

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTOINETTE L. ROSS and U.S. POSTAL SERVICE,
POST OFFICE, South Suburban, Ill.

*Docket No. 96-2572; Submitted on the Record;
Issued October 7, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant had any continuing disability after June 30, 1994 causally related to her accepted April 23, 1993 employment injury.

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof to establish her claim for continuing disability benefits.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a flat letter sorting machine operator, sustained a lumbar strain on April 26, 1993 when she bent down, stood up and experienced a sharp pain in her lower back. Appellant received payment of temporary total disability benefits from April 24 to October 28, 1993, at which time appellant returned to work. Appellant stopped work again on November 4, 1993 and then intermittently returned to work until January 3, 1994, when she stopped work and did not return. On August 29, 1994 the Office denied appellant's claim for further compensation benefits on the grounds that appellant had no continuing disability after June 30, 1994, which was causally related to the accepted injury of April 23, 1993. By decision dated March 9, 1995, an Office hearing representative affirmed the August 29, 1994 decision. The Office hearing representative noted that appellant's treating physician, Dr. Earl B. Thornton, had recommended that appellant undergo a magnetic resonance imaging (MRI) scan and examination by an orthopedic specialist. Appellant was then referred by the Office to Dr. Robert Patek, a Board-certified orthopedic surgeon specializing in sports medicine, who in turn had appellant undergo MRI evaluation and examination by Dr. Avel Bernstein, a Board-certified orthopedic surgeon. Dr. Bernstein thereafter reported that appellant's MRI was within normal limits for her age group. Dr. Bernstein opined that his examination supported a conclusion that appellant could return to work with restrictions and that she had no continuing injury-related disability. The hearing representative noted that appellant had not submitted rebutting evidence which offered a medical opinion, supported by rationale, explaining why appellant remained disabled. The hearing representative noted that appellant had submitted a report from Dr. Andrew S. Zelby, a Board-certified neurosurgeon, however, Dr. Zelby indicated that he could not relate appellant's condition to her work and Dr. Zelby concluded that appellant had no objective findings to support her symptoms and that she should return to moderate work. The hearing representative

therefore found that the weight of the medical evidence established that appellant's employment-related disability had ceased. The Board concurs with the hearing representative's findings of facts and law in this case.

Appellant thereafter requested reconsideration on two occasions. In support of her requests for reconsideration, appellant submitted an undated report from Dr. Thornton wherein he stated "[Appellant's] back injury may be the result of operating the LSM machine and flat sorter machine this may have contributed to her injury." Appellant submitted a copy of a favorable Social Security Administration decision and various medical articles to the record. Appellant also submitted an August 28, 1995 report from Dr. Richard Beaty, an orthopedic surgeon. Dr. Beaty stated that MRI examination showed a bulging L4-5 disc, which did not appear to impinge on the thecal sac, and electrogram (EMG) examination showed what appeared to be a lumbosacral radiculopathy. Dr. Beaty recommended a myelogram to determine whether appellant had a definite low back problem. Appellant thereafter underwent a lumbar myelogram and computerized tomography (CT) studies. These studies were interpreted by Dr. Brian Scanlan, a Board-certified diagnostic radiologist, as revealing four lumbar type vertebra compatible with sacralization of L5; no evidence of focal disc herniation or spinal stenosis. In a report dated September 12, 1995, Dr. Beaty noted that as appellant had a negative myelogram enhanced CT scan, she had a nonsurgically correctable problem. He opined that appellant probably had a stretch injury to the nerve. Dr. Beaty concluded that appellant would not achieve complete pain relief, and that appellant would not be able to return to unrestricted job activity. The Office denied modification of the previous decision on February 29 and July 27, 1996.

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 she had an employment-related disability which continued after termination of compensation benefits.¹

The Board notes initially that the Social Security Administration determination and the medical journal articles appellant submitted to the record are of no probative medical value. The Board has held that approval of a disability claim by another federal agency under its rules and regulations is not determinative of a claimant's entitlement to compensation under the Federal Employees' Compensation Act.² Excerpts from publications are of general application and are not determinative of whether a claimant's condition is causally related to her employment.³ Textual evidence has little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the text to the specific factual situation at issue in the case.⁴

The only narrative medical reports appellant submitted in support of her requests for reconsideration which discussed appellant's current condition and offered an opinion regarding

¹ *Gary R. Sieber*, 46 ECAB 215 (1994).

² *See Harrison Combs, Jr.*, 45 ECAB 716 (1994).

³ *See Ronald M. Cokes*, 46 ECAB 967 (1995).

⁴ *Ruby I. Fish*, 46 ECAB 276 (1994).

the cause of the condition were from Dr. Thornton and Dr. Beaty. Dr. Thornton's report, however, was entirely speculative in nature as he merely noted that appellant's back injury "may be" the result of operating the LSM and flat sorter machine. He did not specifically relate appellant's current condition to her April 23, 1993 bending injury. The Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in nature have little probative value.⁵ Dr. Beaty's opinion regarding appellant's continuing disability is also limited probative value. Dr. Beaty opined that appellant's myelogram and CT studies were normal, however, EMG studies showed a lumbosacral radiculopathy. He then concluded that appellant had a "stretch injury to the nerve" and was disabled from work. The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.⁶ To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value. As Dr. Beaty did not provide any medical rationale in support of his opinion, it is of limited probative value.

The decisions of the Office of Workers' Compensation Programs dated July 27 and February 29, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 7, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Geraldine H. Johnson*, 44 ECAB 745 (1993).

⁶ *See Michael Stockert*, 39 ECAB 1186 (1988).