

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE BROWN and U.S. POSTAL SERVICE,
HACKENSACK POST OFFICE, Hackensack, N.J.

*Docket No. 95-2556; Submitted on the Record;
Issued February 6, 1998*

DECISION and ORDER

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

The issue is whether appellant has any disability after August 17, 1983 causally related to her July 25, 1983 employment injury.

The case has been on appeal four times previously.¹ In an August 5, 1988 decision, the Board found that the Office of Workers' Compensation Programs had properly referred appellant to an impartial medical specialist to resolve a conflict in the medical evidence on whether appellant had any disability or consequential injuries related to her July 25, 1983 employment-related back injury. The Board further found that the Office had properly determined that the first impartial specialist, Dr. Walter J. Pedowitz, a Board-certified orthopedic surgeon, did not resolve the conflict in the medical evidence and therefore appropriately referred appellant to a second impartial specialist, Dr. Andrew Weiss, a Board-certified orthopedic surgeon. The Board, however, stated that Dr. Weiss, in finding that appellant had a mild chronic lumbosacral strain, did not provide sufficient rationale for his opinion that the effects of the July 25, 1983 employment injury had resolved within one to two weeks of the injury. The Board remanded the case for the Office to seek additional rationale from Dr. Weiss. In a June 15, 1990 order, the Board remanded the case because the Office did not submit the case record to the Board in a timely fashion. In a May 21, 1991 decision, the Board found that Dr. Weiss' subsequent July 19, 1989 report provided sufficient rationale for his conclusion. Dr. Weiss stated that appellant related a history of severe back pain from the time of injury but did not seek immediate medical treatment for her back condition. He indicated that appellant's physician's were not able to diagnose a significant back problem despite all the diagnostic tests performed on appellant. Dr. Weiss concluded that appellant's lumbosacral strain symptoms should have resolved in one to two weeks and were unlikely to have persisted for months or years after the employment injury. The Board concluded that Dr. Weiss' report constituted the weight of the medical evidence and

¹ Docket No. 92-1849 (issued June 25, 1993); Docket No. 91-76 (issued May 21, 1991); Docket No. 90-692 (Order Remanding Case issued June 15, 1990); Docket No. 87-848 (issued August 5, 1988). The history of the case is contained in the prior decisions and is incorporated by reference.

established that appellant's disability due to the employment injury did not last beyond August 17, 1983. The Board found that several MRI (magnetic resonance imaging) scans and a myelogram showing degeneration of the L4-5 and L5-S1 discs were not supported by any report which stated that the degeneration found was caused or aggravated by the employment injury. The Board therefore affirmed the October 3, 1990 decision of the Office. In a June 25, 1993 decision, the Board found that the Office had improperly denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was cumulative and therefore insufficient to warrant review of the Office's prior decisions. The Board found that the October 1, 1991 report of Dr. Frank P. Alicandri, an orthopedic surgeon, constituted new, relevant evidence as he had concluded that appellant had chronic low back syndrome, pain and instability due to her employment injury to the back and was partially disabled as a result. The Board therefore remanded the case for review of appellant's case on the merits.

Dr. Alicandri stated in his October 1, 1991 report that appellant had chronic low back syndrome, low back instability and chronic back pain, all due to the employment injury. On remand, in an October 15, 1993 merit decision, the Office denied appellant's request for modification on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

In an August 3, 1994 letter, appellant, through his attorney, again requested reconsideration. He submitted in support of the request a July 21, 1994 report from Dr. Alicandri who reviewed appellant's medical history. He noted that he first examined appellant on January 16, 1991. Dr. Alicandri indicated that she was hospitalized on three occasions for treatment of severe back pain since that time and received continuing treatment involving physical therapy and traction at home. He noted that appellant had some episodes of giving way of the right leg due to weakness of the quadriceps muscle. Dr. Alicandri diagnosed chronic low back syndrome, low back instability with weakness of the right leg and chronic tendinitis of both shoulders. He concluded that appellant had a permanent total disability involving the low back area which he related to the July 25, 1983 employment injury. Dr. Alicandri commented that appellant's symptoms in the low back seemed to be progressively getting worse, particularly with the weakness in the right leg. In a November 18, 1994 merit decision, the Office denied appellant's request for modification of the prior decision.

In a December 28, 1994 letter, appellant's attorney made another request for reconsideration. He submitted in support of the request a December 23, 1994 report from Dr. Alicandri who stated that appellant's history was very specific in that she had injured her back in 1983 and since that time had multiple episodes of back and leg pain for which she had been treated by other people. Dr. Alicandri commented that appellant's symptoms, which arose from the employment injury, progressively became worse, requiring hospitalization when he first saw appellant in 1991. He indicated that the causal relation between the injury of 1983 and appellant's current symptoms were documented by appellant's history in that she injured her back at that time and continued to have back pain and leg pain. Dr. Alicandri noted that appellant's symptoms were documented in her multiple hospital admissions and consultations with orthopedic surgeons and neurosurgeons. He indicated that the physicians had not been able to document a neurological pain to account for the leg pain but stated that the back pain was real

and had been demonstrated in his examination as well as in examinations by other physicians. Dr. Alicandri commented that appellant's back pain was not established on objective findings but was based on signs and symptoms as shown in these examinations. He stated that he had not been able to demonstrate a neuritic pressure problem as demonstrated by protruded discs although he added that this was debatable as some interpretations of an MRI scan seemed to indicate that there were disc protrusions which might be causing some of appellant's leg pain. Dr. Alicandri concluded that appellant's back pain was caused by soft tissue injuries incurred at the time of the employment injury and were progressively getting worse. In a March 29, 1995 merit decision, the Office denied appellant's request for modification.

The Board finds that appellant has not established that her disability after August 17, 1983 was causally related to the July 25, 1983 employment injury.

The Board has held that once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.² The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.³ The Office met that burden with the reports of Dr. Weiss who concluded that appellant sustained a lumbosacral strain, the effects of which ceased by August 17, 1983. Once the Office has met its burden of proof to terminate compensation, it becomes appellant's burden to establish that her disability after the date of termination of compensation remains causally related to the employment injury.⁴ A person who claims benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative, and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.⁶ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁷ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁸ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and

² *Edwin Lester*, 34 ECAB 1807 (1983).

³ See *George J. Hoffman*, 41 ECAB 135 (1989); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

⁴ *Joseph Campbell*, 34 ECAB 1389 (1983).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁷ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁸ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁹

Dr. Alicandri stated that appellant's current back condition is causally related to the July 25, 1983 injury because she had a continuous history of back pain since the employment injury. However, such a history, by itself, is insufficient to establish a causal relationship between the employment injury and appellant's continued disability. Dr. Alicandri admitted that there were no objective findings that would explain appellant's back pain. He suggested that protruding discs might be causing appellant's leg pain. This conclusion, however, was based on speculative readings of an MRI scan. In addition, Dr. Alicandri did not discuss whether the protruding discs were caused by the employment injury and, if so, how such protruding discs would have arisen from the employment injury. He stated that appellant's back pain was due to soft tissue injuries. However, he gave no explanation on how the employment injury would have caused soft tissue injuries that would be so severe as to cause appellant's disability. He also did not explain how the effects of such soft tissue injuries would persist for almost 12 years after the employment injury. Dr. Alicandri's reports, therefore, had little rationale and, therefore, has limited probative value. The reports are insufficient to establish that appellant's July 25, 1983 employment injury caused any disability after August 17, 1983.

The decisions of the Office of Workers' Compensation Programs, dated March 29, 1995 and November 18, 1994, are hereby affirmed.

Dated, Washington, D.C.
February 6, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁹ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).