

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET WOODS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Denver, Colo.

*Docket No. 97-1552; Submitted on the Record;
Issued February 17, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that disability resulting from her accepted work condition had ceased.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation for disability caused by aggravation of her lumbosacral spondylosis.¹

Under the Federal Employees' Compensation Act,² once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.³ Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁴

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁵ The Office's burden

¹ Spondylolysis is defined as the dissolution of a vertebra, a condition marked by platyspondylia, aplasia of the vertebral arch and separation of the pars interarticularis. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

² 5 U.S.C § 8101 *et seq.*

³ *William Kandel*, 43 ECAB 1011, 1020 (1992).

⁴ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁵ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

In this case, appellant filed a notice of occupational disease on October 4, 1994, claiming that her work casing and lifting mail caused her back to hurt. The Office accepted the claim for aggravation of lumbosacral spondylosis and appellant returned to full-time limited duty with restrictions listed by her treating physician, Dr. Russell W. Simpson, a practitioner in internal medicine.⁸

Appellant continued to work, but missed many hours during 1995 for which she claimed wage loss due to her back pain.⁹ On July 2, 1996 the Office referred appellant for a second opinion evaluation to Dr. I. Stephen Davis, a Board-certified orthopedic surgeon. Based on his August 14, 1996 report, the Office terminated appellant's compensation on February 25, 1997 on the grounds that appellant had no continuing disability from the accepted work injury.

The Board finds that the medical evidence establishes that appellant has no continuing disability resulting from the accepted work injury. In his August 14, 1996 report, Dr. Davis related the history of appellant's back condition dating from 1981, noting that appellant had accepted a modified job offer on December 15, 1995, but still experienced discomfort in performing the assigned duties.

Upon physical examination, Dr. Davis found some degree of caution in appellant's lumbar movements, but normal straight leg raising and satisfactory strength and sensation with excellent musculature throughout. He stated that x-rays of the lumbar spine showed smooth contour at the vertebral segments, well-maintained disc spaces and satisfactory alignment. The April 26, 1995 magnetic resonance imaging (MRI) scan was normal as was an electromyogram done on January 24, 1996.

⁶ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁷ *Connie Johns*, 44 ECAB 560, 570 (1993).

⁸ In his various form reports, Dr. Simpson diagnosed low back syndrome with sciatica. The OWCP form he filled out listed the accepted condition as aggravation of lumbosacral spondylosis.

⁹ Appellant was initially injured in 1981 when a letter sorting case weighing about 200 pounds fell on her. She returned to modified duty in October 1988 after extensive rehabilitation. In October 1994, according to appellant, a safety manager ordered her to stop using a chair while casing mail and lean on a rest bar while standing. Appellant claimed that the change precipitated increased back pain.

Dr. Davis concluded that, while appellant still suffered from the residuals of an aggravation of her underlying back condition, she had an essentially normal orthopedic examination. There were no objective findings of a specific orthopedic injury, but simply appellant's subjective complaints of discomfort, which appellant related to the 1981 injury and there was no objective evidence of permanent injury to the lumbosacral spine. Based on his findings, Dr. Davis added that the work restrictions outlined in the December 1995 job description were appropriate and that appellant had indicated that her physical responsibilities were less within these restrictions than they had been previously.

Dr. Davis' report was reviewed by Dr. Daryl K. Mac Carter, Board-certified in internal medicine, who diagnosed fibromyalgia,¹⁰ carpal tunnel syndrome and patellofemoral pain associated with osteoarthritis, all of which he found to be work related. Dr. Mac Carter added that appellant's lumbosacral condition was due to fibromyalgia and chronic low back strain, also work related and that such back pain was "commonly a clinical feature" of fibromyalgia.

The Board finds that while Dr. Mac Carter disagreed with Dr. Davis' conclusion, his January 6, 1997 report is insufficiently probative to create a conflict in medical opinion sufficient to require the Office to refer this case to an impartial medical examiner.¹¹ Dr. Davis failed to address the accepted work condition, an aggravation of appellant's lumbosacral spondylosis, as diagnosed by appellant's treating physician.

The fibromyalgia diagnosed by Dr. Davis was not accepted by the Office as a work-related condition. Further, Dr. Davis' report is devoid of any medical rationale for his conclusion that appellant's fibromyalgia was caused by her employment.¹² Finally, as the Board has long held, pain is a symptom, not a diagnosed condition and pain without objective physical or diagnostic findings to support a condition causing the pain is not compensable under the Act.¹³

By contrast, Dr. Davis' report is well rationalized and based on a thorough review of the medical evidence in the record, physical examination of and discussion with, appellant, the objective testing and the statement of accepted facts. Supportive of his conclusions are the reports of Dr. Simpson, who stated on April 12, 1995 that appellant was capable of working eight hours a day within the listed physical restrictions and approved the December 1995 position description of manual distribution duties as suitable for appellant without modification.

¹⁰ *The Merck Manual* (16th ed. 1992) defines fibromyalgia as a group of common nonarticular rheumatic disorders characterized by achy pain, tenderness, and stiffness of muscles, tendon areas, and adjacent soft tissues.

¹¹ See *Wanda E. Maisonet*, 48 ECAB ____ (Docket No. 94-2466, issued November 29, 1996) (finding no conflict in the medical opinion evidence because appellant's doctor failed to explain the basis for his conclusion that appellant was still disabled by his back strain).

¹² See *Margarette B. Rogler*, 43 ECAB 1034, 1039 (1992) (finding that a physician's opinion that provides no medical rationale for its conclusion on causation is of diminished probative value).

¹³ See *John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

Similarly, Dr. Angelika I. Voelkel, a practitioner in physical medicine and rehabilitation, who diagnosed mechanical low back pain, found appellant able to work full time within the physical restrictions. Dr. Voelkel stated on September 11, 1995 that appellant had reached maximum medical improvement, that her back condition was stable and that she should continue conservative treatment. Thus, the Board finds that the medical evidence establishes that appellant's disability from the October 1994 aggravation of her back condition has ceased and is, therefore, sufficient to meet the Office's burden of proof in terminating appellant's compensation.¹⁴

The February 25, 1997 decision of the Office of Workers' Compensation is affirmed.

Dated, Washington, D.C.
February 17, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹⁴ See *Marion Thornton*, 46 ECAB 899, 907 (1995) (finding that medical reports based on a proper factual and medical background and supported by full rationale were sufficient to meet the Office's burden of proof in establishing that appellant had not sustained a permanent aggravation of her respiratory condition by exposure to second-hand smoke in the workplace).