

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSALEE COLLINS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Martinsburg, W.Va.

*Docket No. 98-1402; Submitted on the Record;
Issued February 16, 1999*

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 compensation on the grounds that she had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the case record and finds that the Office met its burden of proof in terminating appellant's disability compensation.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased,³ even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁴

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.⁵ Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate

¹ 5 U.S.C. § 8101 *et seq.*

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *John Watkins*, 47 ECAB 597 (1996); *Marion Thornton*, 46 ECAB 899, 906 (1995).

⁵ *William Kandel*, 43 ECAB 1011, 1020 (1992).

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.⁶

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.⁷ The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

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.⁹ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

In this case, appellant's notice of traumatic injury, filed on September 15, 1992, was accepted by the Office for a lumbar strain after appellant, a food service worker, fell and hurt her back while exiting a bathroom at work. Appellant returned to work for several months but resigned on May 20, 1993, "due to her health," and has not worked since.

On August 30, 1995 appellant was placed on the periodic rolls, based on the second opinion evaluation of Dr. Clifford Sperow, a Board-certified orthopedic surgeon. Because Dr. Sperow indicated that appellant might have sustained a conversion reaction,¹¹ she was referred to Dr. Brian Schulman, a Board-certified psychiatrist, who found no evidence of this diagnosis in his November 9, 1995 examination, but stated that appellant's back condition should be reevaluated.

On December 16, 1996 appellant was examined by Dr. Frank G. Nisenfeld, a Board-certified orthopedic surgeon, who concluded that appellant had chronic degenerative disc disease of the lumbosacral spine, which preexisted her September 1992 injury, that her current condition

⁶ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁷ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

⁸ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁹ *Connie Johns*, 44 ECAB 560, 570 (1993).

¹⁰ *Gary R. Sieber*, 46 ECAB 215, 223 (1994).

¹¹ Conversion is a term describing the process by which emotions become transformed into physical (motor or sensory) manifestations; conversion reaction is a condition in which motor or sensory symptoms are used to symbolize intra-psychic conflict. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

and complaints could not be attributed to the work injury, and that the effects of that injury had ceased. He added that appellant should lift no more than 15 pounds and should avoid frequent stooping and climbing.

Because his opinion conflicted with that of Dr. Benjamin V. Rezba, a Board-certified orthopedic surgeon and appellant's treating physician, who stated that appellant was totally disabled, even for sedentary work, due to the combined effects of her work-related injury and her nonrelated systemic rheumatoid arthritis, the Office referred appellant for an impartial medical examination to Dr. John D. Ashby, a Board-certified orthopedic surgeon.

On August 26, 1997 the Office informed appellant that she had 30 days to accept the position of retail clerk/cashier offered by the employing establishment on November 25, 1996. The position had been approved by Dr. Rezba, with specific restrictions, but appellant had declined the offer on December 9, 1996. Appellant responded that she was unable to return to work. On October 16, 1997 the Office stated that appellant's reasons for refusing the position were unacceptable and provided her with 15 days to accept the offer.

On December 29, 1997 the Office terminated appellant's compensation on the grounds that the medical evidence established that her work-related disability had ceased. On January 5, 1998 the Office informed appellant that its previous decision was issued in error and should be disregarded.

On February 4, 1998, after seeking further clarification from Dr. Ashby, the Office issued a notice of proposed termination. Appellant responded by submitting a personal statement, an evaluation from a physical therapist, treatment notes from Dr. Rezba, and a letter from Dr. Gregory A. Kujala, Board-certified in internal medicine. On March 9, 1998 the Office terminated appellant's compensation, effective March 28, 1998, on the grounds that the weight of the medical evidence rested with the opinion of Dr. Ashby, who concluded that appellant's work-related disability had ceased.

The Board finds that the medical evidence establishes that appellant's disability resulting from the 1992 lumbar strain has ceased. The record reveals that Dr. M. Evans Brown, who is Board-certified in physical medicine and rehabilitation, and initially treated appellant in September 1992, stated on March 18, 1993 that appellant still had back pain, but "feels she has pretty well recovered from the acute injury" on September 15, 1992 and that her pain level was "about the same as it has been since" 1985 when she had a laminectomy for a herniated disc.

In a form report, Dr. Rezba, who performed appellant's back surgery in 1985, released her to return to work on October 2, 1993 but noted that she should sit as needed. On May 16, 1994 Dr. Rezba stated that appellant had reached maximum improvement "as far as her compensation injury is concerned." In April 1996, Dr. Rezba stated that, "compensation-wise," appellant was again capable of light gainful employment.

While Dr. Rezba subsequently completed multiple form reports finding appellant totally disabled from June 29, 1994 onward, due to her lumbar strain, he stated on January 13, 1998 that he agreed with Dr. Ashby that appellant was not disabled just because of her back pain and

would be capable of light gainful employment. Dr. Rezba added that appellant's rheumatoid arthritis involving her hands prevented her from working.

In his May 13, 1997 report, Dr. Ashby reviewed appellant's history of treatment and the results of x-rays in 1996 and a bone scan conducted on February 3, 1994, as well as medical interpretations of these tests. He stated that there was no relationship between appellant's rheumatoid arthritis diagnosed in 1995 and the 1992 work injury. He noted that appellant's back strain resulted only in subjective complaints and no specific objective findings. Dr. Ashby concluded that appellant's inability to return to work was not due to the 1992 injury.

In a supplemental report dated January 13, 1998, Dr. Ashby stated that appellant's back strain had completely resolved, based on the objective evidence of his examination. Thus, he found no indication that appellant could not return to her cashier's position. He reiterated that appellant's rheumatoid arthritis was not related to her work injury.

As the impartial medical examiner selected to resolve the conflict between Drs. Nisenfeld and Rezba,¹² Dr. Ashby represents the weight of the medical evidence that, while appellant may be unable to work as a cashier because of her rheumatoid arthritis, she has no continuing disability related to the 1992 lumbar strain and is thus no longer entitled to compensation.¹³ Therefore, Dr. Ashby's opinion is sufficient to meet the Office's burden of proof in terminating compensation.¹⁴

As the Office explained, the physical therapist's evaluation and notes of treatment are not considered medical evidence because physical therapists are not recognized as physicians under the Act.¹⁵ Thus, their opinions lack any probative value in determining whether appellant is still disabled from the effects of the 1992 lumbar strain. Dr. Kujala's May 23, 1997 report, also lacks probative value because he failed to address the relevant issue of appellant's work injury.

Finally, in his undated letter and office treatment notes, Dr. Rezba referred to appellant's severe lumbar strain, which was causing her a great deal of pain and did not respond well to conservative treatment, but noted her "more significant problem" of rheumatoid arthritis, which

¹² See *Dallas E. Mopps*, 44 ECAB 454, 456 (1993) (finding that the Office properly referred the claim to an impartial medical examiner because of a conflict in the opinions of a psychiatrist and an psychologist).

¹³ See *Raymond Frederick Echoltz*, 32 ECAB 1423, 1527 (1981) (finding that a medical opinion that distinguished among multiple factors causing appellant's disability was sufficiently probative to carry the Office's burden of proof in terminating benefits.)

¹⁴ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (finding that the Office's referral physician provided convincing rationale, bolstered by the opinion of another Board-certified specialist, that appellant's continuing disability was not work related).

¹⁵ Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value. *Jane A. White*, 34 ECAB 515, 518 (1983).

was certainly not improving. Again, Dr. Rezba did not distinguish between the effects of appellant's work injury and the subsequently diagnosed arthritis. Therefore, his opinion has little probative value.

The March 9, 1998 decision of the Office of Workers' Compensation Programs is affirmed.¹⁶

Dated, Washington, D.C.
February 16, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹⁶ The issue of whether appellant is entitled to wage-loss compensation from October 1, 1993 to June 28, 1994 is not before the Board. The Office explained to appellant that she had to submit medical evidence of her disability for work during this period, but, not having received such evidence, has issued no decision on this question.