

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of M. JANE ROBINSON and DEPARTMENT OF VETERANS AFFAIRS,
SALT LAKE CITY VETERANS ADMINISTRATION HOSPITAL, Salt Lake City, UT

*Docket No. 98-693; Submitted on the Record;
Issued October 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant had any disability or injury residuals after November 9, 1997, the date the Office of Workers' Compensation Programs terminated her compensation benefits, causally related to her April 13, 1985 low back soft tissue muscular strain injury.

The Office accepted that on April 13, 1985 appellant, then a 38-year-old nurse, sustained low back strain while lifting a patient. Concurrent disability at that time was noted to include obesity and degenerative disc disease. A preinjury computerized tomography (CT) scan done on February 7, 1985 demonstrated the preexisting presence of hypertrophic lipping with calcification of the annulus causing encroachment of the spinal canal at L4-5 and posterior and lateral spondylosis causing mild narrowing of the spinal canal and bilateral neuroforamina at L5-S1. Dr. Geoffrey A. Orme, a Board-certified orthopedic surgeon and appellant's treating physician, noted appellant's degenerative arthritis of the lumbar spine and he released her to return to light work without heavy lifting on December 24, 1985.

Appellant returned to work in the private sector for a period of time in 1990; on October 6, 1991 she returned to work with the employing establishment working eight hours per day as a program clerk. However, by report dated September 15, 1992, Dr. Orme noted that a January 16, 1992 CT scan showed mild spinal stenosis secondary to mild diffuse disc bulging and degenerative spurring at L4-5, central canal narrowing at L5-S1, shortened pedicles extenuated by mild to moderate bilateral facet joint degenerative change and prominent ligamenta flavum and bilateral posterior lateral body spurring resulting in limitation of the bilateral neural foramina and he opined that with these changes appellant had difficulty sitting for prolonged periods of time. He further opined that appellant would need to be able to move around frequently and would have a difficult time working a full eight-hour day. Part-time employment was recommended. On February 8, 1993 appellant began working four hours per day and receiving compensation for four hours per day.

On October 10, 1995 x-rays were noted by Dr. Orme as demonstrating a vacuum disc defect at L4-5 which was not present before, such that a worsening of her condition was postulated. Degenerative facet hypertrophy at L2-3 and levels inferior was also documented.

On March 10, 1997 the Office requested that Dr. Orme submit a current medical report addressing appellant's present diagnosis, citing current clinical findings and objective testing results and containing a rationalized medical opinion on any causal relationship between the conditions found and appellant's 1985 low back strain injury. The Office also requested that he complete a work capacity evaluation. Dr. Orme completed the March 18, 1997 Office work capacity evaluation continuing appellant's four-hour per day work restriction with a limit of two hours of continuous sitting or standing at any one time, with no twisting or kneeling and with no lifting more than 20 pounds. Dr. Orme indicated that these limitations were due to the employment injury and that appellant had no limitations due to preexisting or nonwork-related conditions.

The Office then referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record to Dr. David E. Curtis, a Board-certified orthopedic surgeon, for a second opinion evaluation.

By report dated May 14, 1997, Dr. Curtis reviewed the records and appellant's factual and medical history, examined appellant and answered the questions as follows:

“[Appellant] has only very mild restrictions with respect to range of motion of her low back. The x-rays show some degenerative changes in the spine. They are not severe. At this point, I find no clear objective findings that are associated with the work-related injury. However, the examination findings are consistent with her history. [Appellant's] disability is related to her chronic low back injury, plus the type of work she is presently doing which requires prolonged sitting. I believe that she is eligible to be evaluated for a position as a nurse. [Appellant] has chronic low back pain, which she has had for approximately 12 years. Her complaints have been consistent. Therefore, they can be taken as an objective finding. She does have difficulty sitting for prolonged periods or standing in one spot. These activities would preclude her from working as a program clerk except in the position which she is in now, due to her difficulty sitting. If she were in a position where she could get up, move around and walk, then alternately sit stand and move she would be able to work longer hours....”

Dr. Curtis opined that no other treatment for appellant was necessary at that time and that her condition was chronic, but that, if a job change could be arranged, she would be better able to work eight hours per day. Dr. Curtis stated that he completed a work capacity evaluation but it does not appear in the present record.

On September 29, 1997 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical evidence of record established that she no longer suffered from her accepted low back strain condition. The Office noted that Dr. Curtis found no clear objective findings associated with the work-related injury. The Office further noted that Dr. Orme continued to limit her work hours but did not support his reason for doing so

with objective findings, such that his report was of diminished probative value and that the objective findings noted in his reports were degenerative in nature.

In response, appellant submitted an October 15, 1997 report from Dr. Orme which stated that appellant had been treated for degenerative joint disease for a long time; that she had documented bulging disc and spurs at L4-5 and that these made it difficult for her to do prolonged sitting. He opined that she could continue to do light work.

By decision dated October 31, 1997, the Office finalized its termination of appellant's compensation benefits effective November 9, 1997 finding that the weight of the medical evidence supported that she had no objective evidence of problems related to her employment injury.

The Board finds that this termination must be reversed.

In the instant case, Dr. Orme indicated in his March 18, 1997 form report that work limitations due to appellant's employment injury included no twisting or kneeling and no lifting over 20 pounds and working 4 hours per day with no longer than 2 hours continuous standing or sitting.

However, Dr. Curtis stated that appellant had no clear objective findings associated with her work injury, but that the examination findings were consistent with her history and that her disability was related to her chronic low back injury. The Board finds that these statements are not entirely clear and require further clarification as to what chronic low back injury Dr. Curtis is referring. Dr. Curtis also stated that appellant's disability was related to the type of work she was presently doing which required prolonged sitting but then opined that she was eligible to be evaluated for a position of a nurse, which is much more demanding on the back. Dr. Curtis also stated that appellant's condition would preclude her from working as a program clerk except in the position which she was then in, due to her difficulty sitting. That position was for only four hours per day. Dr. Curtis opined that if a position could be arranged that allowed for standing, sitting, moving and alternating positions frequently, appellant would be better able to work eight hours per day. The Board notes that this does not say that appellant could work eight hours a day in her present position or in the position of a nurse, or that these limitations were not due to her accepted employment injury. As this opinion and answers to the Office's questions require further clarification, explanation and elaboration, Dr. Curtis's report cannot constitute the weight of the medical opinion evidence of record and therefore merely creates a conflict with Dr. Orme's form opinion that appellant still required work limitations due to her employment injury.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a 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." As this was not done in the instant case, a conflict in medical opinion remained unresolved.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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 employment.² Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴ The Office did not meet its burden of proof to terminate compensation entitlement and medical benefits in this case, as there remains an unresolved conflict in medical opinion evidence.

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 31, 1997 is hereby reversed.

Dated, Washington, D.C.
October 15, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *See Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁴ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).