

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of PATRICIA E. LYONS and DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE, Brooklyn, N.Y.

*Docket No. 96-638; Submitted on the Record;  
Issued January 13, 1998*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation on the grounds that she had no continuing disability as a result of the accepted work injury.

On February 23, 1994 appellant, then a 51-year-old outreach coordinator and screener for the Job Corps, filed a notice of traumatic injury, claiming that she injured her neck, shoulder, back, and chest in an automobile accident while delivering recruitment information. Appellant stopped work, but on February 26, 1994 accepted a reassignment to the position of supervisory social services assistant. On August 1, 1994 the Office accepted a lumbar strain, based on the reports of Dr. Antonio F. Dulalas, a general surgeon and appellant's treating physician.

On October 5, 1994 the Office issued a notice of proposed termination, based on the second opinion evaluation of Dr. Lester Lieberman, a Board-certified orthopedic surgeon, who reviewed the medical records and stated that appellant had recovered from the back strain caused by the accident and could return to work. He added that appellant has diabetes, which caused the peripheral neuropathy<sup>1</sup> diagnosed by Dr. Christopher Kyriakides, an osteopathic practitioner Board-certified in physical medicine and rehabilitation.

Appellant responded to the notice on October 13, 1994 by submitting a copy of the position description to which she was reassigned and medical evidence, including a form report dated September 27, 1994 from Dr. Dulalas<sup>2</sup> and Dr. Kyriakides' September 6, 1994 report. Dr. Kyriakides stated that appellant's electrodiagnostic studies revealed a peripheral poly-

---

<sup>1</sup> Neuropathy is a general term denoting functional disturbances and/or pathological changes in the peripheral nervous system. *DORLAND'S ILLUSTRATED Medical Dictionary*, 1043 (27th ed. 1988).

<sup>2</sup> Dr. Dulalas was asked to comment on Dr. Lieberman's report regarding appellant's ability to return to her date-of-injury position as a job screener, but he stated that he was "very sympathetic" to appellant and suggested that the Office seek another doctor's opinion.

neuropathy, a right tibial nerve, a median nerve compression and multiple radiculopathies all sustained in the February 1994 accident. He added that the studies were consistent with a double crush syndrome involving the left median nerve and mid-cervical spine as well as a right S1 radiculopathy, as evidenced by an absent H-reflex and denervation potentials in the lumbar sacral spine. Both Dr. Kyriakides and Dr. Dulalas found appellant to be totally disabled for work.

In an addendum dated November 8, 1994, Dr. Kyriakides stated that appellant should not return to work which will involve any lifting or excessive periods of sitting or stair climbing and that she continued to require intensive physical therapy treatments along with a neurosurgical evaluation. Dr. Dulalas completed a form report dated December 15, 1994 stating that appellant's disability would continue for 90 days.

On January 6, 1995 the Office terminated appellant's compensation on the grounds that the weight of the medical evidence, as represented by Dr. Lieberman's report, established that any disability causally related to the February 22, 1994 accident had ceased. The Office noted that appellant's reassignment to a "more demanding job" did not affect the issue of whether she could perform her date-of-injury position.

On August 11, 1995 appellant requested reconsideration on the grounds that the Office failed to consider the medical evidence properly and submitted new medical evidence from Dr. Kyriakides, who stated in a report dated April 4, 1995 that appellant had suffered a significant injury, and electromyogram studies showed nerve root damage in the lower extremities. He added that returning to work would not allow her to recover and would worsen her condition.

In a February 9, 1995 report, Dr. Kyriakides diagnosed lumbosacral derangement and radiculopathy, a median nerve compression on the left side, and a tibial nerve compression on the right. He stated that he had read a report that the peripheral neuropathy he diagnosed was secondary to diabetes, "and this may be the case," but appellant also had a radiculopathy not related to diabetes because the electrodiagnostic studies showed that the H-reflex was not absent on the left side, "which it would have been if this injury was solely due to the deterioration of diabetes."

Dr. Kyriakides explained that appellant's compression injuries were the result of the February 1994 accident because appellant "had never experienced symptomatology in the past and complained of numbness and tingling in her left hand the first day of her visit in this office" [April 11, 1994] and had not complained of such symptoms prior to the accident." The physician added that appellant was unfit for any gainful employment at this time.

On September 11, 1995 the Office referred appellant, along with a statement of accepted facts, the medical records, and a list of questions, to Dr. Brian F. Anziska, a Board-certified neurologist, for an impartial medical examination to resolve the conflict of opinion between Dr. Lieberman and Dr. Kyriakides.

In a report dated September 19, 1994, Dr. Anziska related the history of appellant's medical treatment and stated that she is a diabetic and has been on oral antidiabetic agents for

five years. He listed appellant's complaints and reviewed the electromyogram (EMG) results, which showed denervation at the C6-7 and L5-S1 nerve roots, with involvement of the left median and right tibial nerve. Dr. Anziska opined that the EMG diagnosis was compatible with mononeuropathy or radiculopathy multiplex, a complication of diabetes mellitus, as well as with nerve root injuries. "It is by no means diagnostic of nerve root injury sustained at the accident, but it is quite compatible with diabetes mellitus."

Following physical examination, Dr. Anziska stated that appellant had evidence of a polyneuropathy, probably secondary to diabetes, as well as a left median nerve syndrome resolving in a carpal tunnel syndrome compatible with secondary mononeuropathy multiplex, also a complication of diabetes. "There was no evidence of a nerve root involvement related to either the lumbar spine or the cervical spine due to injury." Dr. Anziska concluded:

"In my opinion there are no conditions causally related to the work injury of February 22, 1994. The peripheral neuropathy is a result of the diabetes as is the mononeuropathy multiplex resulting in the EMG and nerve conduction abnormalities on testing. [Appellant] has no continuing disability due to any work-related condition. There are no residuals from her injury. The pain on back movement is entirely subjective and is not supported by any additional evidence."

Dr. Anziska added that appellant could perform the duties of her job as an outreach coordinator and could also work as a supervisory social services assistant as outlined in the job description. "The problems that she has besides the pain are all complications of the diabetes mellitus and unrelated to the work injury on February 22, 1994."

On September 29, 1995 the Office denied appellant's request for reconsideration after a merit review on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. The Office noted that the narrative medical reports from Dr. Kyriakides were sufficiently probative to create a conflict in medical opinion,<sup>3</sup> which was resolved by Dr. Anziska's well-rationalized conclusion that appellant had no continuing disability causally related to the accepted work injury.

The Board finds that the Office properly terminated appellant's disability compensation on the grounds that she had no residuals of the February 1994 accident.

Under the Federal Employees' Compensation Act,<sup>4</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>5</sup>

---

<sup>3</sup> Section 8123(a) of the Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. *Shirley L. Steib*, 46 ECAB \_\_\_ (Docket No. 93-1529, issued December 7, 1994); see *Craig M. Crenshaw Jr.*, 40 ECAB 919, 923 (1989) (finding that Office failed to meet its burden of proof because a conflict in the medical evidence was unresolved).

<sup>4</sup> 5 U.S.C § 8101 *et seq.*

<sup>5</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

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>6</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>7</sup> The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</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>9</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>10</sup>

In this case, the Office twice referred appellant to orthopedic specialists for an impartial medical examination. Drs. Lieberman and Anziska both found appellant capable of returning to her date-of-injury position because the lumbar strain sustained in the work-related automobile accident had resolved. While Dr. Kyriakides attributed appellant's neuropathy and radiculopathy to the February 1994 accident, he failed to discuss the role of appellant's preexisting and nonwork-related diabetes in causing these conditions. In fact, Dr. Kyriakides agreed that these conditions could produce the neuropathy he diagnosed.

Moreover, the absence of the H-reflex on the left side does not establish the cause of appellant's radiculopathy as the injuries sustained in the 1994 accident. Dr. Kyriakides also provided no medical rationale explaining how a lumbar strain deteriorated into nerve root damage

---

<sup>6</sup> *Carl D. Johnson*, 46 ECAB \_\_\_\_ (Docket No. 94-404, issued May 31, 1995).

<sup>7</sup> *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

<sup>8</sup> *Mary Lou Barragy*, 46 ECAB \_\_\_\_ (Docket No. 93-2326, issued May 25, 1995).

<sup>9</sup> *Connie Johns*, 44 ECAB 560, 570 (1993).

<sup>10</sup> *Gary R. Sieber*, 46 ECAB \_\_\_\_ (Docket No. 93-1180, issued November 10, 1994).

and back derangement. His only reason for attributing appellant's current condition to the 1994 accident was that she had experienced no symptoms prior to the lumbar strain.<sup>11</sup>

Contrary to appellant's contention that Dr. Anziska's report contains "obvious and blatant errors," Dr. Anziska fully explained why he attributed the neuropathy and radiculopathy to appellant's long-standing diabetes mellitus in light of the absence of any evidence of nerve root involvement related to the lumbar or cervical spine. Dr. Anziska explained that appellant's complaints of pain were purely subjective and unsupported by any clinical findings on examination. Dr. Anziska explained that the EMG studies conducted in June 1994 were "by no means diagnostic" of any nerve root damage sustained in the February 1994 accident.

Inasmuch as Dr. Anziska reviewed the case record, a statement of accepted facts, and various diagnostic test results, examined appellant thoroughly, and provided a detailed and well-rationalized medical explanation of why appellant had no continuing disability from the accepted injury, the Board finds that his conclusion represents the weight of the medical evidence and is sufficient to carry the Office's burden of proof.<sup>12</sup> Therefore, the Board finds that the Office properly terminated appellant's compensation.

---

<sup>11</sup> See *Cleopatra McDougal-Saddler*, 47 ECAB \_\_\_\_ (Docket No. 95-2634, issued March 26, 1996) (finding that the fact that appellant was asymptomatic before an injury but symptomatic afterward is insufficient to establish, absent supporting rationale, a causal relationship); *John F. Curran*, 32 ECAB 647, 649 (1981) (finding that a physician's rationale based on the absence of intervening traumas is insufficient to establish causal relationship).

<sup>12</sup> See *Thomas Bauer*, 46 ECAB \_\_\_\_ (Docket No. 93-1678, issued November 21, 1994) (finding that the additional report from appellant's physician was insufficient to overcome the special weight accorded to the impartial medical examiner's opinion); see also *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that physician's opinion was thorough, well-rationalized, and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

The January 6 and September 29, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
January 13, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member