

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. SHEPHERD and U.S. POSTAL SERVICE,
POST OFFICE, Louisville, Ky.

*Docket No. 98-2468; Submitted on the Record;
Issued July 2, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of May 16, 1997.

On August 13, 1994 appellant, a 60-year-old postal worker, sustained an injury to her lower back while trying to unlock a mail pouch. She filed a Form CA-1 claim for benefits based on traumatic injury on August 18, 1994, which the Office accepted for low back strain. On December 2, 1994 appellant filed a Form CA-2 claim for recurrence of disability. She asserted that the anti-inflammatory medicine she was taking for her lower back injury, Lodine, caused bleeding in her colon. The Office accepted appellant's claim for aggravation of colitis and aggravation of low back strain by letter dated February 8, 1995. Appellant returned to limited duty on January 24, 1995.

In a June 5, 1995 letter to Dr. Gehrig M. Robinson, Board-certified in colon and rectal surgery and who had treated appellant for her colitis condition, the employing establishment requested an opinion as to whether the aggravation of appellant's colitis secondary to the Lodine had ceased and whether her present symptomatology was related to her preexisting colitis or to the effects of Lodine.

In a report dated July 12, 1995, Dr. Robinson stated, "I would feel that the Lodine probably is not related to her present situation. [Appellant], as you know, has inflammatory bowel disease and is presently improving."¹

In a report dated July 18, 1996, Dr. William L. Voskuhl, a Board-certified family practitioner, stated that appellant had a history of colitis and rectal bleeding and that during past flare-ups it had taken many months for her symptoms to completely resolve. He advised that he

¹ On October 30, 1995 Dr. Robinson performed a colonoscopy and biopsy on appellant and concluded that appellant had inflammatory bowel disease of the rectum and sigmoid colon.

agreed that the Lodine was not presently contributing to her colitis but it was the direct cause of the flare-up that began with her employment injury and the taking of the Lodine. Dr. Voskuhl opined that appellant's August 13, 1994 injury and the medication she took as a result of this injury did cause her colitis.

By decision dated September 5, 1996, the Office found that, based on Dr. Robinson's reports, appellant was no longer entitled to continuing compensation on the grounds that her injury-related disability had ceased.

In a letter dated September 26, 1996, appellant requested an examination of the written record by an Office hearing representative.

By decision dated December 2, 1996, an Office hearing representative vacated the September 5, 1996 decision, finding that the medical evidence was not sufficient to establish that residuals from appellant's August 13, 1994 employment injury had ceased. The hearing representative remanded the case to the district office for further development of the medical evidence as to appellant's low back and gastrointestinal conditions.

In order to determine appellant's current condition, the Office scheduled medical examinations for appellant with Dr. Robert F. Baker, a Board-certified orthopedic surgeon and Dr. Bhagwant Borkar, Board-certified in internal medicine and a specialist in gastroenterology.

In a report dated January 29, 1997, Dr. Baker reviewed appellant's medical records and a statement of accepted facts and indicated his findings on physical examination. Dr. Baker stated that appellant had, by history, a chronic low back sprain superimposed upon long-standing degenerative arthritis and degenerative disc disease which was "certainly" consistent with her age. He stated that, with regard to "the actual causality of her present problem," he believed appellant had mostly likely sustained a lumbar sprain superimposed upon her asymptomatic underlying structural problems, including arthritis, degenerative disc disease, osteopenia and a generalized weakened body habitus because of her long-term colitis and related medications. In addition, Dr. Baker opined that due to her age and the generalized findings in her back, which were not all caused by the lifting incident, he would not recommend lifting over 20 to 25 pounds or repetitive lifting, bending, stooping or twisting. Dr. Baker stated that appellant should ideally be able to change positions without prolonged standing, sitting, or walking; without these limitations, he added, there was no reason why appellant could not return to a normal workday schedule. Dr. Baker advised that these restrictions were permanent, and that she had reached maximum medical improvement from her August 13, 1994 employment injury.

In a supplemental report dated February 26, 1997, Dr. Baker attributed most of the cause for appellant's continuing complaints to her underlying degenerative lumbar arthritis and disc disease, which was present prior to the injury of August 13, 1994. In a supplemental report dated April 3, 1997, he opined that, were it not for the underlying degenerative lumbar arthritis and disc disease, the usual and customary low back sprain resolves within three to six months and therefore, the work restrictions he outlined were mainly for underlying degenerative arthritis and disc disease. Dr. Baker stated in response to an April 9, 1997 Office inquiry that, although appellant's August 13, 1994 low back strain aggravated her underlying degenerative problems, the objective findings did not support any permanent aggravation.

In a report dated January 30, 1997, Dr. Borkar disputed appellant's claim that her ulcerative colitis was aggravated by her ingestion of Lodine. He noted that Lodine is a nonsteroidal anti-inflammatory drug which caused peptic ulceration and gastrointestinal bleeding in one percent of the population after taking the drug for about three months, but which was not shown to cause rectal bleeding or exacerbation of ulcerative colitis. Dr. Borkar further found that there was no evidence of active ulcerative colitis in appellant since rectal biopsies performed since 1995 had not revealed any abnormality. Therefore, Dr. Borkar stated, he did not find any causal relationship between Lodine and her rectal bleeding. Dr. Borkar concluded:

"It is my medical opinion that her preexisting condition of ulcerative colitis was not worsened or made more severe by taking Lodine for about a week. Thus, I fully agree with her colorectal surgeon Dr. Robinson, that [her] rectal bleeding and colitis is not related to Lodine. [Appellant] is suffering from intermittent episodes of rectal bleeding since 1977 and she had several flare-ups of her disease until 1988. Thus, [appellant's] continued symptomatology is due to her preexisting colitis and not due to Lodine which she took for about a week. This medical opinion is [based] upon a complete physical examination, review of medical literature and all laboratory results."

In a notice of proposed termination dated April 14, 1997, based on the opinions of Drs. Baker and Borkar, the Office found that the weight of the medical evidence demonstrated that appellant no longer had any residuals from the August 13, 1994 employment injury.

Appellant submitted a Form CA-7 claim for compensation claiming compensation beginning September 14, 1996 and a six-page factual statement in opposition to the Office's proposed termination.² Appellant also submitted a May 6, 1997 Form CA-20 physician's report from Dr. Voskuhl, indicating that appellant was permanently and totally disabled due to a severe low back strain and rectal bleeding secondary to Lodine. He also submitted a report dated May 6, 1997 in which he stated:

"[Appellant] has been continuously under our care for [an employment-related injury] she sustained on [August] 13[,] [19]94 up to today's date. She has not been released and I feel she has sustained a permanent injury and is totally and permanently disabled. I feel that her back injury and the taking of Lodine aggravated her preexisting colon problem with resulting rectal bleeding. [Appellant's] condition remains unchanged."

By decision dated May 16, 1997, the Office terminated appellant's compensation, finding that the weight of the medical evidence established that she no longer suffered from residuals of her August 13, 1994 employment injury.

² In this statement, appellant asserted that she worked 11 hours per week on restricted duty until such duty was terminated on August 13, 1996 and that the employing establishment terminated her effective September 14, 1996. Appellant submitted a September 9, 1996 letter from the employing establishment which verified the September 14, 1996 termination from her limited-duty assignment.

By letter dated June 11, 1997, appellant requested an examination of the written record. In support of her claim, appellant submitted a June 11, 1997 report from Dr. Voskuhl who stated:

“It is a documented medical fact ... that [non-steroidal anti-inflammatory drugs]³ effect the large intestine. These effects include colitis, complications of diverticular disease, REACTIVATION OF INFLAMMATORY BOWEL DISEASE, BLEEDING [emphasis in original] and perforation. According to this documented fact blood in the stool can start within a few days after initiating NSAID therapy. In isolated cases reports link reactivation of inflammatory bowel disease to the use of NSAIDs.”⁴

Dr. Voskuhl reiterated his opinion that appellant sustained an aggravation of her preexisting ulcerative colitis as a direct result of her back injury and the taking of Lodine for her back injury.

By decision dated May 26, 1998, the Office hearing representative affirmed the May 16, 1997 decision terminating compensation. The Office hearing representative found that Dr. Voskuhl’s June 11, 1997 report did not contain a fully rationalized opinion regarding the issue of causal relationship.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁵ 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.⁶

In the present case, the Office based its May 16, 1997 decision to terminate appellant’s compensation on the medical reports of Drs. Baker and Borkar, both of whom found that appellant was not currently suffering residuals from her accepted employment conditions. With regard to appellant’s accepted low back injury, Dr. Baker opined that appellant had probably sustained a lumbar sprain superimposed upon underlying structural problems such as arthritis and degenerative disc disease, which resulted in certain physical restrictions and were apparently aggravated by the lumbar sprain, but would not prevent her from returning to a normal work

³ Dr. Voskuhl used the acronym “NSAIDS”, apparently as an abbreviation for nonsteroidal anti-inflammatory drugs.

⁴ In support of his opinion that appellant’s ingestion of Lodine had reagravated her preexisting colitis, Dr. Voskuhl attached a copy of a subsection from a medical textbook, *Micromedex, Inc.*, Volume 93 (1997), which discussed the potentially deleterious effects of nonsteroidal anti-inflammatory drugs on the large intestine. These effects included colitis, in addition to the other conditions mentioned in his June 11, 1997 report.

⁵ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁶ *Id.*

schedule. He advised that appellant's continuing complaints were caused by her underlying degenerative lumbar arthritis and disc disease, which were present prior to the August 13, 1994 employment injury. Dr. Baker indicated that, were it not for these underlying conditions, the usual and customary low back sprain would have resolved within three to six months and he concluded that appellant's objective findings did not support any permanent aggravation. As appellant has not submitted any rationalized, probative medical evidence to contradict Dr. Baker's opinion that appellant's low back sprain had resolved, the Board affirms the Office's finding that appellant had no employment-related low back disability as of May 16, 1997.

With regard to the aggravation of appellant's colitis condition, the Office found based on Dr. Borkar's January 30, 1997 opinion that this condition had resolved. He indicated that appellant's continued symptomatology was attributable to her preexisting colitis, not her ingestion of Lodine, and he based this opinion on "a complete physical examination, review of medical literature and all laboratory results." In addition, the record contains the June 12, 1995 opinion from Dr. Robinson, the Board-certified colon and rectal surgeon, who initially treated appellant from August 1994 through April 1996 for her colitis condition and other gastroenterological problems, that "the Lodine probably is not related to her present situation. [Appellant] ... has inflammatory bowel disease and is presently improving."

The only medical evidence appellant submitted in support of her claim that she still suffered residuals from the aggravation of her preexisting colitis were the medical reports from Dr. Voskuhl, which did indicate causal relationship between Lodine and appellant's rectal bleeding, but failed to provide a rationalized, probative medical opinion that this aggravation lasted from August 1994 through May 16, 1997, the date of the Office's termination decision. He cited medical literature indicating that, in rare cases, the ingestion of nonsteroidal, anti-inflammatory drugs such as Lodine can create side effects in the large intestine such as colitis, complications of diverticular disease, reactivation of inflammatory bowel disease, bleeding and perforation. Dr. Voskuhl, however, did not submit medical evidence sufficient to establish that the aggravation of appellant's colitis caused by her ingestion of Lodine constituted an ongoing, long-term condition capable of lasting for an indefinite period stretching over a course of several years. He also indicated in his July 18, 1996 report that he agreed Lodine was not presently contributing to appellant's colitis, but advised that it was the direct cause of the flare-up that began with her 1994 employment injury and her ingestion of Lodine. Dr. Voskuhl's reports, however, are not sufficient to constitute a rationalized, probative medical opinion establishing that, as of May 16, 1997, appellant still had residuals from the aggravation of appellant's colitis allegedly caused by her ingestion of Lodine. The Board therefore affirms the Office's May 16, 1997 finding that this condition had resolved as of that date.

The Board holds that the Office properly found that appellant no longer had any residuals from her August 13, 1994 employment injury based on the probative, well-rationalized medical opinions of Drs. Baker and Borkar, which constituted sufficient medical rationale to support the Office's decision to terminate appellant's compensation. The Board therefore affirms the Office's May 26, 1998 decision affirming its May 16, 1997 termination decision.

The decision of the Office of Workers' Compensation Programs dated May 26, 1998 is hereby affirmed.

Dated, Washington, D.C.
July 2, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member