

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOAN A SEDER and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Northampton, VA

*Docket No. 99-965; Submitted on the Record;
Issued February 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective January 31, 1999.

On February 27, 1997 appellant, then a 59-year-old nurse assistant, filed a notice of traumatic injury and claim for compensation alleging that on that date she injured her upper and lower back assisting a patient pull a shirt over his head. The Office accepted the claim for cervical and low back strain. Appellant stopped work on February 27, 1997. She was placed on the periodic rolls following expiration of her continuation of pay.

Appellant has been under the care of Dr. Joseph Kelly, a Board-certified internist, for treatment of cervical and thoracic neck pain since her injury. In a report dated April 14, 1997, Dr. Kelly indicated that he ordered a cervical myelogram with a computerized tomography (CT) scan that showed broad based disc protusion at C4-5, C5-6 and C7-T1 with no evidence of herniation or stenosis. He diagnosed that appellant suffered from significant disc disease of the cervical spine and significant pain symptoms related to her work injury. Dr. Kelly prescribed a complete course of pain management including medication, physical therapy, a back brace and trigger point injections.

In an attending physician's report dated February 10, 1998, Dr. Kelly indicated that appellant was totally disabled due to her traumatic injury and degenerative disc disease.

In a report dated April 14, 1998, Dr. Alan Bullock, an Office referral physician and Board-certified orthopedist, examined appellant and confirmed that appellant sustained a cervical and low back strain on February 27, 1997. He opined that the work injury aggravated appellant's preexisting degenerative neck and back disease, but that the aggravation was only temporary. Dr. Bullock concluded that appellant could work one to two hours per day.

In a follow-up report dated May 12, 1998, Dr. Bullock responded to questions posed by the Office. He noted that appellant had no objective neurological findings related to her work injury. He stated, "I do not think what is going on now I can relate to her injury of February 1997."

The Office referred appellant for an impartial medical evaluation with Dr. Eric S. White, a Board-certified orthopedic surgeon, in order to resolve the conflict in the medical evidence. In a report dated August 20, 1998, he noted that appellant's job for the past 18 years required heavy and repetitive lifting. Dr. White related that on February 27, 1997 appellant was reaching forward to support and undress a heavy patient when she felt something grab her in the back causing her to freeze up. He recorded appellant's past medical history as including severe asthmatic bronchitis, obesity, renal calculi, Cushing's syndrome related to her use of Prednisone (steroids) for treatment of her asthma and a significant history of cervical thoracic and thoracic kyphosis, secondary to long standing osteoporosis. He noted physical findings and reported that appellant's current symptoms were related to osteoporosis and vertebral collapse caused by preexisting disc disease. Although Dr. White opined that appellant was totally disabled from work, he opined that appellant's disability caused by her work injury had resolved. He specifically stated:

"It is not reasonable, nor medically accurate to attribute this patient's current complaints and symptoms to a single incident at work in February 1997.... This accident did not result in significant trauma, but may have aggravated many of the above-mentioned diagnoses contributing to musculoskeletal pain. This single event that occurred some 18 months ago is not responsible for her ongoing symptoms. Pain as a result of that specific incident would subside in a period of several weeks or a few months at most."

Dr. White concluded that appellant should continue with her course of pain management as prescribed by her treating physician.

By letter dated December 7, 1998, the Office issued a notice of proposed termination of compensation and advised appellant of her right to submit additional medical evidence.

Appellant next submitted a December 23, 1998 report from Dr. Kelly, which stated that appellant was under his care for ongoing degenerative disc disease involving the lumbar and cervical spine. He noted that appellant suffered an acute exacerbation of that condition due to her work injury. Dr. Kelly further noted that appellant had been able to work full time before her work injury despite the presence of her preexisting disc disease. According to the doctor, despite a comprehensive treatment program of physical therapy since the time of her work injury, appellant was limited in her mobility and movement and was considered to be disabled from work.

In a decision dated January 13, 1999, the Office terminated appellant's compensation effective January 31, 1999 on the grounds that the weight of the evidence established that appellant's work-related disability caused by the February 27, 1997 employment injury had ceased.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of proof to justify 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

In the instant case, because the Office properly determined that there was a conflict in the medical opinion evidence between appellant's treating physician, Dr. Kelly and the Office referral physician, Dr. Bullock, as to whether appellant's work-related disability had resolved, the Office correctly referred appellant for an evaluation with an impartial medical specialist.³ When there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background is entitled to special weight.⁴

The report of Dr. White, the impartial medical specialist in the present case, is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. He adequately explained that the injury appellant sustained on February 27, 1997 was simple a cervical strain, the effects of which would have resolved within a few weeks or months. Although Dr. White agreed that appellant suffered a temporary aggravation of her preexisting degenerative back disease in that she experienced increased pain symptoms, but he specifically opined that appellant had no residuals related to the work injury at the time of his examination, some 18 months after the work injury. Thus, based on his well reasoned opinion, the Board concludes that the Office properly terminated appellant's compensation benefits.⁵

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

² *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

³ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence. *Gertrude T. Zakrajsek (Frank S. Zakrajsek)*, 47 ECAB 770 (1996).

⁴ *Gary R. Sieber*, 46 ECAB 215 (1994); *LeAnne E. Maynard*, 43 ECAB 482 (1992).

⁵ The December 23, 1998 report from Dr. Kelly, submitted after the notice of proposed termination, was insufficient to create a new conflict or to overcome the weight accorded the impartial medical specialist; *see Howard Y. Miyashiro*, 43 ECAB 1101 (1992).

The decision of the Office of Workers' Compensation Programs dated January 13, 1999 is hereby affirmed.

Dated, Washington, D.C.
February 25, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member