

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NILA L. GRANBERRY and DEPARTMENT OF THE ARMY,
WILLIAM BEAUMONT ARMY MEDICAL CENTER, El Paso, Tex.

*Docket No. 96-409; Submitted on the Record;
Issued March 19, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective September 8, 1995 on the grounds that her disability causally related to her October 18, 1993 employment injury had ceased.

On January 3, 1994 appellant, then a 39-year-old secretary, filed an occupational disease claim alleging that on October 18, 1993 she sustained a back condition in the performance of duty as a result of prolonged walking, sitting and carrying files. The Office accepted that appellant sustained an aggravation of displacement of an intervertebral disc in the performance of duty. Appellant was released to return to work for six hours a day on February 6, 1995. She stopped work again on May 3, 1995.

By letter dated June 20, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical records to Dr. Thomas E. Alost, Jr., a Board-certified orthopedic surgeon, for an examination and evaluation as to whether she had any residual medical condition or disability causally related to her employment injury.

In a narrative report dated June 29, 1995, Dr. Alost provided a history of appellant's condition and findings on examination. He diagnosed chronic lumbar discogenic syndrome and chronic lumbosacral paraspinal muscular strain. Dr. Alost stated his opinion that appellant's accepted condition of temporary aggravation of displaced intervertebral disc ceased on February 6, 1995 when appellant returned to work after being off work since December 1994 for a nonwork-related hysterectomy. He stated his opinion that there had been more than adequate time to allow her condition to stabilize as she was not performing any work duties at that time. Dr. Alost noted that appellant appeared to be having multiple problems in addition to her lower back problems including multiple upper extremity symptomatology and diagnoses consistent with de Quervain's syndrome and carpal tunnel reflex dystrophy. He indicated that these medical conditions could limit appellant's secretarial duties because of the repetitive nature of

her job. Dr. Alost stated that appellant was able to return to work as a secretary for 8 hours per day with certain limitations which included no lifting of more than 10 pounds and no pushing, pulling or carrying more than 10 pounds.

In a form report dated June 30, 1995, Dr. Mario Palafox, a Board-certified orthopedic surgeon, diagnosed post-traumatic lumbar annular tear and discogenic pain syndrome and checked the block marked "yes" indicating that the condition was work related. He indicated that appellant was totally disabled.

By letter dated August 7, 1995, the Office advised appellant that it proposed to terminate her compensation benefits based upon Dr. Alost's report which established that appellant had no residual disability or medical condition causally related to her employment injury.

By letter dated August 29, 1995, appellant stated her disagreement with the proposed termination of compensation benefits.

In a report dated January 7, 1994, Dr. Jeffrey R. Abrams, chief of the nephrology service at the employing establishment and a Board-certified internist, stated his opinion that appellant's condition was aggravated by her work. He stated that walking was painful for her after sitting in the same position for prolonged periods of time and that it was necessary for her to be available at her desk most of the working day. Dr. Abrams stated that ambulating from her desk required a cane and made it difficult and painful for her to carry out her other duties such as records retrieval.

By decision dated September 8, 1995, the Office terminated appellant's compensation benefits effective that date on the grounds that the evidence of record failed to establish that appellant had any residual disability causally related to her October 18, 1993 employment injury.

By letter dated October 23, 1995, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

In a report dated September 22, 1995, Dr. Palafox provided a history of appellant's condition and opined that appellant was unable to work due to her pain. He stated that appellant's symptoms were those typical of reflex sympathetic dystrophy. He provided findings on examination and stated:

"[Appellant] has an associated condition of her original injury that usually presents itself in three to four stages. The first stage is characterized by a constant burning pain.... It is aggravated by ... emotional stress. The second stage occurs between three and seven months after the injury. It is associated with less pain than stage one. The second stage is typically accompanied by coolness of the extremity. The third stage is a very advanced and serious condition.

"[Appellant], in my opinion, is between stage one and stage two.... This condition of Reflex Sympathetic Dystrophy is very difficult to understand, even by the majority of physicians, who do not understand [its] pathologic mechanism ..., let alone people outside the medical profession.... I do not want to bore you with all

of the gruesome, scientific details associated with it, but if you so wish, I would be more than glad to comply and give you a more scientific explanation.

“The bottom line remains that [appellant] is totally incapable of returning back to work, to the kind of work that she was previously doing at the time of her injury.”

In a report dated October 3, 1995, Dr. Palafox provided findings on examination, diagnosed post-traumatic discogenic pain syndrome, chronic pain syndrome, and rheumatoid arthritis of the hip, knees, wrists, ankles, and neck and opined that appellant was disabled from any work. He stated that spasms in appellant’s left leg had increased and pain in her lower back and left buttock had continued. Dr. Palafox stated that appellant could not perform her regular secretarial job which required prolonged sitting, filing, constant walking, standing, delivering medical tests, pulling, pushing, and climbing. He stated that appellant worked on the twelfth floor and was not allowed to use the elevators and that at the end of the day she had to carry heavy medical records to the third floor record room. Dr. Palafox stated that all these activities aggravated appellant’s condition.

By decision dated November 1, 1995, the Office denied modification of its prior decision.¹

The Board finds that the Office has met its burden of proof in terminating appellant’s compensation benefits.

It is well established that 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 her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.²

In this case, the record shows that appellant sustained an aggravation of displacement of an intervertebral disc in October 1993 in the performance of duty. Appellant returned to work for six hours a day on February 6, 1995 but stopped work again on May 3, 1995.

By letter dated June 20, 1995, the Office referred appellant, along with a statement of accepted facts and copies of medical records to Dr. Alost, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether she had any residual medical condition or disability causally related to her employment injury.

In a narrative report dated June 29, 1995, Dr. Alost provided a history of appellant’s condition and findings on examination. He diagnosed chronic lumbar discogenic syndrome and

¹ Appellant submitted additional evidence subsequent to the November 1, 1995 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² *See Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990); *Leona Z. Blair*, 37 ECAB 615 (1986).

chronic lumbosacral paraspinous muscular strain. Dr. Alost stated his opinion that appellant's accepted condition of temporary aggravation of displaced intervertebral disc ceased on February 6, 1995 when appellant returned to work after being off work since December 1994 for a nonwork-related hysterectomy. He stated his opinion that there had been more than adequate time to allow her condition to stabilize as she was not performing any work duties at that time. Dr. Alost noted that appellant appeared to be having multiple problems in addition to her lower back problems including multiple upper extremity symptomatology and diagnoses consistent with de Quervain's syndrome and carpal tunnel reflex dystrophy. He indicated that these nonwork-related medical conditions could limit appellant's secretarial duties because of the repetitive nature of her job. As Dr. Alost opined that appellant's employment-related condition had ceased as of February 6, 1995 and supported his opinion with medical rationale, and as he opined that appellant had several nonwork-related medical conditions which were affecting her ability to perform her job, this report suffices to meet the Office's burden of proof that appellant no longer had any residual disability causally related to her employment injury. Therefore, the Office properly terminated appellant's compensation benefits.

The reports of appellant's attending physicians are not sufficient to outweigh the opinion of Dr. Alost. In a form report dated June 30, 1995, Dr. Palafox, a Board-certified orthopedic surgeon, diagnosed post-traumatic lumbar annular tear and discogenic pain syndrome and checked the block marked "yes" indicating that the condition was work related. He indicated that appellant was totally disabled. The Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.³ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁴ As Dr. Palafox did not provide any rationalized explanation as to how appellant's claimed disability was causally related to her October 1993 employment injury, his opinion is not sufficient to outweigh the well-rationalized opinion of Dr. Alost that appellant's employment-related disability had ceased.

In a report dated January 7, 1994, Dr. Abrams, chief of the nephrology service at the employing establishment and a Board-certified internist, stated his opinion that appellant's condition was aggravated by her work. He stated that walking was painful for her after sitting in the same position for prolonged periods of time and that it was necessary for her to be available at her desk most of the working day. Dr. Abrams stated that ambulating from her desk required a cane and made it difficult and painful for her to carry out her other duties such as records retrieval. However, Dr. Abrams did not provide a rationalized explanation as to how appellant's claimed disability was causally related to her October 1993 employment injury. Therefore, this report does not suffice to overcome the opinion of Dr. Alost that appellant's employment-related disability had ceased.

In a report dated September 22, 1995, Dr. Palafox provided a history of appellant's condition and opined that appellant was unable to work due to her pain. He stated that

³ *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁴ *Id.*

appellant's symptoms were those typical of reflex sympathetic dystrophy. Appellant's accepted condition is aggravation of displacement of an intervertebral disc and Dr. Palafox provided insufficient medical rationale explaining how the condition of reflex sympathetic dystrophy was related to appellant's employment injury. He merely stated that this condition was "associated" with appellant's employment injury and then commented that the condition of reflex sympathetic dystrophy was difficult for laymen and even physicians to understand. Although Dr. Palafox expressed his opinion that the reflex sympathetic dystrophy condition was difficult to understand, the fact remains that without a rationalized explanation as to how this condition was causally related to appellant's employment injury, Dr. Palafox's opinion that appellant's claimed work-related disability had not ceased is of little probative value and does not overcome the rationalized opinion of Dr. Alost that her employment-related disability had ceased as of February 6, 1995.

In a report dated October 3, 1995, Dr. Palafox provided findings on examination, diagnosed post-traumatic discogenic pain syndrome, chronic pain syndrome, and rheumatoid arthritis of the hip, knees, wrists, ankles, and neck and opined that appellant was disabled from any work. He stated that spasms in appellant's left leg had increased and pain in her lower back and left buttock had continued. Dr. Palafox stated that appellant could not perform her regular secretarial job which required prolonged sitting, filing, constant walking, standing, delivering medical tests, pulling, pushing, and climbing. He stated that appellant worked on the twelfth floor and was not allowed to use the elevators and that at the end of the day she had to carry heavy medical records to the third floor record room. Dr. Palafox stated that all these activities aggravated appellant's condition. However, Dr. Palafox provided insufficient medical rationale explaining how these conditions were related to appellant's employment injury and her claimed disability and therefore this report is not sufficient to overcome the well-rationalized opinion of Dr. Alost that appellant's employment-related disability had ceased as of February 6, 1995 after she had returned to work following nonwork-related surgery in December 1994.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits based upon the report of the Office referral physician, Dr. Alost.

The November 1 and September 8, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

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

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member