

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JESSICA A. MASON and DEPARTMENT OF HEALTH & HUMAN SERVICES, REGIONAL PERSONNEL BRANCH OFFICE, Cleveland, OH

*Docket No. 99-326; Submitted on the Record;
Issued November 2, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation benefits effective December 11, 1994.

On February 1, 1983 appellant, then a 36-year-old personnel management specialist, sustained a lumbar strain in the performance of her federal employment. The Office subsequently approved surgery for an excision of the interspinous ligament L3-4 on June 17, 1985. The Office also accepted the claim for an adjustment disorder with depressive mood. Following a recurrence of disability, appellant received compensation for total temporary disability beginning July 21, 1986.

On October 19, 1992 Dr. Earl A. Brightman, appellant's treating physician and a Board-certified orthopedic surgeon, stated that appellant was unable to return to her former work due to recurrent low back pain. He stated that appellant's present problems were the result of a work-related injury which rendered her totally disabled.

On December 2, 1992 Dr. Brightman completed a work restriction evaluation, Form OWCP-5. He indicated that appellant could only perform intermittent sitting, walking, lifting, bending, squatting, climbing, kneeling, twisting and standing. Dr. Brightman stated that appellant could lift 0 to 10 pounds, but that she could not lift above her shoulders. He further indicated that appellant could not use her feet to operate foot controls or for repetitive movement and that she could not operate a motor vehicle. Dr. Brightman stated that appellant could not work eight hours per day, but indicated that appellant could work less than that amount on approximately January 10, 1993.

On June 10, 1993 the Office referred appellant to Dr. Gottfried K. Spring, a Board-certified psychiatrist and neurologist, for a second opinion examination. On July 7, 1993 he reviewed appellant's history and reported the results of his psychiatric examination which he performed on July 2, 1993. Dr. Spring indicated that appellant appeared well groomed and

walked into the office without difficulty. He noted that her speech was fluent and that she was well oriented to time, place and person. Dr. Spring stated that her fund of information was good and that her affect was appropriate. He found no evidence of depression. Dr. Spring indicated that appellant had a good appetite, that she slept well, and she had no obsessions or suicidal thoughts. He concluded that appellant was not totally disabled from work due to a psychiatric condition.

On June 21, 1994 the Office referred appellant to Dr. Loretta Peterson, a Board-certified orthopedic surgeon, for a second opinion examination. On July 11, 1994 she reviewed the history of appellant's injury and the treatment appellant received. Dr. Peterson noted that appellant complained of intermittent back pain. She found a decreased range of motion of the lumbosacral spine on forward flexion, extension and lateral flexion bilaterally. Dr. Peterson indicated, however, that appellant was able to walk on heels and toes bilaterally and able to squat. She, however, found no objective strength, sensory, or reflex abnormality. In this regard, Dr. Peterson noted no deficits in manual muscle testing of the lower extremities and that sensation to light touch and pinprick was intact. She found that reflexes were brisk and symmetrical, that no pathological reflexes were present and that cerebellar function was intact. Dr. Peterson concluded that appellant was not totally disabled due to residuals from her February 1, 1983 work injury and that she could perform light to sedentary work.

On September 20, 1994 the Office requested that Dr. Peterson clarify whether appellant could perform her usual work. On September 27, 1994 she responded that appellant could perform her usual work which involved a light to sedentary work load.

On October 7, 1994 the Office issued a "[n]otice of [p]roposed [t]ermination of [c]ompensation" on the basis that disability resulting from appellant's injury had ceased. In an accompanying memorandum, the Office indicated that the well-rationalized medical opinions of Drs. Spring and Peterson constituted the weight of the medical evidence. Appellant was allowed 30 days to submit additional evidence and an argument.

On October 26, 1994 Dr. Brightman noted that appellant continued to experience pain across the lumbosacral level and at the L3 level. He indicated that appellant had not worked since 1983 and stated that she would be unable to work an eight-hour job.

By decision dated November 14, 1994, the Office terminated appellant's entitlement to continuing compensation effective December 11, 1994 because the weight of the medical evidence established that appellant's work-related disability had ceased. In an accompanying memorandum, the Office indicated that the reports of Drs. Spring and Peterson remained the weight of the medical evidence.

On November 30, 1994 appellant requested a hearing which was held on June 20, 1995.

By decision dated July 27, 1995, the Office hearing representative affirmed the Office's November 14, 1994 decision terminating compensation benefits. The hearing representative found that the weight of the medical evidence rested with the well-rationalized opinions of Drs. Spring and Peterson who opined that appellant's work-related disability had ceased. The

hearing representative further noted that Dr. Brightman failed to provide a medical rationale for his conclusion that appellant remained disabled.

On August 30, 1995 appellant's representative appealed the decision of the Office hearing representative. By decision dated October 16, 1997, the Board affirmed the hearing representative's July 25, 1995 decision.¹

On September 1, 1998 appellant's representative requested reconsideration. In support, appellant submitted an August 1, 1998 report from Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon. He recorded the history of injury and the treatment appellant received. Dr. Kaffen noted appellant's complaints of persistent low back pain. His physical examination revealed marked tenderness and a muscle spasm in the midline of the lumbar spine and over both paraspinous muscles. Dr. Kaffen noted that the range of motion of the lumbosacral spine was 10 degrees for flexion and five degrees for extension. He also noted that appellant could right and left lateral bend to five degrees. Dr. Kaffen noted that severe pain accompanied the motions. He stated that straight leg raising produced severe low back pain without radicular pain. His neurological examination was normal. Dr. Kaffen diagnosed chronic lumbosacral sprain/strain and chronic myofascial pain syndrome, aggravated by appellant's surgery. He stated that appellant continued to suffer residuals from her employment injury and stated that as a result of these injuries, appellant "is not capable of returning to the regular duties of her date-of-injury position."

By decision dated September 28, 1998, the Office reviewed the merits of the claim 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 noted that Dr. Kaffen's reports failed to provide any objective findings or medical rationale for his conclusion of continuing employment-related disability.

The Board finds that the Office met its burden to terminate appellant's benefits effective December 11, 1994.

Once the Office has accepted and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits. After it has been determined that an employee has disability causally related to 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.²

In the present case, Dr. Brightman failed to provide a medical explanation for his conclusion that appellant's employment injury rendered her totally disabled in his reports dated October 19 and December 2, 1992 and October 26, 1994. Because his reports failed to provide any medical explanations for his conclusions, they are entitled to little weight.³ On

¹ See *Jessica A. Mason*, Docket No. 95-3012 (issued October 16, 1997).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ *Willie C. Thomas*, 45 ECAB 591 (1994).

reconsideration, appellant also submitted an opinion from Dr. Kaffen. He diagnosed chronic lumbosacral sprain/strain and myofascial pain syndrome and concluded that appellant was not capable of returning to her regular duties due to her employment injury. Dr. Kaffen's opinion, however, was not supported by any objective evidence of disability and he failed to explain his medical reasoning. Consequently, his opinion is also entitled to little weight.⁴

In contrast, Dr. Peterson fully explained that she found no disabling residuals from appellant's employment injury because her neurological testing rendered normal results. These normal results included no deficits in manual muscle testing, normal lower extremity sensation by touch and pinprick, normal reflexes and normal cerebellar function. Moreover, Dr. Spring provided a well-rationalized opinion stating that appellant was not totally disabled from work due to a psychiatric condition. In rendering this finding, Dr. Spring noted that appellant appeared well groomed, walked into the office without difficulty, spoke fluently, was well oriented to time, place and person, had a good fund of information, demonstrated an appropriate affect, showed no evidence of depression, had a good appetite, slept well and had no obsessive or suicidal thoughts. Accordingly, the well-rationalized opinions of Drs. Peterson and Spring constitute the weight of the medical evidence. The Office, therefore met its burden to terminate appellant's benefits effective December 11, 1994.

The decision of the Office of Workers' Compensation Programs dated September 28, 1998 is affirmed.

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁴ *Id.*