appellant's claim of continuing disability as it offered no diagnosis or objective evidence of such disability, and contained no rationalized medical opinion explaining causal relationship between appellant's present condition and her July 16, 1984 lumbosacral strain injury.

The Board finds that appellant had no disability on or after May 28, 1996, causally related to her July 16, 1984 lumbosacral soft tissue muscular strain injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.² The Office met its burden in this case through the well-rationalized report of Dr. Smith.

Dr. Smith had the statement of accepted facts and appellant's complete and accurate history before him when he examined her, and he determined that she could work eight hours per day without restrictions related to her accepted employment condition of lumbosacral strain. Dr. Smith determined that appellant's only duty restrictions were related to her obesity and her other nonwork-related conditions such as rheumatoid arthritis, hypertension and possible angina, and that she had reached maximum medical improvement insofar as her lumbar sprain was concerned. As Dr. Smith's report was based upon a complete and accurate factual and medical history, and a thorough examination of appellant, and as it is well rationalized, it constitutes the weight of the evidence of record.

In contrast the March 23, 1996 report of Dr. Hwang contains no employment-related diagnosis, has no explanation for the basis of the work limitations he proposes, and identifies no objective disability causally related to appellant's accepted condition of lumbosacral strain. As this report is totally unrationalized, it is of diminished probative value and is insufficient to support appellant's claim. The Board also notes that, in response to the Office's attempts to elicit clarification from Dr. Hwang of his earlier reports, Dr. Hwang replied in November 1995 that the four hour per day duty limit was due only to appellant's willingness to work for only four hours, and that the prohibition on night duty was due to "safety and social reasons." The Board notes that these explanations are not satisfactory as they are not based upon residuals of the 1984 lumbosacral strain injury, but stem from other considerations unrelated to appellant's accepted employment injury. Further, the Board finds that Dr. Hwang's other answers were nonresponsive to the questions posed by the Office, and hence are of no probative value. In even earlier reports from Dr. Hwang, the Board notes that appellant's chief problem was identified as

¹ *Harold S. McGough*, 36 ECAB 332 (1984); see Federal (FECA) Procedure Manual, Part 2 -- Claims, Chapter 2.812.3 (March 1987).

² See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

her obesity, which has nothing to do with her 1984 lumbosacral strain. Therefore, even these earlier reports fail to identify injury-related residuals which would warrant continued compensation benefits. The diagnosis noted in these earlier reports is that of herniated disc which was not an accepted employment-related condition. Consequently, the current reports of record from Dr. Hwang are unrationalized, incomplete, and fail to support that appellant either remains disabled or continues with injury residuals, causally related to her accepted employment condition of lumbosacral strain. As these reports do not support continuing injury-related residuals or disability, they are not sufficient to create a conflict with the well-rationalized report of Dr. Smith, and his report constitutes the weight of the medical opinion evidence of record, and establishes that appellant had no injury-related disability of residuals after May 28, 1996. Consequently, the Office properly terminated her entitlement to compensation benefits effective May 28, 1996.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 9, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 3, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member