

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET GARCIA and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 99-29; Submitted on the Record;
Issued December 27, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits as of April 1, 1997.¹

The Board has duly reviewed the case on appeal and finds that the Office did not meet its burden to terminate appellant's compensation benefits.

Once the Office has accepted 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 disability has ceased or that it is no longer related to the employment.²

On February 21, 1996 appellant, then a 46-year-old letter carrier, filed a claim for compensation alleging that on February 8, 1996, while moving boxing flats and priority mailbags, she felt pain in her lower back, right side and down her right leg.

On April 15, 1996 appellant filed a claim for recurrence of disability alleging that she was unable to work due to pain associated with her initial injury of February 8, 1996. Appellant has remained off work since April 11, 1996.

On December 4, 1996 the Office accepted that appellant sustained employment-related lumbosacral strain and right sciatica on February 8, 1996.

¹ The Board notes that the case record contains documents not related to this case.

² *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

On December 30, 1996 the Office referred appellant along with her medical records, a statement of accepted facts and a list of specific questions to Dr. Nate V. Bondi, Board-certified in orthopedic surgery, for a second opinion regarding her work-related disability. In a January 16, 1997 medical report, Dr. Bondi advised that appellant no longer had residuals associated with her accepted injury. In his report, Dr. Bondi noted a familiarity with appellant's medical history, noting that she had undergone a mastectomy for breast cancer. He also reviewed the June 7, 1996 magnetic resonance imaging (MRI) scan, which he read as demonstrating mild degenerative disc disease at L4-5 with a possible small annular tear at L4-5. He also noted no disc herniation or spinal stenosis. Upon physical examination, Dr. Bondi found a mild defect in forward flexion, extension and right and left lateral bending of the lumbosacral spine without evidence of paravertebral muscle spasm. He noted that the interspinous processes and sciatic notches were nontender to palpitation. Dr. Bondi found that, in a supine position, the straight leg raising on the right was 20 degrees with resistance while the left was 70 degrees with resistance. Dr. Bondi noted appellant's subjective complaints of pain in both legs when the hips and knees were flexed simultaneously to 90 degrees. He also noted that the bowstring was unremarkable. Appellant's thigh and calve measurements were equal bilaterally. Dr. Bondi determined that appellant's neurological examination revealed deep tendon reflexes to be intact and equal bilaterally, and that her sensory function and proprioception were equal bilaterally. He found no objective findings to support appellant's complaints or to substantiate any discogenic or lumbar pathology. Dr. Bondi noted further that appellant could return to work without restriction and that her nonwork-related condition of breast cancer did not mitigate her from employment.

On February 18, 1997 the Office notified appellant of its proposal to terminate her compensation and medical benefits on the grounds that the medical evidence of record established that she no longer had residuals of her February 8, 1996 work-related injury. The Office stated that it based its proposal on the January 16, 1997 second opinion medical report of Dr. Bondi. The Office advised appellant that she had 30 days from the date of the proposed notice of termination to submit additional evidence in support of her claim. On April 1, 1997 the Office terminated appellant's compensation and medical benefits on the grounds that she no longer had residuals based on her accepted injury.

The record, however, also contains medical reports from Dr. Paul Boulos Hobeika, appellant's treating physician and Board-certified in orthopedic surgery. In a June 10, 1996 medical report, Dr. Hobeika reviewed the history of injury, noting a date of injury as February 8, 1996 when appellant bent down at work, which caused severe acute lower back pain radiating down the right extremity. He noted appellant's medical treatment history from the date of injury including his initial June 3, 1996 examination. Dr. Hobeika noted that appellant had pain on palpitation of the right greater trochanteric area and stated that she walked "with her back bent because it is too painful." He opined that appellant sustained lumbosacral sprain and sciatica on the right side and trochanteric bursitis, which he related to her work-related injury. In a January 7, 1997 medical report, Dr. Hobeika stated that appellant remained symptomatic with pain and had difficulty standing up, walking and sitting. He noted that an MRI scan revealed a possible herniated disc at L4-5 with sciatica and that her back and abdominal muscles were weak. Dr. Hobeika stated that he had referred appellant to a neurologist for additional testing and added that she could not work because she could not stand for over an hour and "it would

[be] very hard for her to lift any boxes or any object over two pounds on a continuous basis.” In a September 15, 1997 medical report, Dr. Hobeika stated that he evaluated appellant on that day and determined that, although she demonstrated no weakness or sensory deficit, she was positive at straight leg raising in both extremities. He stated that appellant’s MRI scan revealed a small annular tear at L4-5 and that she was totally disabled from any work as a result of her unresolved medical condition caused by the work-related injury of February 8, 1996.

When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,³ to resolve the conflict in the medical opinion. In this case, while Dr. Bondi found no objective findings to support appellant’s claim, he also stated that appellant’s MRI scan revealed a mild degenerative disc disease at L4-5 with a possible tear at L4-5. Dr. Bondi also found a mild defect in forward flexion, extension and right and left arm bending of the lumbosacral spine. Further, Dr. Hobeika, appellant’s treating physician, stated that appellant’s positive MRI scan revealed a causally related herniated disc and a sciatica attributable to the February 8, 1996 work-related injury. The Board, therefore, finds that a conflict exists regarding this matter. Consequently, the Office did not meet its burden of proof in terminating appellant’s compensation on April 1, 1997.

The decision of the Office of Workers’ Compensation Programs dated June 4, 1998 is hereby reversed.

Dated, Washington, D.C.
December 27, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

³ 5 U.S.C. § 8123(a).