

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE E. KRUPA and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Brockton, Mass.

*Docket No. 96-1195; Submitted on the Record;
Issued May 15, 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 to terminate appellant's compensation benefits.

The Board has duly reviewed the case record and concludes that the Office did meet its burden of proof to terminate appellant's compensation benefits. The Board also finds that the case is not in posture for decision as to whether appellant had any continuing disability after January 4, 1995.

In this case, the Office has accepted that appellant, a 35-year-old technician, sustained a bulging disc at L4-5 on April 1, 1987, while helping a patient off an examining table. This is the second appeal of this case. In the prior decision,¹ the Board found that the Office had not met its burden of proof to terminate appellant's compensation benefits effective August 26, 1989. Appellant's treating physician, Dr. Emilio Jacques, a general practitioner, continued to submit reports indicating that appellant remained disabled from work due to chronic low back pain syndrome of discogenic and myofascial etiology.

In a report dated November 15, 1993, an Office second opinion physician, Dr. Robert Shapiro, a Board-certified orthopedic surgeon, reported that appellant had no objective findings. He stated that even though appellant had mild disc bulging on magnetic resonance imaging (MRI) study, such findings were common in asymptomatic people and were "certainly not of any great diagnostic significance to point to any specific therapy." Dr. Shapiro concluded that he could find no evidence of any residual disability and could find no reason why appellant could not work without restrictions, from an objective orthopedic point of view. The Office thereafter concluded that a conflict existed in the medical opinion evidence and referred appellant to Dr. Forrest N. Maddix, Jr., a Board-certified orthopedic surgeon, for an impartial medical evaluation. The Office terminated appellant's compensation benefits on January 11,

¹ Docket No. 91-881 (issued October 31, 1991).

1995 based upon the report of Dr. Maddix. The Office terminated appellant's medical benefits by decision dated April 12, 1995. The Office denied modification of the January 4, 1995 decision, after merit review on January 25, 1996.

The Board finds that the Office did not meet its burden of proof to terminate appellant's wage loss and medical benefits.

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.²

Where a case is referred to an impartial medical specialist, for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

In a report dated October 11, 1994, Dr. Maddix stated that he had reviewed appellant's medical records and conducted his own physical examination on that day. Dr. Maddix noted that appellant had brought along MRI films from October 1991 which showed some mild degenerative changes. He stated that in his opinion there was no evidence of disc extrusion, but that was some mild disc bulging at lumbar levels. Dr. Maddix indicated that this finding had been reported as present in practically all humans by the time they had reached the middle years of life and should not be considered abnormal. He concluded that there was nothing in the MRI he saw or reported by the radiologist to indicate that appellant had a herniated disc with nerve root pressure. Dr. Maddix reported that appellant's examination findings were inconsistent. Dr. Maddix concluded that appellant was obviously suffering from a nonorganic affliction causing her to complain of disabling low back symptoms. He stated that there was nothing in the examination to indicate true organic orthopedic back problems. Dr. Maddix stated that it was not possible for him to determine if appellant's alleged symptoms and disability were secondary to malingering for purposes of secondary gain, or if they were based on some abnormal psychiatric situation. He stated that "all I could tell was that her complaints certainly were inconsistent with any true organic orthopedic pathology afflicting her back or extremities."

In the present case, when Dr. Maddix examined appellant and reviewed the medical reports previously of record. Dr. Maddix related that appellant's examination findings were entirely inconsistent and indicated a nonorganic affliction causing complaints of low back symptoms. Dr. Maddix indicated that he had reviewed the last MRI films taken in October 1991. He related that appellant's October 1991 MRI studies did show some disc bulging, which was consistent with her age and was not an abnormal finding. Dr. Maddix stated that the MRI did not indicate that appellant had a herniated disc with pressure upon a nerve root. He concluded that appellant did not have a true organic orthopedic pathology affecting her back or extremities.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

³ *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

At the time that Dr. Maddix examined appellant, his opinion was based upon a complete factual background. As the opinion of the impartial medical examiner, his report was entitled to special weight. The Office properly determined that based upon Dr. Maddix's report, appellant no longer had residuals of the accepted employment injury.

After termination or modification of compensation benefits, warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.⁴

The record establishes that appellant underwent another MRI study on January 18, 1995. The January 18, 1995 MRI was evaluated by Dr. G. Jerome Beers, a Board-certified diagnostic radiologist, as revealing moderate degree of disc protrusion at L4-5, especially at and to the left of the midline, more pronounced to the left of midline than on the prior 1991 study. Appellant submitted several additional reports from Dr. Jacques, in 1995, wherein he opined that the 1995 MRI demonstrated further degeneration of appellant's lumbar disc condition. Dr. Jacques diagnosed chronic low back pain syndrome secondary to L4-5 disc protrusion with positive low extremity radiculopathy. He concluded that appellant's objective and subjective findings were causally related to her April 1, 1987 work injury and that appellant was totally disabled from work. In a report dated April 20, 1995, Dr. H.T. Sakellarides, a Board-certified orthopedic surgeon, indicated that he had examined appellant on February 9, 1995 and had reviewed the 1995 MRI study. Dr. Sakellarides opined that the MRI taken in January 1995 showed a progression of the disc condition compared to the MRI performed in 1991. Dr. Sakellarides also opined that appellant continued to remain totally disabled for her occupation and that her disability was causally related to her work trauma of April 1, 1987.

The new medical reports received following appellant's January 1995 MRI examination indicate a worsening of appellant's lumbar disc condition at L4-5, with nerve root involvement. Drs. Jacques and Sakellarides have opined that appellant's condition as visualized by the 1995 MRI would totally disable appellant. Drs. Jacques and Sakellarides have also opined that appellant's current condition was causally related to the accepted employment injury. While the new medical reports of record are generally supportive of appellant's claim, none of the reports are sufficiently well rationalized to establish that appellant's current condition was causally related to the accepted employment injury, rather than due to progression of the natural aging process. The new medical evidence received by the Office in 1995, however, provided sufficient support of appellant's claim to require the Office to further develop the claim. Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. The Office has an obligation to see that justice is done.⁵

On remand, the Office shall further develop the medical evidence to determine whether appellant has any continuing disability after January 11, 1995 causally related to the accepted

⁴ Gary R. Sieber, 46 ECAB 215 (1994).

⁵ Mark A. Cacchione, 46 ECAB 148 (1994).

employment injury. After such further development as appropriate, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs is affirmed regarding the termination of appellant's benefits and is set aside for further development as to whether appellant has continuing disability causally related to the accepted employment injury.

Dated, Washington, D.C.
May 15, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member