

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA NOGUES and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

Docket No. 98-57; Submitted on the Record;
Issued August 9, 1999

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation benefits effective August 22, 1996; and (2) whether appellant met her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted employment injuries.

On July 7, 1995 appellant, then a 31-year-old clerk, filed a notice of traumatic injury alleging that she injured her lower left back on that date when she reached up to a top bin and felt a pinching pain in the course of her federal employment. The Office accepted the claim for lumbar strain and paid compensation for temporary total disability.

On December 13, 1995 Dr. Roberto Moya, appellant's treating physician and a Board-certified orthopedic surgeon, completed a duty status report. He indicated that appellant could resume work in a limited-duty capacity beginning December 18, 1995. He indicated that appellant could lift less than 20 pounds; sit, stand, perform fine manipulation and reach above her shoulder four hours per day; walk and perform simple grasping eight hours per day; and that she should not bend/stoop, twist or pull/push.

On December 18, 1995 appellant returned to a limited-duty full-time position. Appellant again stopped working on January 9, 1996.

On January 16, 1996 Dr. Moya diagnosed a herniated nucleus pulposus of L4-5, increased radiculopathy of L4-5 and weakness of the extensor hallucis longus. He based his opinion on a nerve conduction velocity study, an electromyography and a somatosensory evoked response test.

On January 26, 1996 the Office requested a second opinion from Dr. Michael Aptman, a Board-certified neurologist and psychiatrist. On February 7, 1996 Dr. Aptman reviewed appellant's history and medical records. His neurological examination revealed some skeletal

findings and lots of nonanatomical findings. He stated that there was no objective evidence of any neurological deficit.

On February 14, 1996 the Office indicated that it had received information that appellant may have sustained a recurrence of disability. The Office requested additional information, including a detailed narrative medical report addressing the causal relationship between the condition treated and the original injury.

On February 14, 1996 Dr. Aptman again stated that he had no objective evidence to support neurological injury. He stated that he would review additional tests.

On February 28, 1996 Dr. Aptman examined appellant and reviewed an electrodiagnostic study dated February 1, 1996. He noted that the study gave the impression of L4-5 herniated disc in spite of no active denervation in the muscles tested. Dr. Aptman diagnosed degenerative disc disease without objective evidence of nerve root involvement.

On March 4, 1996 Dr. Moya indicated that the nerve conduction study and electromyography showed a radiculopathy at L4-5 consistent with the level of herniation she has at L4-5 which is a small disc. Dr. Moya further indicated that with her preexisting spondylolisthesis that this could be a dramatic combination. He also stated that appellant also has grade I spondylolisthesis at L5-S1. Dr. Moya also noted a weakness of the hallux longus extensor muscle.

On March 5, 1996 appellant returned to her limited-duty position.

On March 7, 1996 Dr. Gaetano Scuderi, an orthopedic surgeon, reviewed appellant's history and course of treatment. He indicated that appellant was morbidly obese on examination and that this resulted in mildly limited flexion extension. He stated that his neurologic examination was normal and that his magnetic resonance imaging (MRI) scan showed no evidence of stenosis or disc herniation. It did show a Grade I L5, S1 slip. He diagnosed sacroiliitis.

Dr. Scuderi stated that this problem would resolve within 6 weeks and that he anticipated no impairment as the lumbar spine did not show disc herniation or stenosis.

On March 12, 1996 appellant filed a notice of recurrence of disability alleging that she suffered a recurrence of disability on January 8, 1996. Appellant indicated that she stopped working on January 9, 1996 and returned on March 11, 1996. Appellant indicated that she never fully recovered from her original injury and returned to work out of financial necessity.

On March 25, 1996 Dr. Moya stated that appellant found out she was pregnant and that she returned to light duty. He indicated that appellant returned to light duty on March 11, 1996. Dr. Moya stated that appellant was diagnosed with a small herniated disc by MRI scan and that on two occasions she showed radiculopathy at L4-5 on nerve conduction studies. He indicated that preexisting spondylolisthesis was present. Dr. Moya stated that it was a reasonable probability that the small herniation and increasing symptoms were related to appellant's July 7, 1995 injury.

On March 25, 1996 Dr. Scuderi repeated his diagnosis of sacroiliitis which he stated was common in pregnant women such as appellant. He stated that the condition always resolves on its own. Dr. Scuderi stated that appellant has returned to her premorbid state. He indicated that appellant's low back problems were related to her obesity and pregnancy.

On April 4, 1996 Dr. Scuderi stated appellant was status post sacroiliitis. He stated that appellant was employed in light duty without problem.

On May 16, 1996 Dr. Scuderi indicated that his musculoskeletal examination revealed no abnormalities except appellant's complaints of pain and that there were no pathologic findings on his neurological examination. He stated that appellant's lumbar strain had healed. Dr. Scuderi stated that appellant continued to suffer lower back pain due to her obesity and pregnancy. He indicated that if appellant were not pregnant she would be able to perform her full-duty activities without restriction. Dr. Scuderi indicated that there were no residuals from appellant's July 1995 condition.

On July 11, 1996 the Office issued a "notice of proposed termination of compensation" on the basis that the disability resulting from appellant's accepted injury had ceased. Appellant was given 30 days to submit additional evidence or argument. In an accompanying memorandum, the Office indicated that the weight of the medical evidence rested with Dr. Scuderi who indicated that appellant was capable of resuming her full-time work. The Office further indicated that appellant failed to establish a recurrence of disability.

By decision dated August 22, 1996, the Office terminated appellant's continuing compensation effective that same date because the weight of the medical evidence established that disability from the July 7, 1995 injury had ceased.

On April 14, 1997 appellant requested reconsideration. In support appellant submitted an MRI scan from Dr. Luis Alvarez, a Board-certified radiologist, indicating that appellant had a bulging annulus at L4-5 associated with a very small midline disc herniation at that level.

By decision dated July 11, 1997, the Office reviewed the case on its merits and found that modification must be denied because the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision.

The Board initially finds that the Office met its burden to terminate appellant's compensation benefits effective August 22, 1996.

Once the Office has accepted and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits. After it has been determined that an employee has disability causally related to his 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.¹

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

In the present case, Dr. Scuderi, an attending physician, reviewed appellant's records and performed comprehensive physical and neurological examinations. In his March 25, 1996 report, Dr. Scuderi diagnosed sacroiliitis and explained that this condition was common in pregnant women such as appellant. On May 16, 1996 Dr. Scuderi opined that appellant's lumbar strain had resolved. He attributed the remaining low back symptoms to appellant's obesity and her pregnancy. He indicated that appellant could return to her full-time job without restriction, but for appellant's pregnancy. Dr. Scuderi's opinion was bolstered by the opinion of Dr. Aptman, a Board-certified neurologist who found no evidence of neurological deficit in his January 26, 1996 examination and diagnosed degenerative disc disease in his February 28, 1996 report. Dr. Moya, a Board-certified orthopedic surgeon, provided the only medical opinion which indicated that appellant remained disabled from her accepted injury. In his March 25, 1996 report, Dr. Moya stated that it was a reasonable probability that the small herniation and increasing symptoms were related to appellant's July 7, 1995 injury. Dr. Moya, however, did not explain his conclusion or discuss the effects of appellant's obesity and pregnancy on her condition. His opinion is, therefore, entitled to less weight than the well-rationalized opinion of Dr. Scuderi who considered appellant's complete medical background.² Consequently, the Office met its burden to terminate appellant's compensation benefits effective August 22, 1996.

The Board further finds that the Office properly found that appellant failed to establish that she sustained a recurrence of disability causally related to her accepted employment injuries.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition for which she seeks compensation is causally related to the accepted employment injury.³ As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment-related injury. As stated above, Dr. Moya provided the only medical opinion evidence indicating that appellant's low back symptoms were related to her July 7, 1995 accepted injury. Dr. Moya, however, failed to explain his conclusion or address the effects of appellant's pregnancy and obesity on her condition. His opinion is, therefore, entitled to little weight.⁴

² *Carolyn F. Allen*, 47 ECAB 240 (1995); *Richard A. Weiss*, 47 ECAB 182 (1995).

³ *Dennis E. Twadzik*, 34 ECAB 536 (1983); *Henry L. Kent*, 34 ECAB 361 (1982).

⁴ See *Carolyn F. Allen*, *supra* note 2; *Richard A. Weiss*, *supra* note 2.

The decision of the Office of Workers' Compensation Programs dated July 11, 1997 is affirmed.

Dated, Washington, D.C.
August 9, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member