

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARJORIE M. ALLUMS and U.S. POSTAL SERVICE,
WORLDWAY POSTAL CENTER, Los Angeles, CA

*Docket No. 99-1761; Submitted on the Record;
Issued June 28, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits as of March 10, 1998 on the basis that appellant had no further residuals of her September 9, 1990 work-related injury.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits as of March 10, 1998.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.²

In the instant case, appellant sustained a traumatic injury to her lower back while in the performance of duty on September 9, 1990. She ceased working the day after her injury and the Office subsequently accepted appellant's claim for subluxation at L4-5, L5-S1 and herniated nucleus pulposus at L5-S1. The Office placed appellant on the periodic compensation rolls and she continued to receive wage-loss compensation until March 10, 1998. On that date, the Office issued a decision terminating compensation on the basis that the medical evidence established that appellant had no further residuals of her September 9, 1990 work-related injury. The Office based its decision to terminate compensation on the opinions of Dr. Frederick J. Lieb, a Board-certified orthopedic surgeon and Office referral physician, and Dr. Joseph T. Broderick, a Board-

¹ *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

certified internist and appellant's treating physician.³ Appellant subsequently requested an oral hearing, which was conducted on November 17, 1998. In a decision dated January 21, 1999, the Office hearing representative affirmed the March 10, 1998 decision terminating compensation.

The Board finds that the January 21, 1999 decision of the Office hearing representative is in accordance with the facts and the law in this case, and hereby adopts the factual findings and conclusions of the Office hearing representative.

On March 16, 1999 appellant, with the assistance of counsel, requested reconsideration. The request for reconsideration was accompanied by additional medical reports from appellant's treating physician, Dr. Broderick.⁴ In a merit decision, dated April 8, 1999, the Office denied modification of the prior decision terminating compensation.

As previously noted, the Office initially terminated compensation based upon the concurring opinions of Drs. Broderick and Lieb. Although, Dr. Broderick initially expressed agreement with Dr. Lieb's assessment that appellant was able to return to her former duties, Dr. Broderick's subsequent reports ostensibly present conflicting information regarding appellant's ability to resume her former duties.

In a November 30, 1998 narrative report, Dr. Broderick noted that appellant continued to experience back pain, which he described as "mild to moderate." Dr. Broderick further noted that appellant "remains temporarily disabled" and he recommended she not return to work. However, in a similarly dated Form CA-20a, Dr. Broderick noted that appellant was not totally disabled for her usual work. In light of these contradictory statements, it is not entirely clear from Dr. Broderick's November 30, 1998 reports whether he is of the opinion that appellant remains totally disabled. Furthermore, his narrative report provides no explanation for his opinion that appellant should not return to work. Additionally, the November 30, 1998 narrative report provides no insight as to what factors prompted Dr. Broderick to change his opinion from that previously stated in January and February 1998.

Dr. Broderick also provided a February 15, 1999 narrative report in which he again noted findings of "mild to moderate" pain in the lumbosacral spine. Similar to his prior report of November 30, 1998, Dr. Broderick also stated that appellant "remains temporarily disabled" and should not return to work. Once again, he provided no explanation for his February 15, 1999 opinion that appellant remains temporarily disabled. In a similarly dated Form CA-20a, Dr. Broderick checked the "yes" box in response to the question. "Is the employee totally

³ In a report dated January 5, 1998, Dr. Lieb noted that appellant presented no objective findings of any injury-related disability and that she was physically capable of performing her prior full-time duties without restrictions. On January 26, 1998 Dr. Broderick reviewed Dr. Lieb's report as well as a surveillance video of appellant performing various physical activities, and he concluded that appellant was malingering and she no longer suffered from any residuals of her employment injury. Subsequently, Dr. Broderick completed a Form CA-20a indicating that appellant was not totally disabled from her usual work and was able to return to work as of February 16, 1998.

⁴ The evidence submitted on reconsideration included narrative reports dated November 30, 1998 and February 15, 1999, which were accompanied by similarly dated Form CA-20a reports. Dr. Broderick also provided a February 10, 1999 report in which he responded to a series of questions the Office initially posed to Dr. Lieb in connection with his second opinion evaluation.

disabled for usual work?” and he inserted the notation “pt. statement [witnessed].” While it is not entirely clear what additional information Dr. Broderick sought to convey by including this notation, arguably the comment suggests that the disability finding was based on appellant’s own assessment of her work capabilities. Dr. Broderick’s February 15, 1999 reports are further undermined by the fact that five days prior to issuing those reports, he authored another report in which he indicated that appellant was capable of returning to work with certain physical restrictions. The record is devoid of any explanation as to why appellant was apparently capable of performing some type of limited duty on February 10, 1999 but unable to return to work five days later.

Although Dr. Broderick’s more recent reports present differing conclusions than those previously expressed in January and February 1998, the recent body of evidence is contradictory and lacks a reasoned explanation for his apparent change of opinion. The evidence can best be described as convoluted. Consequently, Dr. Broderick’s most recent opinions do not rise to the level of rationalized medical opinion evidence sufficient to establish that the termination was improper.⁵

The April 8, 1999 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
June 28, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).