

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL A. KENNEDY and U.S. POSTAL SERVICE,
POST OFFICE, San Bernardino, CA

*Docket No. 99-1377; Submitted on the Record;
Issued July 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the grounds that she no longer suffered residuals of her federal employment injury.

Appellant filed a notice of occupational injury and claim for compensation on May 17, 1997 alleging that she sustained a low back injury on or around April 29, 1997 as a result of her federal employment. The Office accepted her condition of lumbar sprain as compensable on June 5, 1997. Appellant stopped work on April 29, 1997 and did not return to work until March 16, 1998.

Dr. Russell Baksic, a Board-certified orthopedic surgeon, evaluated appellant on December 12, 1997. He reviewed the results of a magnetic resonance imaging (MRI) scan of the lumbar spine performed on April 22, 1997 and diagnosed appellant with chronic low back syndrome, degenerative arthritis and degenerative disc disease of the lumbar spine. Dr. Baksic opined that appellant should enroll in a back rehabilitation and stabilization program, but that she could return to work with restrictive duties of lifting no more than 10 pounds, sitting no more than 30 minutes and no bending and climbing.

Dr. Russell Compton, a Board-certified orthopedic surgeon, conducted a second opinion orthopedic evaluation of appellant on December 17, 1997. He found low back strain superimposed upon mild degenerative disc disease of L2-3 and small central disc protrusion with associated annular tear at L5-S1 per a second MRI scan of the lumbar spine performed on November 8, 1997. Dr. Compton asserted that his diagnosis of appellant was established by a review of appellant's history, her medical records and a clinical examination. He determined that appellant's diagnosed condition was medically connected to factors of her employment. Dr. Compton further asserted that the small central disc protrusion with associated annular tear at L5-S1 was caused by aggravation and occurred in the course of appellant's job activities, such as bending and lifting. He found that the aggravation would be temporary and expected it to cease

within six to eight months. Dr. Compton further found that appellant's prognosis was good and recommended that her medical treatment include regular physical therapy and anti-inflammatory medications for relief of her symptoms. He estimated that appellant's total disability would extend through February 1998 and that she could return to work activities with occasional lifting of no more than 50 pounds; frequently no more than 25 pounds and standing, sitting and walking approximately 6 hours in an 8-hour workday. Dr. Compton provided a second report dated March 5, 1998, which clarified his opinion that appellant was partially and not totally disabled.

Appellant was offered a limited-duty position of modified distribution clerk on February 18 and March 12, 1998, due to her medical restrictions. On the latter date, Dr. Ribton Wade, appellant's attending physician, reported that appellant could return to work with limited duties on March 16, 1998. Appellant began work in the modified position on that day. After an examination on March 24 and April 28, 1998, Dr. Wade reported that appellant could not work more than four hours per day, due to her partial incapacity and that she was restricted to lifting no more than five pounds. Accordingly, appellant reduced her hours to four hours per day.

On May 19, 1998 Dr. Baksic conducted a follow-up examination of appellant and determined in a work status report dated May 21, 1998, that she could return to an 8-hour workday with restrictions of lifting no more than 10 pounds, sitting no more than 30 minutes and brief periods of standing and walking.

On June 4, 1998 the Office referred the case back to Dr. Baksic to determine whether the aggravation reported by Dr. Compton on December 17, 1997 of the underlying degenerative condition had yet resolved and to assess appellant's restrictions at that time and treatment recommendations. Dr. Baksic in his reply letter dated June 10, 1998, asserted that appellant clearly had an aggravation of her underlying degenerative arthritis and degenerative disc disease of the lumbar spine from her 1997 work-related injury, but that her aggravation would resolve in six to eight weeks. He also referred to the findings in his May 19, 1998 report and noted that appellant could return to work with limited duties.

Also on June 4, 1998 the Office arranged that appellant be seen again to determine the relationship between her condition at that time and factors of her employment. On June 29, 1998 Dr. Fredrick J. Lieb, a Board-certified orthopedic surgeon, who reviewed appellant's past medical reports, her medical and occupational history and performed a physical examination, gave his evaluation. He diagnosed appellant with low back strain, which he determined had since resolved and mild degenerative disc disease of the lumbosacral spine, consistent with her age. Dr. Lieb opined that, if aggravation of appellant's preexisting degenerative disc disease occurred, it had since subsided and that there was no evidence of any permanent aggravation. With respect to appellant's degenerative disc disease, Dr. Lieb further opined that with such a disease, there is a natural progression of the degenerative process, which occurs over the course of time with aging. He concluded that appellant's prognosis was excellent, that there was no indication for further or ongoing medical care and that she had no further and ongoing physical limitations from the work-related disability.

The Office issued a notice of proposed termination of compensation on January 15, 1999 on the basis that the weight of the medical evidence established that appellant no longer suffered

residuals of her accepted work injury. The Office allotted appellant 30 days with which to submit additional evidence, however, no further evidence was submitted.¹

The Office issued a final decision dated February 16, 1999 terminating compensation. It found that Dr. Lieb's report dated June 29, 1998 found no ongoing physical limitations as a result of appellant's work injury.

The Board finds that the opinion of Dr. Lieb is sufficient to meet the Office's burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,² once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.³ Thus, after the Office determines that an employee has a condition causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the condition has ceased or is no longer related to the employment injury.⁴

In assessing medical evidence, the number of physicians supporting one position or another is not controlling, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of, physical 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.⁵

The Office met its burden of proof in terminating appellant's disability compensation. Dr. Lieb in his June 29, 1998 report, reviewed the statement of accepted facts and the medical records, noting that Dr. Baksic had previously diagnosed appellant with chronic low back syndrome, degenerative arthritis and degenerative disc disease of the lumbar spine after his December 12, 1997 evaluation. Dr. Lieb recorded a detailed history as stated by appellant and outlined her occupational status with the employing establishment. Based upon his thorough evaluation, Dr. Lieb assessed that appellant had suffered from low back strain, however, he opined that it had since resolved and determined that appellant's mild degenerative disc disease of the lumbosacral spine was a natural progression of the degenerative disc process and consistent with her age. Dr. Lieb further opined that, if there had been any aggravation to appellant's disc disease, it had subsided. With respect to causal relationship, Dr. Lieb indicated that there was no condition present at that time related to the work-related injury and with respect to disability, he concluded that appellant was able to perform her regular work duties.

¹ On appeal, appellant submitted additional evidence. As the Office did not consider this in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *William Kandel*, 43 ECAB 1011, 1020 (1992).

⁴ *See Marvin T. Schwartz*, 48 ECAB 521 (1997).

⁵ *Connie Johns*, 44 ECAB 560, 570 (1993).

The Office issued a notice of proposed termination of compensation on January 15, 1999 on the basis that the weight of the medical evidence established that appellant no longer suffered residuals of her accepted work injury. No further evidence sufficient to alter the weight of the medical opinion offered by Dr. Lieb was submitted.

Inasmuch as Dr. Lieb provided a comprehensive opinion supported by medical rationale that appellant no longer suffered from the accepted condition of low back sprain, the Board finds that the Office met its burden of proof in terminating appellant's compensation.⁶

Regarding the condition of aggravation of degenerative disc disease, the Board notes that the Office had not accepted this condition as causally related to the April 29, 1997 employment injury. While Drs. Baksic and Lieb opined that appellant may have sustained a temporary employment-related aggravation of degenerative disc disease, neither physician offered any medical rationale in support of causal relationship. Furthermore, Dr. Lieb indicated that, by the time of his examination, any aggravation of the degenerative disc disease had subsided.

The decision of the Office of Workers' Compensation Programs dated February 16, 1999 is affirmed.

Dated, Washington, D.C.
July 7, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Cleopatra McDougal-Saddler*, 47 ECAB 480, 488 (1996) (finding that the reports of the Office referral physician established that appellant's degenerative pathology was not work related and were sufficient to meet the Office's burden of proof in terminating disability compensation).