

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIDAL QUINTANILLA and U.S. POSTAL SERVICE,
AIR MAIL CENTER, San Francisco, Calif.

*Docket No. 97-544; Submitted on the Record;
Issued January 7, 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 March 24, 1995 appellant, then a 46-year-old mail handler, filed a notice of traumatic injury, alleging that he injured his back and left elbow while lifting and pulling containers in the course of his federal employment. The Office accepted the claim on July 31, 1995 for low back strain and left elbow strain, and appellant ultimately received compensation for temporary total disability.

On August 10, 1995 Dr. Jay Scheikowitz, a Board-certified radiologist, interpreted an x-ray as showing no evidence of acute abnormality, but revealing mild hypertrophic spurring.

On September 19, 1995 Dr. Robert A. Aguilar, a chiropractor, diagnosed a lumbosacral sprain/strain and lumbosacral segmental dysfunction. He described that injury as moderate and appellant's present status as acute. He indicated that the prognosis was fair and that appellant was working.

On October 20, 1995 Dr. Brad K. Moy, a Board-certified internist, diagnosed thoracic (low) strain/spasms. Dr. Moy released appellant to temporary, alternate work on that same date. He indicated that appellant could not lift over 10 pounds and that he could not climb, push or pull. He further stated that appellant could only occasionally bend, stoop, squat, kneel and reach above his shoulders. On October 26, 1995 Dr. Moy indicated that appellant had improved. Specifically, he stated that appellant's range of motion, strength, posture, body mechanic and functional status had improved. On October 27, 1995 Dr. Moy indicated that appellant's thoracolumbar strain was resolving slowly, but he repeated his October 20, 1995 work restrictions. On November 3, 1995 Dr. Moy again indicated that appellant's thoracolumbar strain was resolving slowly. Dr. Moy, however, indicated that appellant could now not lift over

25 pounds. He further indicated that appellant could not bend, stoop, climb, push or pull. Dr. Moy stated that appellant could squat, kneel, reach above his shoulders and grasp occasionally.

On November 8, 1995 Dr. Susan Obato recorded that appellant was injured from pulling boxes and suffered abdominal and back pain. Dr. Obato stated that she filled out a disability form indicating that appellant was disabled from March 24 through April 19, 1995. She further stated that appellant's records indicated persistent yet decreased pain in office visits on May 4 and May 18, 1995.

On November 10, 1995 Dr. Moy again diagnosed resolving thoracolumbar strain. He stated that appellant could not lift over 30 pounds and could not climb. He stated that on occasion appellant could bend, stoop, squat, kneel, reach above his shoulders, grasp and push or pull. On November 17, 1995 Dr. Moy repeated his diagnosis of resolving thoracolumbar strain.

In an undated report, Dr. Aguilar, a chiropractor, diagnosed lumbosacral sprain/strain and lumbosacral segmental dysfunction. He recorded the date of injury as March 24, 1995 and described the injury as moderate. Dr. Aguilar indicated that the prognosis was fair and that appellant was working. Finally, he indicated that he no longer treated appellant.

On December 1, 1995 Dr. Moy again indicated that appellant's thoracolumbar strain was slowly resolving.

On December 6, 1995 Dr. Robert Harrison, Board-certified in internal and preventive medicine, examined appellant. Dr. Harrison indicated that appellant suffered acute pain in his thoracic lumbar area on March 24, 1995 after lifting heavy boxes for two hours. He stated that appellant missed work until May 16, 1995 when he returned to limited duty with a limitation of lifting or pulling no more than 20 pounds. He recorded that appellant continued to have back pain while performing this duty and that appellant was terminated on November 8, 1995. Dr. Harrison indicated that appellant continued to complain of persistent pain localized on the bilateral aspects of the mid-thoracic area and he noted numbness radiating to the posterior aspect of appellant's right leg, approximately four times a month. He stated that appellant appeared well on physical examination. Dr. Harrison indicated that appellant moved without any limitations and that there was no apparent pain or discomfort either sitting or standing. He stated that his back examination was positive for point tenderness localized between T10 and L2 with very tight paraspinal muscles throughout his cervicothoracic/lumbosacral area. Dr. Harrison noted negative straight leg raising and that appellant was able to bend down without apparent limitation. Dr. Harrison's neurological examination showed normal sensory and strength findings for appellant's lower extremities, but that reflexes in both the upper and lower extremities were not elicited. Dr. Harrison opined that appellant sustained a work-related acute thoracolumbar sprain in March 1995 with a chronic and persistent pattern since that time. He stated that he anticipated a resolution of symptoms by this point and that he could not ascertain why appellant's condition had not improved. Dr. Harrison released appellant to modified work on December 6, 1995, but indicated that appellant could not lift more than 15 pounds.

On December 12, 1995 the Office referred appellant, along with a statement of accepted facts, to Dr. Earl V. Fogelberg, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Fogelberg reviewed the medical evidence of record and conducted a physical examination on January 3, 1996. He noted that appellant complained of symptoms resulting from repeated bending or from standing or sitting in one place too long. Dr. Fogelberg stated that appellant appeared in no apparent acute distress, that he moved without guarding, and that he walked without a limp. His examination of appellant's shoulders revealed no evidence of muscle atrophy and that he had a normal range of shoulder motion. Dr. Fogelberg found that appellant's elbows were symmetrical and that there was no evidence of a swollen olecranon bursa. He also found no evidence of tendinitis or redness around the elbow. He noted that elbow flexion-extension, forearm pronation, and supination were normal, pain free, and symmetrical. Dr. Fogelberg indicated that appellant's spine was straight and his pelvis level. He stated that appellant could forward flex approximately 80 degrees with good lumbar curve reversal and that his fingers reached within 8 inches of the floor. Dr. Fogelberg also stated that appellant recovered from this maneuver smoothly. He noted that lateral bending left and right was normal and pain free. Dr. Fogelberg found some discomfort with spinal rotation in the thoracolumbar junction. He indicated that in the supine position, appellant could lift both lower extremities without low back pain. He noted tenderness in the lumbar thoracic junction in the prone position. Dr. Fogelberg found no evidence of sciatic nerve root irritability. He diagnosed lumbosacral sprain, mild, chronic and left elbow swelling, recurrent by history. Dr. Fogelberg indicated that appellant informed him that he could return to his job if it were available despite his present symptoms. He stated that his physical examination was consistent with someone with some pain emanating from the lumbar thoracic junction areas. He indicated that persistent prophylactic exercise on appellant's part would be appropriate, but that other treatment was not necessary. Dr. Fogelberg stated that appellant had some residuals of the March 24, 1995 injury, but that he found no evidence of a left elbow problem. He stated that his examination was consistent with his subjective complaints and that he believed appellant had some lumbar thoracic junction pain on a chronic basis. Dr. Fogelberg stated that he did not believe appellant was disabled from his usual occupation. He stated that appellant was capable of working 8 to 12 hours a day, but that prolonged repetitive bending or standing in one place might slightly interfere with his ability to function at full capacity. Dr. Fogelberg limited prolonged repetitive bending to 15 to 30 minutes at a time and standing in place to 2 hours at a time for appellant's 8 to 12-hour workday. He stated that these restrictions were due to the employment injury, but that they would resolve in three months.

On January 10, 1996 Dr. Harrison indicated that appellant was released to work on that same date, but with the restriction of lifting no more than 15 pounds. He again diagnosed thoracolumbar sprain. On February 28, 1996 Dr. Harrison diagnosed mid-thoracic strain and released appellant to work on that same date lifting less than 20 pounds. On March 27, 1996 Dr. Harrison again diagnosed a thoracolumbar strain and released appellant to work from that date through June 19, 1996 with a restriction of lifting less than 20 pounds.

On September 17, 1996 the Office issued a "Notice of Proposed Termination of Compensation" indicating that the weight of the evidence established that appellant had no continuing disability as a result of his March 24, 1995 injury. Appellant was given 30 days to submit evidence or argument. In an accompanying memorandum, the Office noted that pursuant

to section 8102(2) of the Federal Employees Compensation Act¹ the opinion of Dr. Aguilar, a chiropractor, failed to constitute competent medical evidence because the record is devoid of x-ray evidence establishing a spinal subluxation. The Office noted that Dr. Harrison failed to provide a reasoned medical opinion addressing the issues of causal relationship and ongoing disability. The Office indicated that the weight of the evidence rested with the detailed and well-reasoned opinion of Dr. Fogelberg which established that appellant had no continuing injury-related disability entitling him to further compensation to wage loss or medical treatment.

On September 25, 1996 Dr. Harrison stated that appellant sustained an acute thoracolumbar strain, without neurological involvement, directly related to his federal work. Dr. Harrison stated that appellant was lifting heavy boxes prior to his acute injury in March 1995. He stated that appellant continued to complain of mid-thoracic back pain without neurological complaints. Dr. Harrison stated that physical examination revealed tight paraspinal muscles with a negative straight leg test. He diagnosed a chronic thoracolumbar strain, with a need for an exercise program. Dr. Harrison stated that appellant should not lift over 20 pounds.

On October 4, 1996 Dr. Obato stated that she reviewed appellant's medical records and indicated that appellant's treating physician stated that from December 6, 1995 through February 27, 1996 appellant was released to modified work with no lifting of more than 15 pounds and that from February 28 through June 19, 1996 appellant was not to lift more than 20 pounds.

By decision dated October 31, 1996, the Office terminated appellant's compensation for wage loss beginning January 3, 1996 and for medical treatment beginning October 31, 1996. In an accompanying memorandum, the Office found that Dr. Harrison's September 25, 1996 report and Dr. Obato's October 4, 1996 report were entitled to little weight because they were conclusory. The Office further indicated that Dr. Harrison placed too much weight on appellant's recitation of symptoms and limitations and noted that they were not supported by Dr. Harrison's physical findings. The Office found that the weight of the evidence rested with the detailed and well-reasoned opinion of Dr. Fogelberg which was supported by his physical findings.

The Board finds that the Office met its burden in terminating appellant's compensation for wage loss beginning January 3, 1996 and for medical treatment beginning October 31, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.³

¹ 5 U.S.C. §§ 8101-8193.

² *Frederick Justiniano*, 45 ECAB 491 (1994).

³ *Id.*

Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.⁴ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁵

In the present case, Dr. Fogelberg, a Board-certified orthopedic surgeon, provided a well-reasoned opinion indicating that appellant required no further medical treatment and that he could return to his usual occupation. In reaching this conclusion, Dr. Fogelberg relied on an extensive physical examination which revealed that appellant's range of motion was not limited by his back injury and that appellant demonstrated no elbow abnormalities. Although Dr. Fogelberg noted pain in the lumbar thoracic junction, he recorded that appellant indicated that this pain would not preclude a return to his previous work. Dr. Fogelberg's opinion is, therefore, supported by his physical findings. In addition, Dr. Fogelberg's opinion is supported by the opinion of Dr. Moy, a Board-certified internist, who opined that appellant's thoracic strain would resolve. In contrast, Dr. Harrison, appellant's treating physician, Board-certified in internal medicine and preventive medicine, indicated that appellant had continuing disability due to an acute thoracolumbar strain. Dr. Harrison, however, admitted that he anticipated that appellant's symptoms would resolve and that he could not ascertain why appellant's condition had not improved. Moreover, Dr. Harrison failed to explain his conclusion of continued employment-related disability in light of his physical findings. Dr. Fogelberg's opinion is therefore entitled to more weight than Dr. Harrison's opinion.⁶ In addition, the report of Dr. Aguilar, a chiropractor, lacks probative value because the record contains no x-ray evidence of a subluxation⁷ and the opinion of Dr. Obato fails to address the issue of continuing disability or need for medical treatment. Accordingly, the opinion of Dr. Fogelberg constitutes the weight of the medical evidence and the Office properly terminated appellant's compensation for wage loss beginning January 3, 1996 and for medical treatment beginning October 31, 1996.

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995).

⁷ *See Bruce Chameroy*, 42 ECAB 121 (1990).

The decision of the Office of Workers' Compensation Programs dated October 31, 1996 is affirmed.

Dated, Washington, D.C.
January 7, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member