

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN M. BROUGHAN and U.S. POSTAL SERVICE,
POST OFFICE, Woodland Hills, CA

*Docket No. 99-883; Submitted on the Record;
Issued January 4, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On August 24, 1982 appellant, a mail clerk, sustained an injury while in the performance of her duties when she pulled a sack of mail off a mail belt and experienced back pain. The Office accepted her claim for the conditions of lumbosacral strain, permanent aggravation of scoliosis and transitional vertebrae of the lumbosacral spine. Appellant lost intermittent time and returned to light duty.

On August 2, 1994 Dr. Roy Gottlieb interpreted a magnetic resonance imaging (MRI) scan obtained that day as showing dextroconvex scoliosis of the lumbar spine. He reported: "This may be contributing to the degenerative disc disease seen at multiple levels, more than expected for the patient's age. Disc desiccation and disc bulges are seen at L3-4 through the L5-S1 levels. No significant compression to the thecal sac or on the nerve roots was appreciated. Mild degenerative changes are seen in the L4-5 and L5-S1 facets."

On April 28, 1997 Dr. Elliott A. Schaffzin, a Board-certified orthopedic surgeon and appellant's attending physician, reported that appellant had marked discomfort in the low back eight weeks after giving birth to her son. Noting that she had been doing more lifting at home and was unable to take any medication because she was breast feeding, Dr. Schaffzin found that appellant was temporarily totally disabled for the next four to six weeks. He reported that it would be counterproductive to return appellant to work because of her low back pain. Dr. Schaffzin stated that he was sending appellant to physical therapy, which was discontinued during her pregnancy.

On May 19, 1997 Dr. Schaffzin reported that appellant was noting an increase in low back pain. He continued to recommend physical therapy, noting that appellant was unable to seek symptom relief through appropriate medication. Dr. Schaffzin reported: "There has been no change in the symptomatology in the location of her pain, *i.e.*, this is simply an exacerbation of her industrially-related back pain. The pain is still localized to the right side."

The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. William Boeck, a Board-certified orthopedic surgeon, for a second opinion on whether appellant continued to suffer disabling residuals of her August 24, 1982 employment injury.

In a report dated June 20, 1997, Dr. Boeck reviewed the statement of accepted facts and summarized a number of medical reports of record. He related appellant's history of injury and current complaints and detailed extensive findings on physical examination. Dr. Boeck diagnosed lumbar strain, chronic. Addressing questions posed by the Office, he reported as follows:

“The only way in which I can relate the current physiologic findings to her work injury of August 24, 1982, is to state that the symptoms are similarly located. I cannot otherwise relate the present problem to the 1982 injury, and after a relatively free interval of any difficulties with the low back until the birth of her child, I can only relate the present symptoms to changes secondary to the birth of her child, which was by cesarean section, and the necessary activities she incurs taking care of the child. Ordinarily, I would expect these postpartum problems to subside within 6 to 12 weeks after the birth and would not anticipate that they would bar her from being able to do her work activity. The child is about three months old at this time. Again, however, I do not see objective evidence that clearly relates the back problem to any work condition.”

Dr. Boeck found that appellant could return to her full-time regular duties as a window clerk. He saw no contraindication to her returning to that same type of activity and noted that there were no objective findings for which work restrictions were required. Dr. Boeck concluded his report as follows:

“In summation, I feel that the patient's present back problem is related to the physiologic and other changes related to the birth of her child. I do not feel the scoliosis or transitional vertebra play a role in the development of these symptoms. I feel the difficulty presently relates to a muscular and ligamentous strain in the low back area. I do not find any evidence to support the presence of compressive lumbar radiculopathy or any other finding that suggests a symptomatic disc herniation problem at the present time. The protrusions of the discs, as noted by the radiographic examinations, are not unusual, but are not of the degree which would cause nerve root difficulties and otherwise are felt to be normally physiologic.”

On August 6, 1997 Dr. Schaffzin reported that appellant was noting a slight increase in back pain. Appellant was able to fully flex her back with minimal discomfort “although she extends with more pain with flexion.” Extension was not limited and appellant had no low back tenderness. Dr. Schaffzin released appellant to return to permanent light-duty work as noted previously with the same restrictions.

In a decision dated September 9, 1997, the Office terminated appellant's compensation benefits on the grounds that Dr. Boeck's report constituted the weight of the medical opinion evidence and established that she had no continuing residuals of her August 24, 1982 employment injury.

On September 8, 1997 Dr. Schaffzin reported that he had reviewed Dr. Boeck's report and agreed that appellant's symptoms did not appear to be radicular but quite possibly were discogenic in origin. He agreed with Dr. Boeck's suggestion that appellant may require additional treatment including physical therapy. Dr. Schaffzin reported that he expected no significant change in the future. He stated that appellant may require the use of medications and may occasionally require treatment for her ongoing back symptomatology for the indefinite future. He did not make a follow-up appointment for appellant.

In a decision dated October 5, 1998, an Office hearing representative affirmed the Office's termination of benefits.

The Board finds that the Office properly terminated appellant's compensation benefits.

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

Dr. Boeck's report of June 20, 1997 justified the Office's termination of benefits. Having reviewed the statement of accepted facts and having summarized medical reports of record, Dr. Boeck based his opinion on an accurate factual and medical history. He noted appellant's complaints and reported extensive findings on physical examination. Dr. Boeck diagnosed chronic lumbar strain but could not relate this condition to the incident that occurred on August 24, 1982 other than to observe that appellant's symptoms were similarly located. He reasoned that appellant had a relatively free interval of any difficulties with her low back until the birth of her child, so he could only relate appellant's current symptoms to the physiologic and other changes secondary to the cesarean birth and the necessary activities incurred in taking care of the child. Such postpartum problems, he explained, would ordinarily subside within 6 to 12 weeks. Appellant's scoliosis and transitional vertebra, he reported, did not play a role in the development of these symptoms, which related to a muscular and ligamentous strain in the low back area.

The Board finds that Dr. Boeck's opinion is based on an accurate factual and medical history and is sufficiently well reasoned that it constitutes the weight of the medical opinion evidence and justifies the Office's termination of benefits. Appellant's attending physician, Dr. Schaffzin, reported on May 19, 1997 that appellant's current back pain was "simply an exacerbation of her industrially[-]related back pain." Although this brief statement tends to support continuing residuals of the accepted employment injury, Dr. Schaffzin offered no medical reasoning to explain how he came to this conclusion. For this reason, his statement is insufficient to overcome the reasoned opinion provided by Dr. Boeck or to create a conflict therewith.³ The Board also notes that Dr. Schaffzin reviewed Dr. Boeck's opinion but on

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

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

³ The Board has held that medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

September 8, 1997 reported no disagreement with the conclusion that appellant's symptoms were unrelated to the incident that occurred on August 24, 1982 and were instead related to changes secondary to the birth of her child by cesarean section and the necessary activities she incurred taking care of the child. Thus, when the Office issued its October 5, 1998 decision, the weight of the medical evidence continued to rest with the June 20, 1997 report of Dr. Boeck.⁴ As the weight of the evidence justified the termination of appellant's benefits, the Office met its burden of proof.

The October 5, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 4, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ Following the Office's final decision, appellant submitted a January 4, 1999 report from Dr. Schaffzin. This evidence was not before the Office when it issued its final decision on October 5, 1998; therefore, the Board lacks jurisdiction to review this report for the first time on appeal. 20 C.F.R. § 501.2(c) (Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).