

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERREL BIVENS-LEMON and U.S. POSTAL SERVICE,
POST OFFICE, Oak Park, MI

*Docket No. 99-2151; Submitted on the Record;
Issued July 13, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective June 21, 1998; and (2) whether appellant has met her burden of proof to establish that she is entitled to continuing compensation benefits on or after June 21, 1998.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective June 21, 1998.

On July 23, 1997 appellant, then a 34-year-old letter carrier, sustained cervical and lumbar strains when she was involved in an employment-related car accident.¹ She was off work until November 10, 1997, when she returned to light duty four hours a day, with restrictions. Appellant returned to light duty eight hours a day, with restrictions, on March 16, 1998. On June 25, 1998 she was laid off work. In a letter dated May 6, 1998, the Office proposed to terminate appellant's compensation benefits. By decision dated June 23, 1998, the Office terminated appellant's wage-loss compensation and medical benefits effective June 21, 1998. Appellant requested an oral hearing, which was held on December 16, 1998 and submitted additional medical evidence in support of her claim. In a decision dated March 22, 1999, an Office hearing representative found that the Office had properly terminated appellant's benefits effective June 21, 1998 and that appellant had failed to meet her burden of proof to establish any continuing disability causally related to her accepted medical condition.

Once the Office accepts a claim, the Office may not terminate or modify compensation without establishing that the disability has ceased or that it is no longer related to the

¹ Appellant sustained a prior employment-related injury on October 2, 1996, as a result of lifting and carrying parcels. On April 18, 1997 the Office accepted appellant's claim for acute lumbosacral strain. Appellant was released to return to regular duty on November 26, 1996.

employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.⁴

On August 19, 1997, at the request of the employing establishment, appellant was examined by Dr. Shlomo S. Mandel, a Board-certified internist, for the purpose of determining her fitness for duty. After documenting appellant's employment and medical histories and his findings on physical examination, Dr. Mandel stated that there was no clinical indication of pathology which constituted impairment or disability from performing her usual work. He added that appellant's prognosis was good and that she required no further testing or medical treatment, but might benefit from some home exercises.

Appellant's treating physician, Dr. Sheila P. Meftah, a Board-certified internist, completed a form dated September 8, 1997, on which she indicated that appellant could resume light-duty work, with restrictions, on September 11, 1997 and could return to full duty on October 1, 1997. On a follow-up form dated September 15, 1997, however, he noted that appellant was totally disabled from September 15, 1997 until further evaluation. On November 10, 1997 Dr. Meftah released appellant to return to light-duty work, four hours a day, with lifting restrictions and stated that appellant could assume her full work load on January 5, 1998. Appellant accepted a job offer from the employing establishment and returned to light duty four hours a day, beginning November 10, 1997.

The Office referred appellant to Dr. Philip J. Mayer, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated November 7, 1997, he noted appellant's history of injury and medical history and performed a complete physical examination. Dr. Mayer found no objective abnormalities but recommended that appellant undergo a magnetic resonance imaging (MRI) scan to rule out intraspinal pathology. He stated that if the MRI scan showed no abnormalities, then no physical restrictions or medical treatment would be required. A MRI scan performed on February 11, 1998, revealed a mild disc bulge at L4-5 and degenerative changes at L2-3 and multi-level facet degenerative changes. In a follow-up report dated February 17, 1998, Dr. Mayer stated that there were no findings on the MRI scan to suggest post-traumatic change and no objective abnormalities which would indicate the need for physical restrictions or further medical treatment. He stated that he could not explain appellant's continued complaints of pain and concluded that appellant was not disabled from work.

Appellant submitted progress notes from Dr. Meftah dating from the date of injury to January 9, 1997, in which he documented appellant's complaints, treatment and progress. An x-ray report dated August 4, 1997 noted that appellant's lumbosacral spine was normal in appearance. In a report dated February 19, 1998, Dr. Meftah stated that appellant continued to

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

complain of neck and back pain, but that she was also unable to determine why appellant's strains were lingering and would refer appellant back to Dr. Mandel for further evaluation. Dr. Meftah stated that she was uncertain when appellant would be able to resume her full duties as a letter carrier.

The Office forwarded copies of Dr. Mayer's reports to Drs. Meftah and Mandel for comment, but no response was received. On March 12, 1998, however, Dr. Meftah released appellant to increase her light-duty job, with restrictions, to eight hours a day. Appellant accepted the employing establishment's offer of light-duty work, eight hours a day, on March 21, 1998.

Subsequent to the issuance of the Office's May 6, 1998 notice of proposed termination, appellant submitted treatment notes from Dr. Mandel which documented appellant's continued complaints of neck and back pain and recorded her progress with physical therapy and home exercise. He did not include any diagnosis of appellant's condition and did not comment on the causal relationship, if any, between appellant's condition and the accepted employment-related medical conditions. Dr. Mandel did not comment on Dr. Mayer's report.

On June 23, 1998 the Office issued its decision terminating appellant's benefits effective June 21, 1998.

The Board initially finds that the weight of the medical opinion evidence rests with Dr. Mayer's well-rationalized narrative report and that the Office met its burden to terminate appellant's compensation benefits effective June 21, 1998. Dr. Mayer stated that while appellant's MRI scan showed some degenerative changes, there was no evidence of any traumatic change and that appellant had no residuals and required no additional treatment for her accepted conditions. Appellant's treating physicians, Drs. Meftah and Mandel, continued to place physical restrictions on her but despite several requests from the Office, did not provide any rationalized opinions regarding the causal relationship, if any, between appellant's continued complaints of pain and her accepted cervical and lumbar strains.⁵

The Board further finds that appellant failed to meet her burden of proof to establish continuing disability after June 21, 1998, causally related to her accepted employment conditions.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted employment injury.⁶ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the

⁵ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

⁶ *George Servetas*, 43 ECAB 424, 430 (1992).

physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

At the oral hearing, held at appellant's request, appellant submitted additional medical evidence in support of her claim, to include reports from Drs. Meftah and Mandel, as well as a report from Dr. Jeffrey Eisman, a chiropractor. In his report dated August 13, 1998, Dr. Eisman stated that x-rays from July 1998 revealed multiple subluxations of the cervical and lumbar spine. Dr. Eisman, however, did not provide any opinion as to the relationship, if any, between the diagnosed subluxations and the accepted employment injury or explain the significance of these x-ray results in light of the fact that x-rays taken on August 4, 1997, shortly after the date of injury, were reported as being normal. Therefore, his report is of insufficient probative value to support appellant's claim for continuing compensation.⁸

The reports from Dr. Meftah include progress notes which diagnose degenerative arthritis of the lumbosacral spine and mild disc bulge at L4-5, but do not discuss the relationship between these diagnosed conditions and appellant's accepted lumbar and cervical strains.⁹ Also included is a narrative report dated October 20, 1998, in which Dr. Meftah noted that she first saw appellant on July 31, 1997, following a motor vehicle accident and stated that at that time, appellant was having low back and neck pain, which has continued since the accident. She noted that x-rays taken in August 1997 appeared normal, but that a subsequent MRI scan showed a bulging disc at L4-5 and degenerative changes at multiple levels. Dr. Meftah noted that appellant had been returned to full-time work, but that she remained on light duty because of her back pain. She concluded that because appellant's problem was beyond her specialty, she was referring appellant to Dr. Mandel and that further information could be obtained from him. While Dr. Meftah noted that appellant had complained of back pain since the employment-related car accident, the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.¹⁰ As Dr. Meftah also does not offer any opinion, with rationale, as to the causal relationship, if any, between appellant's diagnosed condition and her accepted employment injuries, her opinion is insufficient to support appellant's burden of proof.¹¹

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *Id.*

⁹ *See Sally G. Radic*, 32 ECAB 179 (1980).

¹⁰ *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹¹ *Id.*

Finally, appellant submitted a treatment note dated December 8, 1998, from Dr. Mandel, in which he noted that appellant continued to have back pain and had obtained no relief from the pain clinic and physical therapy. He stated that he felt appellant's condition was related to the previously imaged degenerative disc disease and bulging at multiple levels of the lumbar spine. Dr. Mandel did not see any need for surgical intervention and prescribed conservative care. He concluded that in terms of appellant's work, activities that called for a great deal of bending, twisting, heavy lifting, pulling and pushing could produce some lower back symptoms. While Dr. Mandel indicated that appellant's back pain, the cause of her physical restrictions, was due to her diagnosed degenerative disc disease and bulging discs, these conditions were not accepted by the Office as employment related and Dr. Mandel did not offer any opinion as to the relationship between these diagnoses and the accepted cervical and back strains or the employment incident.¹²

Although the reports of Drs. Eisman, Meftah and Mandel continue to provide support for a finding that appellant's back pain has not ceased, none of the physicians provides any medical rationale explaining why and how appellant's condition is causally related to the July 23, 1997 employment injury. Therefore, these reports are not sufficient to establish appellant's claim for continuing compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated March 22, 1999 and June 23, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 13, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹² *James A. Long*, 40 ECAB 538 (1989); *see Charlene R. Herrera*, 44 ECAB 361 (1993).