

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARA A. PENN and U.S. POSTAL SERVICE,
POST OFFICE, Akron, Ohio

*Docket No. 96-1706; Submitted on the Record;
Issued June 18, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had any disability after February 14, 1994, the date the Office of Workers' Compensation Programs terminated her benefits, causally related to her February 7, 1994 slip and fall employment injuries.

On February 25, 1994 appellant, then a 64-year-old custodian, filed a claim alleging that on February 7, 1994 while in the cafeteria she slipped on debris and fell, injuring her right elbow and hand, her left knee, her lower back, stomach, and groin area. Appellant was seen in the emergency room on the date of injury, where the emergency physician reported as history that appellant stated she slipped on a wet floor and fell on her right hand, elbow, and left knee. The emergency physician noted that appellant was uncertain of the exact mechanism of her fall, however, she assured him that she did not hit her head or knock herself out. The examining physician noted that appellant's only complaints at that time were of hand, elbow, and leg discomfort, and he diagnosed contusions of the right hand, elbow and left knee, and poorly controlled hypertension.

On February 28, 1994 appellant's treating physician, Dr. Carole A. Savan, a Board-certified family practitioner, described appellant's clinical findings as contusions of the right hand, right elbow and left knee, and she diagnosed lumbar strain. On the Form CA-17 that date Dr. Savan noted appellant's other disabling conditions as including facet arthritis and labyrinthitis. In an attending physician's report that date Dr. Savan noted appellant's history of injury as "slipped on floor (wet) striking right hand, right elbow, left knee, low back pain, hypertension elevation, vertigo, chest pain," noted preexisting conditions as "hypertension, borderline diabetes mellitus, degenerative arthritis," reported clinical findings as a negative CT scan of the head, x-ray evidence of facet arthritis of the back, and audiometric demonstration of decreased hearing on the left, and she diagnosed "contusions, lumbar strain, [and] labyrinthitis." She opined by checking "yes" that she believed that appellant's fall resulted in lumbar strain and a hypertension crisis. Dr. Savan also noted that appellant was readmitted to the hospital on February 26, 1994 for shortness of breath.

On March 1, 1994 Dr. Savan diagnosed hypertension, lumbar strain, and hypothyroidism. On April 4, 1994 Dr. Savan opined that appellant was disabled from the date of injury until that time due to vertigo, hearing loss, weakness, and newly diagnosed hypothyroidism. However, on an attending physician's report that date Dr. Savan checked "yes" regarding an employment relationship, noting that the "initial fall [caused] low back pain [which caused] hypertensive crisis difficult to [illegible] hearing loss and vertigo as no history [of] head trauma."

On April 13, 1994 the Office accepted that appellant sustained "back strain/sprain - right knee/right elbow contusion," and on the nonfatal summary noted the accepted conditions as "left knee contusion/ elbow/ back strain/sprain."

On August 8, 1994 appellant submitted a From CA-8 claim for compensation from May 27, 1994 through that date due to her February 7, 1994 employment injuries.

In response the Office advised appellant on September 14, 1994 that her claim was accepted for left knee contusion, right elbow contusion and back strain only, and that Dr. Savan's reports indicated that appellant was being treated for nonwork-related conditions, such that the Office was unable to pay benefits at that time. The Office requested that appellant submit rationalized medical evidence explaining how her present conditions were related to her February 7, 1994 injuries.

In response appellant submitted an October 28, 1994 report from Dr. Roger N. Ferreri, a Board-certified general practitioner, which noted that appellant stated that she struck her head as a result of the employment fall. He further noted that two days after the fall appellant was hospitalized complaining of headache, loss of balance, and shortness of breath. Dr. Ferreri noted appellant's discharge diagnoses as hypertensive crisis and labyrinthitis, and noted that she claimed her left-sided hearing loss and tinnitus occurred at that time. However, Dr. Ferreri also noted that an otolaryngologist diagnosed left-sided sensorineural hearing loss and either chronic labyrinthitis and/or left labyrinthine dysfunction. He speculated that when appellant fell and struck her head, she probably suffered either a brain stem or labyrinthine concussion, and probably suffered post-traumatic tinnitus and labyrinthine dysfunction.

Thereafter appellant submitted multiple further 1994 and 1995 medical records addressing her various medical conditions and treatment, which did not mention her February 7, 1994 employment injuries.

By decision dated March 8, 1995 the Office denied appellant's claim for compensation from May 27, 1994 and continuing, finding that the evidence of file failed to establish that the claimed conditions for which she sought compensation were causally related to her February 7, 1994 injuries. The Office noted that Dr. Ferreri based his opinions on a history of appellant striking her head when she fell, but indicated that such a head injury was not supported by the contemporaneous medical evidence of record. The Office noted that the emergency room records on the date of injury indicated that appellant was asked about any possible head injury and that she assured the examining physician that she did not hit her head or knock herself out. The Office concluded that as Dr. Ferreri's report was based upon an inaccurate history of injury, it had no substantial value in support of her claim.

On April 5, 1995 appellant submitted a February 14, 1994 emergency room report indicating that on that morning appellant awoke with a headache and dizziness. The report noted that a week earlier appellant had been started on a second antihypertensive drug in addition to the one she had been on for 10 years and was taking both. The hospital stopped appellant's second antihypertensive medication and prescribed a different type of drug. The report did not address the presence or absence of signs or symptoms of appellant's previously accepted employment-related injuries.

On January 17, 1996 appellant, through her representative, requested reconsideration of the March 8, 1995 decision, and in support submitted multiple medical records, including copies of previously submitted reports, dating back to 1994. Some of the reports contained diagnoses of closed head injury, concussion, and post-concussive syndrome, and related these diagnoses to the February 7, 1994 fall. Other reports did not mention appellant's employment injuries at all. Some reports noted that appellant felt she was losing hearing in her right ear, was gaining weight, and had uncomfortable dry skin. Other reports discussed appellant's diet and the need for diabetic teaching, her mild depression, and possible peripheral neuropathy.

An urgent care record dated February 8, 1994 indicated that appellant had left knee pain, right elbow pain and low back pain that date. An August 18, 1994 progress note from Dr. Laurence Wolpert, an osteopath, noted that at that time he felt that the disabilities associated with appellant's back strain subsequent to the initial trauma had certainly resolved, and that her disability from work was due to vertigo.

A July 11, 1994 note from Dr. Savan indicated that at that time appellant was complaining of cervical strain. A September 27, 1994 progress note from Dr. Savan indicated that appellant had difficulty understanding that her continuing vertigo and loss of hearing were not secondary to the accident. Dr. Savan indicated that appellant stated that she was not certain whether or not she did hit her head when she fell, and noted that the contemporaneous medical records indicated that appellant did not strike her head. Dr. Savan indicated that appellant's most disabling problems at that time were vertigo and arthritis. A December 26, 1995 report from Dr. Savan noted that appellant had preexisting low back degenerative arthritis, and that the fall of February 7, 1994 did exacerbate the pain and discomfort, and she speculated that this was "probably what precipitated a cascade with increased pain" which caused increased blood pressure and required that she be seen in the emergency room on several occasions.

By decision dated April 12, 1996 the Office modified the March 8, 1995 decision finding that appellant's disability for work ceased by February 14, 1994, the date appellant sought medical treatment for her preexisting conditions. The Office found that all of the submitted reports which based their conclusions on the history that appellant struck her head on February 7, 1994 when she fell, were of diminished probative value as they were not based upon an accurate history of injury.

The Board finds that the Office did not meet its burden in terminating compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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 disability has ceased or that it is no longer related to the employment.²

The Board notes that the February 14, 1994 emergency room report addressed only appellant's complaints of headache and dizziness and discussed only her multiple antihypertensive medications. It did not discuss whether or not appellant was still disabled to any degree due to her accepted employment-related conditions of left knee contusion, right elbow contusion, or back strain/sprain, or address whether these conditions had completely resolved. In fact, it did not address appellant's disability status at all. Consequently, this report is not sufficient to determine that appellant's accepted employment-related conditions had all resolved by that time, and does not support the Office's determination that appellant's accepted conditions had all resolved by that date. Merely because appellant sought medical treatment for underlying or pre-existing medical problems, does not mean that she was not still disabled by her accepted conditions at that time. The Office, however, did not identify what medical evidence established that appellant's accepted condition of back strain/sprain that occurred on February 7, 1994 had resolved by February 14, 1994, one week later.

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 12, 1996 is hereby reversed.

Dated, Washington, D.C.
June 18, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹ *Corlisa L Sims (Smith)*, 46 ECAB 172 (1994); *Harold S. McGough*, 36 ECAB 332 (1984).

² See *Mary Lou Barragy*, 46 ECAB 781 (1995); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).