U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GURWANT SINGH BAL and U.S. POSTAL SERVICE,
POST OFFICE, Walnut Creek, Calif.

Docket No. 96-2183; Submitted on the Record;
Issued October 21, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's monetary compensation.

On or about February 20, 1992 appellant, a letter carrier, developed a low back strain in the performance of duty. His attending physician, Dr. Elizabeth F. Nelson, restricted him to limited duty for four hours a day. On April 13, 1992 she indicated that these restrictions would continue to July 12, 1992. On July 14, 1992 she indicated that restricted duty would continue through October 19, 1992. On November 10, 1992 the Office accepted his claim for low back strain and paid compensation for periods of disability.

On October 6, 1992 Dr. Nelson reported that restricted duty would continue to February 1, 1993. On March 16, 1993 she reported that appellant was expected to return to full-work duties by February 1, 1994.

The Office advised appellant on May 7, 1993 that it had been nearly a year since his last exposure to the factors of employment that were accepted to have caused his back strain, and that Dr. Nelson did not make clear the reason there had been no improvement in his condition in this time. The Office referred appellant, together with a statement of accepted facts and copies of pertinent medical records, to Dr. Sumner S. Seibert, a Board-certified orthopedic surgeon, for a second opinion examination and opinion on continuing disability.

In a report dated October 4, 1993, Dr. Seibert related appellant's history of injury and medical course. He noted that a month or so earlier appellant's hours were increased to five hours a day which, according to appellant was not well tolerated with increased pain noted. Dr. Seibert also related present symptoms, findings on physical examination and results of diagnostic testing. He reported his impression as history of chronic lumbosacral strain. Responding to questions posed by the Office, Dr. Seibert reported that appellant was in fact felt to have incurred an on-the-job injury in the course of his employment and that it was his opinion

that the injury was causally related to appellant's current symptoms. He stated that appellant continued to have residuals with persistent pain in the low back and left lower extremity. Dr. Seibert concluded as follows:

> "In summary, this is a patient who incurred an injury to his low back approximately eighteen months ago and has residual symptoms, which appear to not be entirely corroborated by the physical findings. Although the patient does have symptoms consistent with nerve root impingement, two MR [magnetic resonance] scans have been totally negative and there is nothing on the physical examination to objectively document any neurological compromise or impingement.
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> "The motivational status for returning to full duty has to be suspect given the fact that he is presently receiving the usual compensation for working essentially half time. The patient has demonstrated that he can do the job in terms of lifting, bending and stooping, which is apparently only occasionally required and the issue of stamina in an otherwise male [sic] is suspect to my point of view. I believe if he were motivated he could return to his usual job, including driving as described."

On a work restriction evaluation form also dated October 4, 1993, Dr. Seibert indicated that appellant could climb, kneel, walk and stand for 8 hours a day, could sit and bend intermittently for 8 hours a day, could lift no more than 50 to 75 pounds, and had no restrictions on pushing, pulling, reaching above his shoulders or simple grasping.

In a report dated October 8, 1993, Dr. Nelson reported that appellant continued to complain of ongoing back pain that "worsens as he is up for longer periods of time." She noted that a magnetic resonance imaging (MRI) scan obtained on September 21, 1993 was normal. "At this time," she stated, "I cannot explain why the patient has ongoing symptoms with minimal objective findings." Dr. Nelson noted that appellant's hours were recently increased to five hours a day but that appellant had increased pain. She stated that appellant continued to feel he could not work eight hours a day due to his back pain. Dr. Nelson recommended an intensive physical therapy/work hardening program, and concluded her report as follows:

> "[Appellant] continued to complain of subjective pain without objective findings. He does not feel he can do full duty at this time. His hours at work are being gradually lengthened to a full eight-hour day."

After the Office issued a notice of proposed termination of compensation, appellant submitted reports from Dr. Santiago O. Carin, a Board-certified specialist in orthopedic medicine. Finding moderate thoracolumbar spasm and tenderness of the facets at the lower lumbar-sacroiliac ligament, Dr. Carin diagnosed spine ligament injury, cervical strain/sprain and lumbosacral sprain/strain. He reported that appellant was able to work only part time with restrictions. On December 3, 1993 Dr. Carin restricted appellant to four hours a day, five days a week, with no climbing stairs or ladders, no kneeling, no sustained body positions, no lifting over 20 to 50 pounds and no overhead work. He stated that appellant could sit, bend, pull, push and reach above his shoulders intermittently, and could also do simple grasping for only six

hours a day. Dr. Carin attributed appellant's disabling condition to the industrial accident by history.

In a decision dated January 5, 1994, the Office denied further compensation finding that appellant was no longer incapable of working an eight-hour day. The Office noted that Dr. Carin's findings did not differ substantially from eight Dr. Nelson's or Dr. Seibert's, that Dr. Carin still reported minimal objective findings to substantiate the subjective complaints on which he based his restrictions. "While the claimant's condition may not have resolved entirely," the Office found, "the weight of the medical evidence still supports that the claimant is capable of working 8 hours a day with a preclusion of lifting over 50 to 75 pounds."

Appellant requested an oral hearing before an Office hearing representative. He submitted a September 28, 1994 report from Dr. Carin, who last examined appellant on September 27, 1994. Dr. Carin related appellant's history of injury, medical course and complaints. He listed three subjective findings and eight objective findings,[1] including limited range of motion with all validity tests satisfied; tenderness; stiffness and spasm as documented by the Metrecom System AXIS Muscle Tester; and moderate hypertonicity in the lumbar spine at L1 as revealed by a paraspinal surface electromyogram. Dr. Carin reported that appellant's lower back had an inadequate response to conservative treatment and that appellant had refused to undergo injection treatment to strengthen the injured ligaments and increase his endurance. He stated that appellant was able to work four hours a day, five days a week, with limitations and restricted physical activities. He stated that appellant was unable to perform his regular duty "unless injured ligaments are directly treated and re[i]nforced with injection treatment." Dr. Carin restricted appellant to no lifting more than 10 pounds, no climbing, no bending, no stooping and no prolonged standing or walking. On the issue of causation, Dr. Carin stated that appellant's condition was industrially related by history and arose out of appellant's employment. "His complaints," Dr. Carin stated, "are due solely to the injuries he sustained on February 20, 1992 during the course of employment."

Dr. Carin offered the following discussion:

> "It should be kept in mind that ligaments and fasciae, which are like the supporting layers of the lining of a garment, are really the subject at issue reference to myofascitis pain syndrome. It is not surprising that injuries, particularly overuse injuries are apt to strain, harm and even rupture this binding part of the body. When these layers are disrupted, and new strains are applied in the normal course of work and exercise, abnormal tension develops at the point of weakness. These concentrations of stress in the binding layers, are the sight of pain. (Thomas A. Durhen, MRCP (UK), FRCP (C), M.D. – Journal of Orthopaedic Medicine, Vol. 12, 1990, No. 1).
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> "Ligaments and fasciae have been recognized to contain nerve endings and to be a source of pain recognized at all spinal levels including the sacro-iliac articulations. The phenomenon of asymmetric entrapment of any vertebra (and

[1] Dr. Carin's ninth objective finding simply stated that an MRI was requested but not authorized.

other bones such as the lunate at the writ and talus of the ankle) may be caused by mechanical forces acting across moving links, such as vertebrae. If the tension in the straining intersegmental structures, such as the several intervertebral ligaments, is uneven (following injury) the links align themselves unevenly which can occur in several planes simultaneously. The asymmetric alignment is accompanied by asymmetrical strains on the short intersegmental ligaments, and the weak ligament is stretched further. Persistent stretching is responsible for pain, as in poor posture. Correction calls for a structural and functional diagnosis and recognition of the stretched (relaxed) ligaments and fasciae.

"Among many medical providers, there has been a failure to appreciate the role of ligaments and fasciae as stabilizers of the moving parts or as sources of pain with dysfunction (locally or remotely) following injury. This deficiency is responsible for the poor progress in managing such injuries, both diagnostically and therapeutically. When ligaments are injured, attenuated, weakened (or relaxed in Hackett's terminology), PROLOTHERAPY (Biologic Reconstructive Therapy Injections) of the damaged ligaments, offers a promise of refurbishment. (Ref: Thomas A. Dorman, MD., F.R.C.P., Prolotherapy and Back Pain, American Back Society Symposium, December 11 through 15, 1991, ABS Journal, Vol. 7, No. 4.)

"Biomechanical influence of the low back injury affects the cervical spine from time to time. Therefore symptoms related to the neck should be regarded as industrial injury even if it was not directly affected b the original incident.

"I disagree with the comment made by [the fitness-for-duty physician] on his report, dated July 27, 1993, that the patient can perform his regular work as a letter carrier. Based on the functional capacity test performed by our office, he does not qualify to perform this job with the list of required job duties. However, in my opinion, he would be able to do a four-hour workday job, five days per week with his current condition.

"Under the guidelines for work capacity, in my opinion, he would fall under the Category G -- limitation to semi-sedentary work. When the patient can work one half the time sitting, one half the time standing or walking with a minimum demand of physical effort whether standing, walking, or sitting." (Emphasis deleted.)

In a report dated June 23, 1995, Dr. Carin stated that he disagreed with Dr. Seibert's October 4, 1993 comment that aggravation was not apparent. "[Appellant's] condition," Dr. Carin stated, "is in fact aggravated by prolonged standing (in excess of one hour). He complains that after one hour of standing at work, his symptoms of low back pain begin." Dr. Carin also disagreed with Dr. Seibert's comment that appellant's physical limitations resulting from the work-related condition consisted of disability precluding very heavy lifting.

The Office hearing representative issued a decision dated November 2, 1995 affirming the termination of appellant's monetary compensation. The Office noted that Dr. Carin merely related appellant's complaints of pain and failed to provide any reasons for his opinion or other

detail to explain appellant's protests of pain. The Office found that appellant failed to submit probative, reliable and substantial evidence that he continued to be disabled for work as a result of the accepted condition.

The Board finds that the Office did not meet its burden of proof to appellant's monetary compensation.

It is well established that, once the Office accepts a claim, it has the burden of proof to terminate modification of compensation benefits.[2] 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.[3]

In this case, the Office justified its termination of monetary compensation on the strength of the October 4, 1993 opinion given by Dr. Seibert, the Office referral physician. This opinion, however, conflicts with the opinion given by Dr. Carin, appellant's attending physician. Dr. Seibert reported that, although appellant did continue to suffer residuals with persistent pain in the low back and left lower extremity, appellant could return to his usual job for eight hours a day if he were motivated. Dr. Carin expressly disagreed, reporting that appellant was capable of working only four hours a day with notably greater restrictions.

The Board finds that the opinion of Dr. Seibert does not constitute the weight of the medical opinion evidence because an unresolved conflict exists with the opinion of Dr. Carin on the issue of the nature and extent of injury-related disability for work. Consequently, the Office has not met its burden of proof to justify the termination of appellant's monetary compensation.[4]

[2] *Harold S. McGough*, 36 ECAB 332 (1984).

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

[4] *Craig M. Crenshaw, Jr.*, 40 ECAB 919 (1989) (finding that the Office failed to meet its burden of proof in terminating the claimant's benefits where it relied on the report of an Office referral physician without having resolved the existing conflict in medical opinion).

The November 2, 1995 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.
October 21, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member