U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYLA J. WHITE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Rapid City, S.D.

Docket No. 97-1744; Submitted on the Record;
Issued March 11, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's medical benefits on the grounds that she had no continuing disability related to the accepted work injury; and (2) whether appellant established that she was entitled to wage-loss compensation from May 8, 1995 onward.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the November 26, 1996 decision of the hearing representative of the Office is in accordance with the facts and the law in this case and therefore adopts the findings and conclusions of the hearing representative regarding appellant's failure to meet her burden of proof in establishing that her recurrence of disability after May 8, 1995 was causally related to the October 1994 injury.

Following the hearing representative's decision, appellant requested reconsideration, stating that she would not have continued taking prescribed medications if she had not been disabled for work. Appellant added that the employing establishment retired her because no permanent light-duty work was available.

On January 30, 1997 the Office denied reconsideration on the grounds that the evidence submitted in support of appellant's request was insufficient to warrant review of its prior decision. The Office noted that appellant had provided no medical evidence supporting her claim for disability compensation.

On February 21, 1997 the Office issued a notice of proposed termination of medical benefits on the grounds that appellant's current physical problems were unconnected to the lumbar strain sustained on October 4, 1994, which had since resolved. On March 24, 1997 the Office terminated medical benefits on the grounds that the medical evidence failed to establish that appellant's present symptoms were related to the October 10, 1994 injury.

Appellant requested reconsideration, which was denied on April 14, 1997 without merit review and denied again on April 16, 1997 after the Office considered evidence appellant submitted and found two progress notes dated March 6 and April 3, 1997 insufficient to warrant modification of its prior decision.[1]

The Board finds that the Office improperly terminated appellant's medical benefits on the grounds that she required no further treatment for her work injury.[2]

Under the Act,[3] the Office has the burden of justifying modification or termination of compensation -- whether for disability or medical treatment -- once a claim is accepted and compensation paid.[4] Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation or medical benefits without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.[5]

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.[6] The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7]

In this case, the medical evidence fails to establish that appellant has no further need of medical treatment for the October 1994 lumbar strain. On December 29, 1994 appellant was

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[1] The record contains an April 30, 1997 decision issued by the Office after appellant filed an appeal with the Board. The Board and the Office cannot have jurisdiction over the same issue in the same case at the same time. 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993). Consequently, the Office had no jurisdiction to issue the April 30, 1997 decision and it is deemed null and void. *Cf. Douglas E. Billings*, 41 ECAB 880, 893 (1990) (finding that the Office had jurisdiction to issue a decision on a matter unrelated to the issue on appeal before the Board).

[2] Section 8103 of the Federal Employees' Compensation Act provides for the furnishing of "services, appliances and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation." While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure was incurred for treatment of the effects of an employment-related injury or condition. *Mamie L. Morgan*, 41 ECAB 661, 667 (1990). Thus, to be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable. *Debra S. King*, 44 ECAB 203, 209 (1992).

[3] 5 U.S.C. §§ 8101-8193.

[4] *William Kandel*, 43 ECAB 1011, 1020 (1992).

[5] *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

[6] *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

[7] *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

released for full duty by a physician's assistant who stated that appellant's back strain had resolved.[8]

In September 1995, nearly a year after the work injury, appellant was still taking two medications related to the accepted lumbar strain, Piroxicam as needed for pain and inflammation and Cyclobenzaprine as needed for muscle spasms. All her other medications were prescribed for nonwork-related conditions and diseases.

Appellant's treating physician, Dr. Dale E. Berkebile, a Board-certified orthopedic surgeon, stated on May 8, 1995 that appellant's computerized tomography scan was within normal limits and that she did not need surgical intervention. Dr. Frederick R. Entwistle, a Board-certified orthopedic surgeon who is also Board-certified in physical medicine and rehabilitation and who conducted a fitness-for-duty examination, found no evidence of neurological defect in appellant's back on July 28, 1995.

However, appellant's treating physician, Dr. Berkebile, stated on October 20, 1995 that appellant's back problems were related to "a definite injury" and required continued medication. While he provided no medical rationale for this conclusion, subsequent chart notes from 1996 to 1997 indicated that appellant continued to complain of back pain. Further, the progress notes dated March 6 and April 3, 1997, submitted in support of reconsideration, showed that appellant was still being prescribed medication for back pain.

While appellant failed to establish that she sustained any recurrence of disability resulting from the October 1994 lumbar strain, there is no medical evidence establishing that medication for this condition was no longer necessary. While appellant stopped work in May 1985 and also hurt her back in a September 1996 automobile accident, Dr. Berkebile stated on October 1, 1996 that appellant had chronic low back strain, indicating a need for ongoing treatment. In summary, the medical evidence which was found insufficient to establish a recurrence of disability is also insufficient to meet the Office's burden of proof in terminating medical benefits.

[8] 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).

The January 30, 1997 and November 26, 1996 decisions are affirmed and the April 14 and 16 and March 24, 1997 decisions are reversed.

Dated, Washington, D.C.
March 11, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member