

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIE C. CAREY and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 97-2805; Submitted on the Record;
Issued January 19, 2000*

DECISION and ORDER

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

The issues are: (1) whether the Office of Worker's Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective March 15, 1996 on the grounds that she had no further disability causally related to her August 8, 1995 employment injury; (2) whether the Office properly terminated appellant's authorization for medical treatment; and (3) whether appellant has established that she had continuing disability after March 15, 1996 causally related to her employment injury.

On August 8, 1995 appellant, then a 40-year-old clerk, filed a claim for a traumatic injury to her lower back occurring on that date when she "lift[ed] trays of mail." The Office accepted appellant's claim for lumbar low back strain and paid her the appropriate compensation benefits.

The record indicates that appellant had a preexisting back condition not related to her employment and for which Dr. Louis Jacob, an osteopath, performed a May 6, 1994 microhemilaminotomy at L5-S1 to repair a ruptured disc. On the day of appellant's August 1995 employment injury, she had resumed work following an absence due to a nonemployment-related hysterectomy.

In a duty status report dated August 31, 1995, Dr. Robert J. Sikorski, an osteopath and appellant's attending physician, released her to resume part-time employment beginning September 5, 1995.

In a report dated October 10, 1995, Dr. Sikorski diagnosed persistent lumbosacral pain, myositis and strain and found that appellant was totally disabled.

In a report dated November 19, 1995, Dr. Sikorski opined that he had released appellant to resume work on September 5, 1995 and noted that "[s]he apparently worked two days, reinjured her low back (or at least exacerbated her problem) and did [not] return to work."¹ He

¹ It does not appear from the record that appellant returned to work for any period following her employment injury.

opined that at the time he examined her on September 15, 1995 she could not work and further stated that she had informed him that there was no light or sedentary duty available at the employing establishment. Dr. Sikorski noted that appellant had not returned for treatment and that therefore he “had assumed her care was provided by a [w]ork [c]linic.”

A magnetic resonance imaging (MRI) scan, obtained on December 9, 1995, revealed “posterior soft tissue density which is enhancing and appears to be impinging on the thecal sac and right nerve root. This is though most likely to be secondary to scar tissue from [the] previous surgery.” The radiologist further found facet spurs “causing some narrowing of the right neural foramina which may be impinging on the nerve root slightly” and facet arthritis.

In a report dated December 12, 1995, Dr. Jacobs related:

“[Appellant] is known to me from previous micro-dis[c]ectomy at L5, S1 on the right side with excision of herniated dis[c] on May 6, 1994. [She] did extremely well, became asymptomatic and returned to work. She reports a new work[-]related injury on August 8, 1995. She was lifting a tray of mail and felt awkward and had immediate sense of low back pain and shooting pain down the posterior distribution of the right leg.”

Dr. Jacobs indicated that he intended to rule out a recurrent herniated disc at L5-S1 as opposed to lumbar strain and epidural fibrosis and noted that the MRI scan was “not diagnostic.” He recommended further objective testing.

In a report dated January 23, 1996, Dr. Jacobs, after review of a myelogram and computerized tomography (CT) scan, recommended “epidural steroid blocks due to epidural fibrosis.”

In a report dated March 6, 1996, Dr. Jacobs, in response to an Office inquiry, stated:

“... I would reiterate that [appellant] presently has x-ray evidence of epidural fibrosis which would have to be linked to her original injury which culminated in her micro-dis[c]ectomy. [She] would not have epidural fibrosis if she did not have an original ruptured dis[c].

“I did not treat [appellant] for a lumbar strain. I can offer no information in regards to this. Usually, a lumbar strain does not cause permanent sequelae and resolve spontaneously with conservative management over the course of four to six weeks. I cannot give [appellant] any type of disability or restrictions based upon her condition post micro-discectomy.”

By decision dated March 15, 1996, the Office terminated appellant’s compensation on the grounds that the evidence established that she had no further condition or disability causally related to her accepted employment injury.

In a letter dated March 29, 1996, appellant, through her representative, requested a hearing before an Office hearing representative. Appellant submitted a medical report dated December 11, 1996 from Dr. Clifford M. Buchman, an osteopath, who discussed her medical and work history, listed findings on physical examination, and reviewed the results of objective

tests. Dr. Buchman stated that appellant related that her injury occurred “while twisting and lifting a tray of mail which weighed approximately [two and one half pounds].” He diagnosed “[s]tatus following lumbar laminectomy with facet arthritis with bulging disc L4 on the right, L5 on the right. Dr. Buchman found that she could perform limited-duty employment. He opined:

“I do not agree with Dr. Jacobs’ conclusion that her pathological problem is due to scar tissue. She does have some epidural fibrosis. However, she has significant facet problems and additional bulging discs on the right at L4 and L5. These are causally and directly related to her work[-]related injury of August 8, 1995. The bulging discs were caused by lifting and twisting at work. This motion produces extra stress on the lateral (outer) sides of the discs. This has caused bulging in a previously weakened area. The facet joints were also inflamed by twisting and lifting. These two anatomic areas were more susceptible to injury because of her prior hemilaminectomy; the surgery results in additional stress on the disc levels above and below.”

* * *

“The combination of recurrent disc herniation or bulging at L5 and bulging at L4 as well as some scar tissue is [appellant’s] pathological problem. If she only had fibrosis she would have mild to minimal symptoms. The additional disc bulging and facet changes makes for a much worse condition. These two problems (disc bulging and facet arthritis) are work related.”

In a decision dated March 3, 1997, an Office hearing representative affirmed the Office’s March 15, 1996 termination of appellant’s benefits. The hearing representative did not discuss Dr. Buchman’s December 11, 1996 report.

By letter dated March 31, 1997, appellant’s attorney requested reconsideration on the grounds that the hearing representative had not considered Dr. Buchman’s December 11, 1996 report.

In a merit decision dated May 7, 1997, the Office denied modification of its prior decision.

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation benefits effective March 15, 1996.

Once the Office accepts a claim, it has the burden of proof to justify termination of compensation benefits.² After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

In the present case, the Office accepted appellant’s employment injury for lumbar low back strain. The Office thus has the burden of proof to justify termination of compensation for

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Gail D. Painton*, 41 ECAB 492 (1990).

this condition. The Office based its termination of appellant's compensation on the March 6, 1996 report of Dr. Jacobs, an osteopath and her attending physician. In his March 6, 1996 report, Dr. Jacobs discussed his treatment of appellant for a back condition which preexisted her employment injury and which resulted in a micro-discectomy. Regarding appellant's employment injury, Dr. Jacobs stated, "I did not treat [appellant] for a lumbar strain. I can offer no information in regards to this." Thus, he did not address the relevant issue in the present case, which is whether appellant had any further disability or residual condition causally related to her accepted employment injury of low back strain. Dr. Jacobs did note that a lumbar strain usually resolved in four to six weeks; however, Dr. Jacobs' comment is general in nature rather than specific to appellant and thus not of probative value.⁴ Further, he did not discuss what effect, if any, appellant's employment-related low back strain had on her preexisting back condition.

As Dr. Jacobs' report did not resolve the issue at hand, it cannot constitute the weight of the medical opinion evidence. Therefore, the Office did not have an adequate basis upon which to terminate appellant's compensation and medical benefits effective March 15, 1996.⁵

The decisions of the Office of Workers' Compensation Programs dated May 7 and March 3, 1997 are reversed.

Dated, Washington, D.C.
January 19, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁴ *Durwood H. Nolin*, 46 ECAB 818 (1995).

⁵ Given the Board's disposition of the Office's termination of compensation, it is not necessary to consider the issue of whether appellant met her burden of proof to establish continuing disability.