

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN E. MALLON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Holtsville, NY

*Docket No. 97-1932; Submitted on the Record;
Issued October 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant had any continuing disability after August 21, 1993 causally related to her accepted February 2, 1987 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, then a 40-year-old clerk/typist, sustained a fractured (sacrum) coccyx as a result of a fall on February 2, 1987 in the performance of her federal employment. Appellant returned to work four hours a day on August 10, 1992. The Office terminated appellant's compensation benefits on September 9, 1993 on the grounds that the weight of the medical evidence established that she no longer had any disability and required no further medical treatment, due to the employment injury of February 2, 1987.¹ The Office denied modification of the prior decision, after merit review on October 7, 1994, January 2, 1996 and March 26, 1997.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for the accepted condition of fractured (sacrum) coccyx.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.²

In the present case, the Office accepted that appellant sustained a nondisplaced fracture of the (sacrum) coccyx as a result of a fall on February 2, 1987. The Office terminated

¹ The record indicates that appellant returned to her regular full-time position following the termination of her compensation benefits.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

appellant's compensation benefits after receipt of a second opinion report from Dr. Richard S. Goodman, a Board-certified orthopedic surgeon. In his report dated August 5, 1993, Dr. Goodman noted appellant's history of injury, as well as her history of medical treatment and current physical examination findings. He thereafter stated that appellant's employment-related fracture of the coccyx had healed within three months and that none of her current complaints were related to the accepted fracture of the coccyx. Dr. Goodman explained that although appellant had continued complaints, she was able to perform her regular work duties and that his opinion in this regard was based upon her normal x-rays, magnetic resonance imaging (MRI) scan and electrical studies. He concluded that appellant had no organic disability and was able to perform all of the duties of her job on a full-time basis. Dr. Goodman also concluded that appellant required no further medical treatment for the accepted injury.

In assessing medical opinion evidence, the weight to be accorded such medical evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are factored into this evaluation.³ Dr. Goodman's findings and conclusions regarding appellant's coccyx fracture did evidence a thorough and accurate understanding of the history of injury, and medical history. As his conclusions regarding this condition was based upon this proper history, as well as his own current examination, his report was supported by proper medical rationale and was of probative medical value.

As appellant did not submit any medical evidence from her treating physicians which indicated that she still had residuals of the coccyx fracture which required continued medical treatment or which disabled appellant, the evidence of record did support a finding that this condition had resolved, no longer caused appellant disability and no longer required medical treatment. The Office therefore met its burden of proof to terminate appellant's compensation benefits for this condition.

The Board finds that the case is not posture for decision as to whether appellant had a herniated lumbar disc, causally related to the accepted employment injury, which caused disability after August 21, 1993.

Appellant requested reconsideration after the termination of her compensation benefits and submitted reports to the record indicating that she had a low back condition, causally related to the accepted 1987 injury.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden of reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial

³ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

evidence that she had an employment-related disability which continued after termination of compensation benefits.⁴

After the termination of her compensation benefits, appellant continued to request reconsideration and submit medical reports from her treating physicians in support of her contention that she had a low back condition, which was causally related to the accepted employment injury. In this regard, Dr. James F. McHale, a Board-certified diagnostic radiologist, conducted an MRI scan of the lumbosacral spine on March 1, 1994 which he stated revealed disc herniation of a narrowed L5-S1 disc, with disc material extending into the right L5 neural foramen. Dr. McHale stated that such findings could be seen secondary to mechanical abnormalities and vertebral subluxation of the lumbosacral spine. On April 26, 1994 Mark S. Richi, a chiropractic physician, indicated that appellant's diagnoses were lumbar displacement, segmental dysfunction, neuritis and myofascitis. Dr. Richi also noted that appellant had damaged her L5 disc during her employment-related fall. He stated that this fall had enough impact to break a coccyx bone and to damage the disc.

On May 23, 1994 Dr. Shlomo Piontkowski opined that appellant had a disc herniation at L5-S1 which was related to her February 2, 1987 fall. In a report dated June 11, 1996, Dr. Piontkowski explained that appellant's March 3, 1994 MRI scan examination showed a disc herniation at L5-S1. He explained that this disc herniation was the direct result of deterioration of the disc which resulted from the employment injury, the fall appellant sustained on ice on February 2, 1987. Dr. Piontkowski also noted that appellant had no prior problems with her back and had not sustained any other injury since February 1987. He stated that he last examined appellant on July 21, 1995 and that she continued to be disabled from work.

On April 6, 1995 Dr. Frederic A. Mendelsohn, a Board-certified neurologist, stated that appellant's history of injury was that she fell on ice in February 1987 landing on her buttocks, fracturing her sacrum and coccyx, with no other history of trauma. Dr. Mendelsohn reviewed appellant's medical history, current physical examination findings, and thereafter concluded that appellant had a herniated disc at L5-S1 with persistent radiculopathy and that there was every reasonable medical certainty that the fall of February 1987 was responsible for this condition. He explained that appellant had no prior history of back pain and that the fall was severe enough to cause a fractured sacrum and coccyx. Dr. Mendelsohn concluded that clearly a fall of that magnitude would be sufficient to weaken a disc, which over time could progressively herniate.

The Board finds that the reports from appellant's treating physicians are supportive that appellant has a herniated disc at L5-S1. Appellant's physicians have opined that this condition is causally related to the accepted employment injury. Dr. Goodman, the Office's second opinion physician, reported however that appellant had degenerative disc disease, but otherwise she had normal x-ray, MRI scan and electrical studies, and no organic disability. A conflict therefore exists in the medical opinion evidence as to whether appellant has a herniated lumbar disc causally related to the accepted 1987 employment injury, which causes appellant continuing disability.

⁴ *Talmdge Miller*, 47 ECAB 673 (1996).

The Federal Employees' Compensation Act⁵ provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.

On remand, the Office shall prepare a statement of accepted facts and shall thereafter refer appellant to an impartial medical specialist for examination and evaluation to determine whether appellant does have a disc condition causally related to the accepted employment injury, which caused continuing disability. After such further development as necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated March 26, 1997 is affirmed as modified.

Dated, Washington, D.C.
October 5, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁵ 5 U.S.C. § 8123(a).