

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE R. CARSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Miami, Fla.

*Docket No. 96-2607; Submitted on the Record;
Issued March 25, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had any disability or injury-related residuals after June 26, 1996, causally related to her January 22, 1994 accepted lumbosacral strain.

On April 13, 1994 appellant, then a 57-year-old food services supervisor, filed a claim alleging that on January 22, 1994 she injured her lower back and leg. Appellant sought treatment on January 27, 1994 at the employing establishment health unit and was diagnosed with chronic low back pain with myofascial pain syndrome. On May 4, 1994 appellant submitted an April 29, 1994 report from Dr. David G. Lehrman, a Board-certified orthopedic surgeon and appellant's treating physician, which noted that she had been under his care since 1984 for low back problems, that she had a prior herniated disc and lumbar laminectomy, that she had developed degenerative osteoarthritis and disc degeneration over the years partially as a result of her laminectomy, and as a result of her progressive disc degeneration. He stated that appellant had "recent on the job incidents" which exacerbated her preexisting lumbar problems, and he discussed her August 6, 1992 injury, which was enhanced by preexisting spondylosis and a 1990 fall. A January 22, 1994 work injury was not mentioned.

The employing establishment controverted appellant's claim and provided evidence documenting that, for the period of July 16, 1959 through January 22, 1994, appellant had filed 34 workers' compensation claims, that 20 of these claims were for low back injury, and that 4 other back injuries had also occurred outside of her employment. It noted that appellant's last four back claims had been denied based on medical evidence substantiating that her condition was the result of chronic lumbosacral disc disease. The employing establishment later noted that

since appellant's January 22, 1994 injury claim she had filed an additional claim for low back injury occurring on September 1, 1995.¹

By decision dated July 8, 1994, the Office of Workers' Compensation Programs denied appellant's claim for failure to establish fact of injury.

By letter dated August 4, 1994, appellant requested an oral hearing before an Office hearing representative.

At the hearing held October 24, 1995, appellant described her January 22, 1994 injury and testified as to the progression of her condition. She admitted that she had filed numerous workers' compensation claims, several for her back, which she stated had been accepted by the Office. Subsequent to the hearing appellant submitted additional evidence, including information on her other claims.

Appellant submitted a November 9, 1995 letter from Dr. Lehrman which described her January 22, 1994 injury as follows:

“[Appellant] was initially seen by me on February 1, 1994 with a history of having to engage in prolonged standing activities at her job at the [employing establishment] and as a result of the extra time in the standing posture she developed progressive low back pain which intensified over the 24 hour period. The patient continued to work, however, approximately [at] 2:00 p.m. [the] patient was unable to stand, walk, or engage in any movement without severe back pain.”

Dr. Lehrman noted that on February 2, 1994 appellant “was in marked distress with a marked limitation of movement and midlumbar tenderness, though her neurological examination was negative. My diagnosis was exacerbation of acute compressive lumbar radiculitis.” He noted that appellant improved with treatment and that on March 4, 1994 appellant was well and working, but “[o]n April 1, 1994 [appellant] had a regression with more pronounced pain in the low back and leg discomfort associated with activity.” Dr. Lehrman noted that appellant was last seen on May 9, 1994: “[a]t that time I felt she could see me on a prn [*pro re nata*] basis.” He stated: “I feel that [appellant] has a vulnerable lumbosacral spine and has had repetitive low back injuries which caused exacerbations of her low back problems. I feel that her prolonged standing activities associated with her January 1994 exacerbation are definitely work related and are part of the exacerbation cycle that [she] has had with her low back symptoms.”

By decision dated December 14, 1995, the hearing representative remanded appellant's case for further development.

¹ Appellant stopped work on September 30, 1995 complaining of chest pain; later she submitted medical evidence dated October 13 and October 16, 1995 from Dr. Lehrman stating that her disability was due to lumbosacral sprain which occurred when a patient fell on her on September 1, 1995, and that she was totally disabled through November 6, 1995. Dr. Lehrman noted the original injury as occurring in 1982. The Board notes that this subsequent claim is not now before the Board on this appeal; *see* 20 C.F.R. § 501.2(c).

By letters dated June 5, 1996, appellant was referred, along with a statement of accepted facts and the relevant case record, to Dr. Elliot N. Lang, a Board-certified orthopedic surgeon, for a second opinion examination.

By report dated June 26, 1996, he reviewed the medical record and reported his findings upon physical examination. Dr Lang opined:

“It is my impression based upon my evaluation of [appellant’s] x-rays, physical examination and medical records at this time that the injury on January 22, 1994 was just a mild strain to the lumbosacral region which has resolved completely with respect to [appellant] [as] of this date. Her symptoms that she is complaining about are as a result of her long standing low back strain which has been well-documented in the previous records.”

Dr. Lang noted that Dr. Lehrman had erroneously stated that appellant had a laminectomy done in the past and had progressive disc degeneration, indicating:

“X-rays taken in my office on this date disprove the presence of disc degeneration and all the lamina are in place. [Appellant] states emphatically that she had no previous surgery so that my only conclusion is that Dr. Lehrman was wrong in his statement of April 29, 1994.... As to [appellant’s] current condition, her general medical examination with respect to her back is within normal limits. There are no objective findings with respect to her back as of this date.... I do not see any disability with respect to [appellant] concerning her back whether permanent or temporary and any temporary disability she may have had after the 1994 incident is now resolved. There are no objective findings either in any of Dr. Lehrman’s reports or in my examination to indicate any permanency with respect to [appellant’s] back condition.”

By decision dated July 23, 1996, the Office accepted that appellant sustained a mild lumbosacral strain on January 22, 1994, but disallowed any medical benefits after June 26, 1996 because the injury had resolved without residuals no later than that date. Also by decision dated July 23, 1996, the Office denied appellant’s request for continuation of pay finding that she did not file her claim within 30 days of the incident.²

The Board finds that appellant had no disability or injury residuals after June 26, 1996, causally related to her January 22, 1994 accepted lumbosacral strain employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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

² Appellant did not appeal this aspect of her claim.

³ *Harold S. McGough*, 36 ECAB 332 (1984).

employment.⁴ However, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁵ To terminate authorization for medical treatment, the Office must further establish that appellant no longer has residuals of an employment-related condition that requires further medical treatment.⁶ The Office met its burden to terminate both in this case, with the well-rationalized report of Dr. Lang.

In this case, the Office accepted appellant's claim for mild lumbosacral strain as a result of her January 22, 1994 standing incident, based on the well-rationalized medical report of Dr. Lang. He further stated that based upon his extensive and thorough evaluation, including current physical examination findings, current x-ray findings and a comprehensive review of appellant's medical records, the injury had completely resolved as of his examination on June 26, 1996. Dr. Lang noted that appellant's continuing complaints were as a result of her history of long-standing back problems, and that her back examination at that time was within normal limits, and without any objective findings. He opined that appellant had no disability with respect to her back, either temporary or permanent, and that any temporary disability she might have had after the 1994 incident was now resolved. Dr. Lang additionally noted that none of Dr. Lehrman's reports documented any objective findings to indicate any permanency with respect to appellant's back condition.

In *Naomi Lilly*⁷ the Board stated:

“In assessing the medical evidence, the number of doctors supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value, its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into such evaluation.”⁸

In the present case, the report of Dr. Lang, the second opinion specialist, constitutes the weight of the rationalized medical evidence because it is convincing, it is based upon a complete and well-documented factual and medical history of the appellant and of the condition,⁹ and a thorough and comprehensive examination of appellant, it is consistent with objective physical

⁴ See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁶ See *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

⁷ 10 ECAB 560, 573 (1959).

⁸ Similar factors noted in the Office's procedure manual include the qualifications of the specialist, rationale, factual basis, consistency with physical findings, comprehensiveness and equivocalness; see *Melvina Jackson*, 38 ECAB 443 (1987) (addressing factors that bear on the probative value of medical opinions)

⁹ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

findings and of reasonable medical certainty,¹⁰ and was well rationalized and supported by physical evidence noted in the record.¹¹

In contrast, the most current report of record from Dr. Lehrman related to appellant's condition, continuing disability and residuals from her January 1994 injury was included as a comment in his November 9, 1995 letter to the Office. He indicated that appellant was last seen on May 9, 1994 at which time he advised her that she could see him on an "as needed" basis. At that time he did not report any problems, continuing disability or objective injury-related residuals. Therefore, Dr. Lehrman's May 9, 1994 evaluation of appellant does not support continuing disability or the presence of significant residuals. Thereafter, he saw appellant on October 13, 1995 related to a September 1, 1995 back injury which he opined caused disability due to lumbosacral strain through November 6, 1995. No mention was made in that report of appellant's January 22, 1994 injury. Therefore, this report does not support that appellant had continuing disability or injury residuals due to the January 22, 1994 mild low back strain.

In his November 9, 1995 letter, Dr. Lehrman gave a history of January 22, 1994 injury from standing, which intensified over 24 hours and then at 2:00 p.m. became disabling, precluding appellant from standing, walking or moving without severe back pain. He did not, however, explain why, if this history was accurate, appellant was able to work for five days before even seeking treatment at the employing establishment health unit, and why she did not see him until February 1, 1994, nine days later.¹² Dr. Lehrman noted that on February 2, 1994 he diagnosed acute compressive lumbar radiculitis. The Board notes that, neither at that time, nor thereafter did he diagnose lumbosacral strain. On March 4, 1994 Dr. Lehrman noted that appellant had improved with treatment and was well and working. This report supports that any injury-related disability and residuals had ceased at that time. Dr. Lehrman reported that on April 1, 1994 appellant had "regression" with more back pain, but he did not explain how or why this happened, what anatomical or physiological process was involved, or how it was related to the January 22, 1994 incident or injury, and did not provide any objective basis to support this contention. Therefore, this report does not support that appellant had continuing disability due to her January 22, 1994 back strain. Dr. Lehrman noted his May 9, 1994 visit (discussed above) with appellant, and then summarized his November 9, 1995 letter, stating that appellant had a "vulnerable lumbosacral spine and has had repetitive low back injuries which caused exacerbations of her low back problems." He then opined that appellant's January 1994 exacerbation was definitely work related, and was "part of the exacerbation cycle [appellant] had with her low back symptoms." Dr. Lehrman did not identify any continuing disability or any remaining objective residuals of appellant's January 22, 1994 mild low back strain. Consequently, his November 9, 1995 letter does not support that appellant had any continuing disability or injury residuals at that time.

¹⁰ See *Morris Scanlon*, 11 ECAB 384 (1960).

¹¹ See *William E. Enright*, 31 ECAB 426 (1980).

¹² The Board has frequently explained that medical conclusions based on inaccurate or incomplete histories are of little probative value, see *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete) as are medical conclusions unsupported by sound rationale. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

As none of Dr. Lehrman's reports after March 4, 1994 identify or substantiate continuing disability related to appellant's January 22, 1994 mild low back strain injury, there is no evidence of record to support that appellant had continuing disability as of June 26, 1996, causally related to her January 22, 1994 mild low back strain injury. As none of his reports after May 9, 1994 identify or substantiate any objective residuals causally related to appellant's January 22, 1994 back strain injury, there is no evidence of record to support that appellant had continuing injury-related residuals on or after June 26, 1996. Consequently, Dr. Lang's well-rationalized report constitutes the weight of the medical opinion evidence of record in establishing that as of June 26, 1996 appellant had no continuing disability or injury residuals requiring further medical treatment. Therefore, the Office has discharged its burden of proof to justify termination of appellant's compensation and entitlement to medical benefits after June 26, 1996.

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 23, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 25, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member