

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAZMUK NAZARIAN and U.S. POSTAL SERVICE,
POST OFFICE Van Nuys, Calif.

*Docket No. 96-866; Submitted on the Record;
Issued February 17, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant no longer had residuals of his June 22, 1992 and June 3, 1993 employment injuries after April 14, 1994.

In the present case, the Office accepted that appellant, a letter carrier, sustained subluxation of C6-7 on June 22, 1992 as a result of a motor vehicle collision. Appellant was placed on light work effective June 23, 1992. In February 1993 appellant was referred by the Office to Dr. Hrair E. Darakjian, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated February 4, 1993, Dr. Darakjian diagnosed cervical myofascial strain and thoracic myofascial sprain and recommended continued light duty. On April 28, 1993 Dr. Darakjian reported that appellant's diagnosis was chronic thoracic myofascial sprain resulting from the June 22, 1992 injury. He noted that appellant had occasional pain in the upper back, no objective findings of any abnormality and no longer had any disability due to this injury.

The Office also accepted that on June 3, 1993 appellant sustained a rib contusion and a right leg contusion as a result of a second motor vehicle incident. At the request of the employing establishment, appellant was examined on July 7, 1993 by Dr. Benjamin Broukhim, a Board-certified orthopedic surgeon. Dr. Broukhim diagnosed cervical muscular strain with underlying cervical spondylosis, lumbar muscular strain, bruised ribs with good recovery, and leg contusions with good recovery; and recommended that appellant continue light-duty work and physical therapy. Dr. Broukhim continued to submit reports noting appellant's low back pain.

Appellant thereafter filed a notice of recurrence of disability on February 10, 1995 indicating that he had not stopped work, but continued on light work and had sustained continued back, neck and leg pain since September 23, 1994, for which he had received treatment from Dr. Darakjian. On March 27, 1995 the Office referred appellant to Dr. Edwin

Clark, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated June 1, 1995, Dr. Clark stated that appellant had contusion of the ribs, resolved; contusion of the right leg, resolved; dorsal strain, resolved; lumbar strain, resolved; which all resulted from the June 3, 1993 injury. Dr. Clark stated that based upon magnetic resonance imaging (MRI) examination appellant also had cervical spondylosis which was preexisting, but was aggravated by the June 3, 1993 incident. Dr. Clark noted that appellant currently had subjective complaints and limited range of motion on rotation, however, that the aggravation of the cervical spondylosis should have resolved within four to six months following the injury. Dr. Clark concluded that appellant had no physical limitation resulting from his work-related condition, however, progression of his preexisting cervical spondylosis may require a limitation of no very heavy work at or above the shoulder level.

Appellant continued to submit reports from Dr. Darakjian. In a report dated June 29, 1995, Dr. Darakjian reported that appellant's diagnoses were cervical myofascial sprain, C5-6 and C6-7 disc protrusion, thoracic myofascial sprain, and lumbar myofascial sprain. Dr. Darakjian noted that appellant had considerable subjective complaints since his June 22, 1992 injury which had not responded to conservative care. He indicated that appellant's objective findings were range of motion limitation in the cervical and lumbar spine, and tenderness in the paraspinal and trapezius muscles at the neck, and the mid and lower back, and that an MRI scan of the cervical spine demonstrated disc protrusion at the C5-6 and C6-7 levels. Dr. Darakjian further noted that appellant's performance of full duties caused ongoing aggravation of his condition and that appellant required ongoing treatment for his neck, mid and lower back pain.

By decision dated June 7, 1995, the Office found that appellant did not have any objective residuals causally related to his employment injuries after April 14, 1994 and that appellant had not established a recurrence of disability. The Office denied modification of the June 2, 1995 decision, after merit review, on October 18, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.¹

The Office had accepted that as a result of the June 22, 1992 employment injury, appellant sustained subluxation of C6-7. The Office had also accepted that as a result of the June 3, 1993 injury, appellant sustained a rib contusion and a right leg contusion. There is no medical evidence of record that residuals of these conditions continued to disable appellant after April 14, 1994, therefore, the Office properly terminated payment of compensation for these conditions.

The medical evidence of record, however, does indicate that appellant may have

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

sustained additional conditions from the accepted injuries or from his continued work activities. The Office referred appellant to Dr. Darakjian in February 1993 for a second opinion evaluation. In a report dated April 28, 1993, Dr. Darakjian reported that appellant had a chronic thoracic myofascial sprain resulting from the June 22, 1992 injury, but that appellant no longer had any objective findings of abnormality and was no longer disabled. The record indicates that appellant thereafter sought medical treatment from Dr. Darakjian. In a report dated June 29, 1995, Dr. Darakjian related that appellant had cervical myofascial sprain, C5-6 and C6-7 disc protrusion, thoracic myofascial sprain, and lumbar myofascial sprain, with subjective complaints since the 1992 injury and current objective findings, and that appellant's continued work activities had aggravated such conditions. Appellant was also referred to Dr. Broukhim by the employing establishment. Dr. Broukhim reported that appellant had also sustained cervical muscular strain with underlying spondylosis and lumbar muscular strain as a result of the June 3, 1993 employment injury. The Office also referred appellant to Dr. Clark for a second opinion examination. On June 1, 1995 Dr. Clark reported that as a result of the June 3, 1993 injury, in addition to the accepted conditions, appellant had sustained a dorsal strain which had resolved, a lumbar strain which had resolved and aggravation of preexisting cervical spondylosis, which should have resolved within four to six months following the injury.

Thus while the Office has only accepted that appellant sustained cervical subluxation, rib contusion and right leg contusion as a result of his employment injuries, the reports from the Office's second opinion physicians as well as the employing establishment's physician, while not providing sufficient medical rationale, suggest that appellant may have sustained additional cervical, thoracic or lumbar conditions as a result of these employment injuries or appellant's continued employment. The Board also notes that these reports are unclear as to whether these other conditions actually resolved or whether they disabled appellant beginning April 14, 1994. The record contains an uncontroverted inference of causal relationship as represented by these reports, for which the Office is obligated to request further information.² The fact that the reports of these physicians contain deficiencies preventing appellant from discharging his burden of proof does not mean that they may be completely disregarded by the Office; it merely means that their probative value is diminished.³ Under such circumstances, the reports are sufficient to require further development of the record.⁴

On remand, the Office shall further develop the medical evidence to ascertain if appellant sustained any additional medical conditions causally related to the accepted employment injuries or to his continued employment. After such further development as necessary the Office shall issue a *de novo* decision.

² See *John J. Carlone*, 41 ECAB 354 (1989).

³ See *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁴ See *Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Worker's Compensation Programs dated October 18 and June 7, 1995 are affirmed regarding the finding that the accepted conditions had ceased and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
February 17, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member