

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD A. TALLEY and U.S. POSTAL SERVICE,
POST OFFICE, Providence, R.I.

*Docket No. 96-2209; Submitted on the Record;
Issued March 18, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation benefits effective October 10, 1992.

On January 29, 1991 appellant, then a 41-year-old van driver, filed a notice of traumatic injury alleging that, on that same date, he injured his back, left hand and left leg when he picked up a bag of mail in the performance of his federal employment. On February 21, 1991 the Office accepted the claim for a lumbosacral sprain and appellant received appropriate compensation benefits. Appellant returned to limited duty on February 1, 1991. On July 26, 1991 appellant filed a notice of recurrence of disability alleging that he suffered a recurrence on June 12, 1991. On December 10, 1991 the Office accepted appellant's claim for a recurrence of disability and it again provided appropriate compensation benefits.

On February 6, 1992 Dr. Melvyn M. Gelch, appellant's treating physician and a Board-certified neurological surgeon, stated that appellant presented him with back pain and left-sided sciatica. Dr. Gelch's physical examination showed straight leg raising limited to about 70 degrees on the left and unlimited on the right. He stated that the left ankle reflex was diminished, that spinal column percussion and compression were slightly uncomfortable and that the head drop test produced back pain. Dr. Gelch stated that appellant was quite symptomatic, but that he had no diagnosis because his myelogram and postmyelographic computerized axial tomography (CAT) scan were negative. He stated that a magnetic resonance imaging (MRI) and an electromyography (EMG) would be performed.

On February 26, 1992 Dr. Jerrold Rosenberg, Board-certified in physical and rehabilitation medicine, interpreted an EMG and a nerve conduction velocity (NCV) study as essentially normal. He stated that there was no evidence for an acute root level injury which he could identify electronically. Dr. Rosenberg stated that the asymmetrical H reflex was nondiagnostic, but that it could suggest early or mild involvement. Finally, he concluded that there were no findings to explain the degree of current pain.

On May 6, 1992 the Office requested an updated report from Dr. Gelch.

On June 8, 1992 the Office referred appellant, along with a statement of accepted facts, to Dr. Edwin J. Madden, a Board-certified orthopedic surgeon.

On June 24, 1992 Dr. Madden conducted his physical examination. He recorded the history of appellant's January 29, 1991 injury and the treatment he received for it. Dr. Madden noted appellant's complaints that he was completely disabled and that his back pain, left sciatica and parasthesias in his left leg prohibited him from normal functions. He recorded that appellant was unable to stand, walk or sit for any length of time without developing pain and paresthesias in his left leg. Dr. Madden noted that appellant told him if he walked for more than 30 minutes he limped and that he had trouble going up and down stairs. He also reviewed appellant's past history of injury. Dr. Madden noted that on July 1, 1988 appellant picked up a 30-pound relay and felt sharp pain in the dorsal area with muscle spasms which required chiropractic treatment. He also noted that appellant suffered an upper back injury on November 27, 1988 from carrying boxes which resulted in the transfer to his position as a van driver. Dr. Madden's physical examination revealed that appellant moved slowly with guarded steps and that he could not walk on his tiptoes or heels because of weakness and pain in his left leg. He indicated that appellant could not squat and that he was slow getting on and off the examining table and in turning from the prone to supine position. His neck examination was normal, except that forward flexion of the cervical spine resulted in pulling down the back, and his examination of the upper extremities was normal. Dr. Madden's back examination showed a straight spine without muscle spasms. He noted forward flexion to 50 degrees with pain radiating down the left buttock through the back of the left leg to the foot. Dr. Madden indicated that extension of 15 degrees referred pain to the lumbosacral joint, and the lateral flexion at 30 degrees and lateral rotation at 50 degrees bilaterally caused pain in the low back. He noted tenderness in the lumbosacral joint and left sacroiliac joint. Dr. Madden's examination of the lower extremities revealed atrophy of the left leg. Straight leg raising sitting was free and painless, but straight leg raising supine on the left was 40 degrees with pain in the low back. Flexion of the left hip onto the chest while supine also caused low back pain. Bilateral femoral nerve stretch also caused low back pain. Dr. Madden diagnosed chronic low back strain with left sciatica, subjective and an extreme psychosomatic overreaction to that injury. He stated that the symptoms are related to appellant's January 29, 1991 injury. Dr. Madden stated that appellant's symptoms were not substantiated by objective findings because the majority of studies appellant had on his lumbar spine, including normal x-rays, lumbar myelogram, CAT scan, MRI, EMG and NCV were normal. He stated that from an orthopedic standpoint appellant could return to his regular employment.

On July 30, 1992 the Office requested that Dr. Gelch review Dr. Madden's findings.

On August 13, 1992 Dr. Gelch indicated that appellant fell recently and that he had persistent complaints of back pain and some left lower extremity pain. He stated that appellant's myelogram and other studies were negative for a surgical lesion and that appellant was discharged from follow-up.

On September 10, 1992 the Office issued a notice of proposed termination of compensation. The Office indicated that appellant's treating physician, Dr. Gelch, had released

appellant from follow-up and that Dr. Madden found appellant capable of performing his regular work. The Office allowed appellant 30 days to present evidence or argument to the contrary.

By decision dated October 15, 1992, the Office terminated appellant's compensation benefits effective October 10, 1992 inasmuch as the weight of the medical evidence, as represented by Dr. Madden's uncontradicted, well-rationalized opinion, established that appellant's employment-related disability ceased on June 24, 1992.

Following a hearing held on October 25, 1993, appellant resubmitted medical evidence that predated Dr. Gelch's August 13, 1992 report releasing appellant from follow-up care and Dr. Madden's June 24, 1992 examination finding that appellant was able to return to his regular work. This evidence included an October 20, 1989 report from Dr. Pobzeznik, a chiropractor, diagnosing a chronic cervico-thoracic strain causally related to an accident appellant experienced on July 11, 1998. It also included Dr. Pobzeznik's supplementary report on November 17, 1992 indicating that he continued to treat appellant for his chronic cervico-thoracic strain. He stated that appellant attempted to return to carrying the mail and aggravated this condition. Appellant also submitted an August 6, 1991 report from Dr. Eugene Russo, a specialist in neurological surgery, diagnosing a lumbar sprain and sciatic radiculopathy directly related to appellant's January 29, 1991 injury. He found that appellant was totally disabled. Appellant also submitted an April 4, 1991 report from Dr. Ronald P. Hantman, a Board-certified orthopedic surgeon, indicating that appellant's MRI was negative and that he thought appellant had a degeneration of the L4-5 disc, a lateral disc herniation, and a radiculopathy on the basis of other causes than the spinal cord. Appellant also submitted a September 20, 1991 report from Dr. Albert A. Ackil, a neurologist, indicating that appellant had a lumbar radiculopathy causally related to his January 29, 1991 injury and that he was unable to work. Appellant also resubmitted a February 6, 1992 report from Dr. Gelch, an x-ray dated April 6, 1991 interpreted as normal by Dr. Debra Kimball, a Board-certified radiologist, and an MRI of the spine dated February 7, 1992 in which Dr. Oliver Cvitanic, a Board-certified radiologist, interpreted as showing a disc bulge at L4-5 and L5-S1.

In addition, appellant resubmitted Dr. Madden's work restriction form and Dr. Rosenberg's February 26, 1992 report.

By decision dated March 7, 1994, the Office hearing representative affirmed the Office's October 15, 1992 decision terminating benefits. The hearing representative found that the weight of the evidence rested with the opinion of Dr. Madden who provided the only well-reasoned opinion of record addressing whether appellant remained disabled from his employment-related injury.

Appellant subsequently requested reconsideration. In support, appellant submitted a January 12, 1994 report from Dr. Paul Powers, a chiropractor, indicating that appellant remained disabled from work due to his S1 radiculopathy. Appellant also submitted bills and treatment records from Dr. Pobzeznik, a chiropractor.

By decision dated May 9, 1995, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of its previous decision. In an accompanying memorandum, the Office noted that the reports of a

chiropractor were entitled to no weight in this because the record is devoid of evidence of a subluxation. The Office further indicated that Dr. Madden's opinion was entitled to the weight of the evidence because he offered the only rationalized opinion of record addressing the issue of disability.

On January 4, 1996 appellant again requested reconsideration. In support, appellant submitted a report from Dr. Harold F. Goodman, a Board-certified orthopedic surgeon. He examined appellant on December 14, 1995. Dr. Goodman noted that appellant complained of low back pain and recorded the history of appellant's January 29, 1991 injury. He also recorded appellant's treatment history. Dr. Goodman noted that appellant stated that he could not stand, walk or sit for any period without developing pain and parasthesias in his left leg. He further noted that appellant could not walk for more than 30 minutes without limping and dragging his left leg and that he had trouble using stairs. Dr. Goodman noted appellant's July 1, 1988 employment injury. He diagnosed chronic low back strain with left sciatica, S1 radiculopathy. Dr. Goodman stated that the injuries to the low back and left lower extremity were causally related to the January 29, 1991 injury. He indicated that this was supported by his examination which showed sensory loss of vibratory sensation and pin prick in the S1 root distribution and a decrease in the Achilles reflex. Dr. Goodman indicated that these findings were present in the opinions of Dr. Hartman and others. He further noted that EMG and NCV evaluations showed a consistent finding of a reduction of the H reflex on the left side and that Dr. Ackil found evidence of early left L5-S1 radiculopathy. Dr. Goodman indicated that his diagnosis of H reflex abnormality signifying radiculopathy was supported by medical literature. He concluded that appellant's radiculopathy rendered him disabled from his regular work.

By decision dated April 8, 1996, the Office again reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of its prior decision. In an accompanying memorandum, the Office found that Dr. Goodman's report was entitled to little weight because he failed to mention appellant's March 28, 1991 injury and other numerous preemployment injuries and because, contrary to Dr. Goodman's assertion, the record established that EMG/NCV studies were normal. The Office also indicated that Dr. Goodman's referencing of medical literature had little probative value on the specific facts of this case.

The Board finds that this case is not in posture for a decision.

In the present case, the Office found in its October 15, 1992 decision terminating benefits that the weight of the medical evidence rested with opinion of Dr. Madden who opined that appellant was not disabled and could return to work. The Office properly determined that Dr. Madden's opinion was entitled to the weight of the medical evidence because he provided a well-rationalized opinion which was not contradicted by appellant's treating physician.¹ Subsequently, appellant submitted a report on reconsideration from Dr. Goodman indicating that appellant had an employment-related disability. Both Dr. Madden and Dr. Goodman based their opinions on a thorough review of the medical record, including the objective evidence and on their extensive physical examinations. Moreover, each physician explained his opinion in light of these factors. When their are opposing medical reports of virtually equal weight and

¹ See *Melvina Jackson*, 38 ECAB 443 (1987).

rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Federal Employees' Compensation Act,² to resolve the conflict in the medical opinion.

As an unresolved conflict exists in the medical opinion evidence, this case is remanded to the Office for referral to an impartial medical specialist. After such further development as necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated April 8, 1996 is hereby set aside and the case is remanded to the Office for further development consistent with this opinion.

Dated, Washington, D.C.
March 18, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² 5 U.S.C. § 8123(a); see *Martha A. Whitson (Joe D. Whitson)*, 36 ECAB 370 (1984).