

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CASSANDRA BUFFORD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HOSPITAL, Ann Arbor, Mich.

*Docket No. 96-432; Submitted on the Record;
Issued February 19, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective October 5, 1994; and (2) whether appellant has established a myofascial pain syndrome as causally related to her employment injury.

In the present case, the Office accepted that appellant sustained a lumbar strain on September 17, 1992 while easing a patient to the floor. Appellant briefly returned to light-duty work in March and April 1993, then stopped working and began receiving appropriate compensation benefits. By decision dated October 4, 1994, the Office terminated appellant's compensation on the grounds that residuals of the employment injury had ceased. In a decision dated February 13, 1995, the Office reviewed the case on its merits and denied modification of the prior decision. The Office also made a finding that appellant had not established a myofascial or chronic pain syndrome as employment related. In decisions dated April 5, May 16 and October 4, 1995, the Office again reviewed the case on its merits and denied modification of the prior decisions.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating compensation effective October 5, 1994.

Once the Office accepts a claim, it has the burden of justifying termination or modification 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 had ceased or that it was no longer related to the employment.¹

In this case, the Office found that a conflict existed between appellant's attending physicians and a second opinion referral physician as to whether appellant continued to have an

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

employment-related lumbar strain. In a report dated May 23, 1993, attending physicians Dr. Mary C. Spires and Dr. Michael Boninger, specialists in physical medicine, indicated that appellant had a musculoskeletal low back strain resulting from a lifting incident at work, to which appellant was predisposed due to an increased lordosis. In a report dated June 10, 1993, Dr. Boninger and Dr. James Leonard, a specialist in physical medicine, indicated that appellant continued to have restrictions due to the lumbar strain. The Office referred appellant to Dr. Arnold D. Charnley, a Board-certified orthopedic surgeon and neurologist, who provided a history and results on examination in an August 19, 1993 report. Dr. Charnley opined that appellant was not disabled and could return to her normal duties.

The record therefore was in conflict over whether appellant continued to be disabled by an employment-related lumbar strain, and the case was referred to Dr. Hermann Remsperger, a Board-certified orthopedic surgeon, to resolve the conflict. In a report dated January 26, 1994, Dr. Remsperger provided a history, results on examination, and reviewed the medical evidence. Dr. Remsperger indicated that his only finding was a complaint of tenderness around the right posterior superior iliac spine, which had not previously been reported. He stated that, were it not for the complaint of tenderness, "I would have no choice but to consider [appellant] able to return to work in an unrestricted fashion." Dr. Remsperger indicated that, based on the reported tenderness, he would restrict appellant's bending to two hours per day, and her work time to four hours per day, for a period of two to four weeks. When asked by the Office to further explain his comments, Dr. Remsperger submitted a July 6, 1994 report, stating in pertinent part that "[i]t is my opinion that the complaints of tenderness were not due to the alleged injury of September 17, 1992." He discussed his lack of objective findings and noted that the lack of prior mention of the tenderness indicated that it was not present. Dr. Remsperger again indicated that the physical restrictions he cited in his earlier report were based on the reported tenderness and would have been of limited duration.

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.² The Board finds that Dr. Remsperger has provided a reasoned opinion that resolves the medical conflict. Dr. Remsperger provided detailed reports, opining that appellant's only disability was related to tenderness in the iliac spine area and that the tenderness was not causally related to the employment injury. He indicated that appellant could return to work without restrictions based on the employment injury. The Board therefore finds that Dr. Remsperger's reports represent the weight of the evidence and that the Office met its burden of proof in terminating compensation effective October 5, 1994.

The Board further finds that the case is not in posture for decision regarding the diagnosis of myofascial pain syndrome.

Once the Office has met its burden in terminating compensation, the burden shifts to appellant to establish continuing disability.³ It is also noted that the only accepted condition in

² *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

³ *George Servetas*, 43 ECAB 424, 430 (1992).

this case is a lumbar strain, and it remains appellant's burden to establish any additional disabling condition as employment related.

Appellant has submitted medical evidence from her attending physicians supporting a myofascial pain syndrome as causally related to her employment injury. The Board notes that this issue was not included in the conflict that was resolved by Dr. Remsperger; that issue was limited to a lumbar strain condition.

In a report dated March 27, 1995, Dr. Georgine Steude, a specialist in pain management, and Dr. Randy S. Roth, a clinical psychologist, opined that appellant had a myofascial pain syndrome causally related to her lifting injury. The physicians stated that it would be quite reasonable to associate appellant's present symptoms with the injury, "given our experience that lifting injuries most often precipitate chronic back pain of musculoskeletal (myofascial) origin." In a report dated April 17, 1995, Dr. Boninger opined that appellant had a myofascial pain disorder directly resulting from her lifting incident at work. Dr. Boninger stated that the trauma caused facet joint inflammation, which went on to compromise other soft tissue in the low back area.

The Board finds that this uncontradicted evidence is of sufficient probative value to require further development on this issue.⁴ On remand the Office should further develop the record and secure a reasoned opinion as to whether appellant has a myofascial pain syndrome causally related to her employment injury, and if so, the nature, extent and duration of any resulting disability. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁴ See *Udella Billups*, 40 ECAB 260 (1989).

The decisions of the Office of Workers' Compensation Programs dated October 4, May 16, April 5 and February 13, 1995 are affirmed with respect to termination of appellant's compensation. With respect to a myofascial pain syndrome, the decisions are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
February 19, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member