

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of MICHELLE ANN CALNAN and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Boston, Mass.

*Docket No. 96-2626; Submitted on the Record;  
Issued December 29, 1998*

---

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation, effective September 17, 1995.

The Board has carefully reviewed the case record and finds the medical evidence sufficient to establish that appellant has no disabling residuals from the March 18, 1994 work injury and is therefore no longer entitled to disability benefits.

Under the Federal Employees' Compensation Act,<sup>1</sup> the Office has the burden of justifying modification or termination of compensation once a claim is accepted and compensation is paid.<sup>2</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>3</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>4</sup> The Office's burden

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

<sup>3</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>4</sup> *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

In this case, appellant's claim was accepted for acute cervical and lumbar sprains and spasms sustained at work on March 18, 1994 while bundling and throwing mail and magazines. On June 13, 1995 the Office referred appellant, along with the medical records, a statement of accepted facts,<sup>7</sup> and a list of questions to Dr. Philip I. Salib, a Board-certified orthopedic surgeon, for a second opinion evaluation.

Based on his June 29, 1995 report, the Office issued a notice of proposed termination on August 4, 1995. In response, appellant submitted an office note from Dr. John J. Walsh, Jr., her treating physician and a Board-certified orthopedic surgeon, who stated that she remained disabled from activities requiring the use of her upper extremities or cervical spine in any sustained, repetitive or exertional manner.

On September 6, 1995 the Office terminated appellant's compensation, effective September 17, 1995, on the grounds that appellant had no residual disability due to the March 18, 1994 work injuries. The Office noted that appellant's cervical spondylolysis,<sup>8</sup> degenerative disc disease, and osteoarthritis at L4-5 and L5-S1 were not work-related conditions.

Appellant timely requested an oral hearing, which was held on May 14, 1996. At the hearing, appellant's representative argued that the Office had failed to consider Dr. Walsh's August 14, 1995 report disagreeing with Dr. Salib's conclusion in terminating appellant's compensation. The attorney pointed out that such a conflict in medical opinion required referral to an impartial medical examiner.

---

<sup>5</sup> *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

<sup>6</sup> *Connie Johns*, 44 ECAB 560, 570 (1993).

<sup>7</sup> Appellant was initially injured on November 2, 1984 when a mail container struck her head, left shoulder and back. She returned to work on December 4, 1984 but was injured again on November 20, 1986. Appellant remained off work until March 10, 1993 when she returned to limited duty. On March 12, 1994 appellant was placed on her bid job following the August 19, 1993 decision of the Office's hearing representative that appellant's compensation be terminated, effective January 10, 1993, on the grounds that she had no residual disability resulting from the November 2, 1984 work injury.

<sup>8</sup> Spondylolysis is defined as the dissolution of a vertebra, a condition marked by platyspondylia, aplasia of the vertebral arch, and separation of the pars interarticularis. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

On July 25, 1996 the hearing representative determined that Dr. Salib's report represented the weight of the medical evidence that the effects of appellant's March 18, 1994 injury had resolved. The hearing representative stated that Dr. Walsh attributed appellant's ongoing problems and disability to her 1984 injury, not the accepted work injury. The hearing representative added that reports from two other physicians who had examined appellant failed to address the effects of the March 1994 injury.

The Board finds that Dr. Salib's medical opinion is sufficient to meet the Office's burden of proof in terminating appellant's compensation. While both Dr. Walsh and Dr. Salib are Board-certified orthopedic surgeons, Dr. Salib directly addressed the issue in this case—whether appellant's current disability for work was caused by the residual effects of the March 18, 1994 injury—and related appellant's current symptoms to underlying, preexisting conditions.

Dr. Salib reported "unconnected and unrelated subjective complaints" but no positive objective orthopedic or neurological findings. He reviewed the magnetic resonance imaging (MRI) scan done on February 15, 1995 and confirmed Dr. Walsh's conclusion that appellant had degenerative changes in her cervical spine as well as mild osteoarthritis in her lumbar spine.

He reviewed appellant's medical history from November 2, 1984 when she was first injured at work and her subsequent treatment by Dr. Walsh since 1987—he diagnosed an acute cervical-lumbar strain following the March 1994 injury—and concluded that appellant's 1994 "acute attack" injury resolved in four to six weeks, as shown by her progress reported in the medical records of physical therapy and exercises.

Dr. Salib stated that appellant's long-standing and preexisting symptoms resulted from an old similar sprain in the same region, but that her degenerative disc disease and arthritis were nontraumatic and not work related. Dr. Salib added that appellant was able to perform her normal duties without restrictions and that her degenerative disc disease and arthritis would not disable her at this time.

The reports of three fitness-for-duty examinations requested by the employing establishment do not detract from Dr. Salib's well-reasoned conclusion. Dr. John H. Chaglassian, a Board-certified orthopedic surgeon, concluded on May 17, 1994 that, while appellant had chronic symptoms caused by her degenerative disc disease, she had been able to function until the March 18, 1994 injury. He stated that with anti-inflammatory medication and physical therapy, appellant's symptoms would completely improve over the next four to six weeks.

While Dr. Ronald F. Kaplan, a Board-certified orthopedic surgeon, related an accurate medical history and diagnosed lumbar and cervical syndrome, he merely recommended that appellant return to a sedentary job and failed to address the relevant issue of whether appellant still suffered from the effects of the March 18, 1994 injury. Similarly, Dr. Ingrid de Bainter, an orthopedic practitioner, stated that although appellant "may have chronic orthopedic problems," there was a strong overlay to her symptomatology. She recommended a return to a light-duty position with physical restrictions.

Finally, while Dr. Walsh disagreed that appellant was able to work, he related her current disability to the November 1984 injury, which in his opinion caused the cervical degenerative changes and osteoarthritis. Dr. Walsh added that working eight hours without restrictions would not benefit appellant's current condition, based on her history of persistent chronic back problems with repeated overuse and injury, but this recommendation is purely prophylactic.<sup>9</sup>

Stating that appellant's complaints were essentially unchanged over the years except for more frequent and intense muscle spasms, Dr. Walsh diagnosed chronic cervical and lumbar sprain with radiculitis but did not attribute this condition to the March 1994 trauma. Thus, the Board finds that his report and treatment notes are insufficient to challenge the rationalized medical opinion of Dr. Salib that appellant's March 1994 work injury had resolved.

As the Board has long held, the fact that appellant cannot continue in her previous employment because of the effect that work factors might have on her underlying conditions of degenerative disc disease and arthritis does not entitle her to disability compensation if, in fact, there is no residual disability resulting from the accepted work injury.<sup>10</sup>

The July 25, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
December 29, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

---

<sup>9</sup> See *Mary A. Geary*, 43 ECAB 300, 309 (1991) (finding that fear of future injury is not compensable under the Act); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for comprehension).

<sup>10</sup> See *John Watkins*, 47 ECAB \_\_\_\_ (Docket No. 94-1615, issued May 17, 1996); *Marion Thornton*, 46 ECAB 899, 906 (1995) (finding that compensation is not payable after disability from an accepted condition has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition).