

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUISE E. CLARK and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

*Docket No. 95-2640; Submitted on the Record;
Issued January 8, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant had any residuals of her accepted April 21, 1986 lumbosacral strain injury after April 3, 1994, the date the Office of Workers' Compensation Programs terminated her compensation benefits.

The Office accepted that on April 21, 1986 appellant sustained lumbosacral strain in the performance of duty, and commenced paying compensation benefits for temporary total disability. Appellant's treating physician, Dr. David R. Pashman, a Board-certified orthopedic surgeon, had diagnosed on April 25, 1986, four days after her employment injury, that she had sustained lumbosacral strain, and he continued in multiple reports over the intervening years, to support that appellant remained totally disabled due to "back and leg problems."

In an August 7, 1989 report, Dr. Henry S. Wieder, Jr., a Board-certified orthopedic surgeon, examined appellant, reviewed her history, noted that following her April 21, 1986 injury she developed complaints consistent with low back strain/sprain superimposed on preexisting lumbar surgery, and reported that she had continued to experience back and lower extremity pain ever since. He opined that she had chronic pain syndrome, secondary to trauma, superimposed on preexisting lumbar disc pathology, and was permanently partially disabled. Dr. Wieder did not specifically identify what trauma he was referring to, but the preexisting lumbar disc pathology appears from the record to refer to appellant's 1984 disc herniation and subsequent discectomy.

In an October 23, 1991 report, Dr. Pashman opined that appellant remained disabled because of persistent back and left lower extremity discomfort and that she had chronic low back pain with chronic lumbar radiculopathy. In reports dated January 29 and July 8, 1992, Dr. Pashman opined that appellant continued to be functionally incapacitated and unavailable for employment due to chronic low back pain and chronic radiculopathy.

By second opinion report dated April 7, 1992, Dr. Gerald Williams, a Board-certified orthopedic surgeon, reviewed appellant's history, conducted a physical examination, and opined that he did not believe that her current symptoms were as a result of her April 21, 1986 injury. He did not explain how or why he came to this conclusion. Dr. Williams stated that he believed appellant had recovered from her lumbosacral strain and that her remaining symptoms were as a result of degenerative disc disease related to a May 1984 injury and subsequent discectomy. He did not provide any supporting explanation for this opinion. Dr. Williams concluded, however, that appellant was totally disabled for any employment.

In a January 4, 1994 notice of proposed termination of compensation, the Office advised appellant that Dr. Williams' April 7, 1992 report established that disability resulting from her injury had ceased. The Office advised that Dr. Williams' report constituted the weight of the medical evidence because it was supported by objective findings, x-ray review, and patient examination.

In response to the Office's notice of proposed termination appellant submitted a January 26, 1994 report from Dr. Pashman repeating the contents of his earlier reports.

By decision dated March 7, 1994, the Office terminated appellant's compensation effective April 3, 1994 finding that the weight of the medical evidence established that appellant's disability resulting from her April 21, 1986 injury had ceased by April 3, 1994.

Appellant requested a hearing, which was held on September 27, 1994. By decision dated November 2, 1994, the hearing representative affirmed the prior decision finding that Dr. Williams' report constituted the weight of the medical evidence. The hearing representative found that Dr. Williams' report was rationalized and negated residual disability.

Appellant requested reconsideration of the hearing representative's decision and in support submitted a November 30, 1994 report from Dr. Pashman which referred to his April 25, 1986 examination and report and noted that five days earlier she had injured her back at work. He opined that the exacerbation of appellant's back and radicular discomfort occurred as a result of this injury in April 1986.

By decision dated April 25, 1995, the Office denied modification of the prior decision finding that the evidence submitted was insufficient to warrant modification. The Office stated that Dr. Pashman's most recent report stated that appellant had injured her back in November 1995, rather than in April 1986 as the report actually said.

The Board finds that the Office did not properly terminate compensation due to an unresolved conflict in medical opinion evidence.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

In the instant case, there exists a conflict in medical opinion evidence between Dr. Pashman and Dr. Williams. Dr. Pashman opined that appellant's 1986 injury caused an exacerbation of her back and radicular discomfort, which he found still disabled her, whereas Dr. Williams opined that appellant's disabling back discomfort was the result of her 1984 injury and subsequent surgery, and that her 1986 employment injury has resolved. Although the Office continued to find that Dr. Williams' report constituted the weight of the medical opinion evidence, the Board notes that his conclusions were not explained or rationalized and that he did not discuss the significance of his physical examination results or relate them to his conclusions. Consequently, the Board finds that Dr. Williams' 1992 report cannot constitute the weight of the medical evidence and is in conflict with the body of reports by Dr. Pashman.

Consequently the decisions of the Office of Workers' Compensation Programs dated April 25, 1995 and November 2, 1994 are hereby reversed.

Dated, Washington, D.C.
January 8, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member