

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLEN T. VELA and U.S. POSTAL SERVICE,
POST OFFICE, Inglewood, Calif.

*Docket No. 96-1943; Submitted on the Record;
Issued October 5, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant had any disability or injury residuals after March 6, 1995, the date the Office of Workers' Compensation Programs terminated her monetary compensation and medical benefits, causally related to her accepted conditions of lumbar contusions and/or lumbosacral muscular strain.

The Office accepted that on August 8, 1989 appellant sustained lumbar contusions and lumbosacral muscular strain when she fell down eight steps. She lost no time or pay, returned to light duty, and returned to regular duty on February 20, 1990. The Office also accepted that on June 17, 1991 appellant sustained lumbosacral muscular strain when she was pulled off balance by another employee and pushed against a scale stand. She was pregnant at that time. The Office additionally accepted that on October 14, 1993 appellant sustained a recurrence of disability which the contemporaneous medical evidence showed was due to exacerbation of low back strain. Appellant stopped work October 14, 1993 and then as of December 2, 1993 ceased work altogether.

On March 25, 1994 appellant's treating orthopedic surgeon, Dr. Gerald W. Swanson, recommended referral of appellant to a pain management specialist, since he felt all routine modes of treatment had been exhausted.

On April 19, 1994 Nurse Betti Baldwin of Managed Care Services advised the Office that, as per Dr. Swanson's pain management program request to the carrier, appellant was being referred to Dr. Brian L. Gwartz, a Board-certified anesthesiologist and pain management specialist, and his pain management team for a full course of outpatient treatment.

By report dated August 8, 1994, Dr. Gwartz noted that appellant presented for evaluation of her ongoing pain, reviewed her history of injury, conducted an examination, and opined that there were several inconsistencies in her examination which prevented him from making a final determination after that single visit. Dr. Gwartz noted that appellant moved her neck more

spontaneously than she did when he examined her, but noted that she did have some trigger points and involuntary guarding. He opined that some undiagnosed injury might exist, but noted that the amount of movement on straight leg raising was entirely different on supine straight leg raising than on sitting straight leg raising. He opined that this suggested some exaggeration, and recommended further electrophysiologic testing.

Dr. Gwartz referred appellant to Dr. John Caccavale, a clinical psychologist, for a psychological evaluation related to her pain. By report dated November 28, 1994, Dr. Caccavale diagnosed depression and traits of passive-aggressive personality style and chronic low back pain. Dr. Caccavale also noted that appellant entered the evaluation room with apparent discomfort, that she sat with a very erect posture for only a short period, then needed to change from sitting to standing on a frequent schedule, and that she contorted, guarded and contracted her back muscles.

By report dated January 9, 1995, Dr. Gwartz noted no change in appellant's pain, that appellant was angry, that appellant did have some lumbar facet joint pain, and that 10 sessions of autogenic training might be helpful. He diagnosed lumbar facet arthropathy and myofascial pain syndrome, and opined that appellant was disabled until March 1, 1995.

By report dated February 6, 1995, Dr. Gwartz indicated that appellant was taking a tricyclic antidepressant and was undergoing autogenic training with Dr. Caccavale.

By report dated March 6, 1995, Dr. Gwartz noted that appellant's condition was permanent and stationary as of March 6, 1995, that caudal epidural blocks had no effect and that extensive evaluation including diagnostic nerve blocks and electrophysiologic testing revealed that there was no pathology which required any further treatment. He noted that appellant had unrestricted nonpainful cervical and lumbar spine ranges of motion, that appellant walked with a normal gait, but that during the examination she attempted an awkward limp but that there was no localizing area of the body which she consistently favored. He noted that her reflexes and muscle strength were normal and equal bilaterally, and that her sensation was intact. Dr. Gwartz noted that there were no myofascial trigger points found and no involuntary muscle spasms. He opined that appellant was well and able to work, but that she did not desire to return to work. Dr. Gwartz opined that appellant had no objective findings compatible with any diagnosis which would result in a painful condition, that appellant's objective findings of voluntary muscle spasm on electrophysiologic testing as reported by Dr. Caccavale were compatible with malingering, and that appellant's diagnosis was "complaint of chronic pain with no physical findings" and "no evidence of lumbar facet pain, herniated disc, muscle nor soft tissue sprain/strain." In his discussion, Dr. Gwartz stated that appellant had no objective findings compatible with her complaints of pain, and that she made several attempts at limping or reacting to palpation of the back muscles during examination, but these were all sufficiently inconsistent to suggest malingering. He noted that appellant sat for 30 minutes very comfortably in his waiting room while being observed by staff and himself, and that she sat in a comfortably relaxed position during the entire waiting period. He noted that her gait from the waiting room to the examination room was also normal, but that the gait in the examination room was entirely different. Dr. Gwartz noted that when he began to explain the lack of physical findings to appellant, she stopped listening and made no effort to understand. Dr. Gwartz noted that

appellant's husband intervened to complain that he had to find something wrong because "she cannot go back to work." Dr. Gwartz strongly suggested to appellant that she not seek any further treatment because any intervention was much more likely to cause harm than to relieve her pain. He advised appellant to return to work at full duty with no restrictions and he noted that no future medical care was required. Dr. Gwartz noted that there was no residual disability of any kind at that time, that there was no residual disability from this injury or from any of the three listed dates of injury, 1989, 1991 or 1993. He noted that appellant was not in need of additional care for her pain, that appellant was not a qualified injured worker and that she did not qualify for vocational rehabilitation.

By decision dated April 4, 1995, the Office noted that as of March 6, 1995 appellant was discharged from all medical care and required no further medical treatment, that appellant was found to have no objective physical findings due to the work injury, and that appellant was able to work full duty without restrictions. The Office further noted that extensive evaluation and testing revealed no pathology requiring treatment, that appellant's nonanatomic limp was not consistent, and that appellant's voluntary reactions were inconsistent with any pathology. The Office rejected appellant's CA-8 claim for monetary compensation and medical treatment after March 6, 1995, finding that there were no residuals of either the 1989 or the 1991 injuries.

By letter dated July 5, 1995, appellant, through her representative, requested reconsideration of the April 4, 1995 decision, and in support submitted a June 5, 1995 report from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon. Dr. Tauber diagnosed stenosis, L4-5, with disc bulge, history of three lumbar injuries, work-related cervical stenosis, C5-6, left carpal tunnel syndrome, and ulnar nerve entrapment, right upper extremity. Dr. Tauber opined that as a result of her work injuries, appellant's stenosis became symptomatic, that her degenerative spinal condition became permanently aggravated, that electrodiagnostic testing showed peripheral nerve entrapments which were caused by repetitive motions in the course of her employment, and that appellant remained totally disabled.

By decision dated July 28, 1995, the Office denied modification of the prior decision finding that the evidence submitted in support of the request was insufficient to warrant modification. The Office noted that Dr. Tauber did not explain why the lumbar stenosis was related to the lumbar contusions and strain injuries. It also recommended that appellant file a separate claim for carpal tunnel syndrome and ulnar nerve entrapment if she believed it was employment related.

By letter dated September 18, 1995, appellant, through her representative, again requested reconsideration, and in support submitted a response from Dr. Tauber. Dr. Tauber stated that appellant's stenosis was present for many years but became symptomatic when she sustained her work injuries. He opined that appellant work injury either caused the stenosis or accelerated an existing stenosis. Dr. Tauber further noted that appellant's repetitive work activities were responsible for her peripheral nerve entrapments. Appellant's representative also submitted a September 11, 1995 report from Dr. Tauber in which he opined that appellant was totally disabled.

By decision dated October 25, 1995, the Office denied modification of the prior decision finding that the evidence submitted was insufficient to warrant modification. The Office

explained that Dr. Tauber still did not explain how appellant's lumbosacral contusions and strains caused or aggravated spinal stenosis and that no basis existed to accept carpal tunnel syndrome as being related to either of appellant's accepted injuries.

By letter dated January 22, 1996, appellant, through her representative, requested reconsideration of the prior decision and in support submitted a January 5, 1996 report from Dr. Tauber. Appellant's representative requested that the Office find a conflict in the medical opinion evidence of record. Dr. Tauber's report discussed carpal tunnel syndrome and restated his previous conclusions about spinal stenosis.

By decision dated March 14, 1996, the Office rejected appellant's request for a merit review finding that the evidence submitted was cumulative and was insufficient to warrant a review of the case on its merits.

The Board finds that appellant had no disability or injury residuals after March 6, 1995, the date the Office terminated her monetary compensation and medical benefits, causally related to her accepted conditions of lumbar contusions and/or lumbosacral muscular strain.

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 In the instant case, the Office met its burden to terminate all benefits through the well-rationalized reports of Dr. Gwartz.

Dr. Gwartz was appellant's treating pain specialist and had multiple opportunities to examine and evaluate her. He noted functional and behavioral inconsistencies and he performed multiple procedures and diagnostic testing. Dr. Gwartz concluded in a well-rationalized and thoroughly complete report that she had no residuals whatsoever of her accepted lumbosacral contusion and strain injuries, and could return to work without restrictions. He also concluded that no further medical treatment was necessary and that appellant's reactions were consistent with malingering. The Board finds that the Office properly relied on Dr. Gwartz's thorough and well-rationalized report in terminating appellant's entitlement to continuing monetary and medical benefits.

On appeal appellant's representative claims that the reports of Dr. Tauber create a conflict with the report of Dr. Gwartz. Dr. Tauber merely diagnoses the presence of several other conditions not accepted by the Office, but fails to explain in anatomic and physiologic detail how these other conditions are related to appellant's accepted work injuries of soft tissue muscular lumbosacral contusions and sprains. The Board notes that all of Dr. Tauber's reports are repetitious and all of them fail to include a rationalized explanation of how and why the diagnosed conditions are related to the accepted employment injuries multiple years after the

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

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

fact, such that they are of diminished probative value, but further notes that since Dr. Gwartz was appellant's treating physician and not a physician for the United States, as required by 5 U.S.C. § 8123(a) for the creation of a conflict, no such conflict in medical opinion evidence can arise.

As the Office met its burden of proof to establish that appellant was no longer disabled by her accepted employment injuries and had no medical residuals of these conditions requiring further medical treatment, it properly terminated her entitlement to monetary and medical benefits effective March 6, 1995.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated March 14, 1996 and October 25, 1995 are hereby affirmed.

Dated, Washington, D.C.
October 5, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member