U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of P. FRED GEHO, III and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, DE

Docket No. 97-2721; Submitted on the Record;
Issued March 14, 2000

DECISION and ORDER

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

The issue is whether appellant had any disability or injury residuals after April 26, 1995, the date the Office of Workers' Compensation Programs terminated his compensation benefits, causally related to his March 29, 1993 soft tissue lumbar muscular strain and lumbar subluxation injuries.

The Board finds that this case must be reversed.

The Office accepted that on March 29, 1993 appellant, then a 28-year-old distribution clerk, sustained soft tissue lumbar muscular strain and a lumbar subluxation while reaching to clear a mail jam from a machine.[1] Appellant returned to work on light duty in April 1994 but continued to receive chiropractic treatment, and continued to be diagnosed as having subluxations.

Thereafter the Office determined that a second opinion medical examination was necessary to determine the nature and extent of appellant's work-related injury and its residuals. The Office referred appellant, together with questions to be answered and a statement of accepted facts, to Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon.

By report dated October 18, 1994, Dr. Eckbold reviewed the record, noting that the magnetic resonance imaging (MRI) demonstrated dessicated discs at L4-5 and L5-S1 but without gross evidence of herniation or spinal stenosis identified. Dr. Eckbold noted no objective findings upon examination and he diagnosed "sprain pattern low back, by history only." He noted the presence of degenerative disc disease and opined "[i]t cannot be defined when the abnormalities occurred and it cannot be defined that the abnormalities were caused or aggravated

[1] Appellant was born with a pars defect, or a congenital missing vertebra.

by an incident of March 29, 1993." Dr. Eckbold opined that appellant's work limitations were on the basis of observed abnormalities on the MRI, and that it "cannot be defined that the MRI abnormalities were in any way affected by the incident of March 29, 1993." He opined that he could "find no objective evidence of residuals which can be defined as having been caused or aggravated by the March 29, 1993 incident." No x-rays were noted as being taken or examined.

On March 4, 1995 the Office issued appellant a notice of proposed termination of compensation advising that Dr. Eckbold's opinion constituted the weight of the medical evidence as he was Board-certified and had a statement of accepted facts, and found that there was "no injury-related condition after October 18, 1994." The Office gave appellant 30 days within which to submit a report "relevant to the issue."

By report dated March 27, 1995, Dr. Ronald J. Saggese, appellant's treating chiropractor, examined appellant and noted positive objective low back findings which included moderate to severe muscle spasms of the thoracic and lumbar paraspinal musculature, pain upon palpation from L3 to T9, decreased lumbar flexion with pain, and a positive Sotohall's test. Dr. Saggese noted that x-rays demonstrated abnormal disc spacing and degenerative changes at L4 and L5, hyperlordosis, and subluxation at L2, L4 and L5. He diagnosed lumbar vertebral subluxation complexes with associated lumbar plexus disorder, and disc degeneration, lumbar intervertebral disc syndrome with resultant lumbalgia. Dr. Saggese noted on an attached form report that appellant's daily routine made appellant's symptoms worse and that he experienced constant sharp pain. Further chiropractic records demonstrated regular treatment given for a condition which had a March 29, 1993 onset, that included spinal manipulation.[2]

However, by decision dated April 26, 1995, the Office terminated appellant's entitlement to further compensation or medical benefits finding that the evidence of record showed that appellant no longer suffered any residuals of his original work injury. The Office noted Dr. Saggese's report, ignored his x-ray findings of subluxations, and concluded that Dr. Eckbold's report represented the weight of the evidence.

By letter dated August 9, 1995, appellant requested reconsideration, and in support he submitted additional medical evidence, but modification of the April 26, 1995 decision was denied by decision dated November 12, 1996 as the evidence was found to be insufficient to warrant modification. By letter dated March 14, 1997, appellant again requested reconsideration and in support he submitted additional medical evidence, but modification of the November 12, 1996 decision was denied by decision dated May 22, 1997 as the evidence was found to be insufficient to warrant modification.

The Board finds that both the statement of accepted facts and the questions to be resolved, which were sent to Dr. Eckbold, omitted any mention of a lumbar subluxation as being

[2] Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary." Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Act and his opinion on causal relationship does not constitute competent medical evidence. However, in this case, Dr. Saggese diagnosed subluxations on the basis of his x-rays and provided spinal manipulation as treatment, and therefore is considered to be a physician in this case. *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

one of the accepted injury-related conditions. Consequently, Dr. Eckbold's report failed to address whether appellant still had a lumbar subluxation or any subluxation residuals. Therefore, this report, being based upon an incomplete history of injury, cannot constitute the weight of the medical opinion evidence.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] 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.[4] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[5] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[6] The Office did not meet its burden of proof to terminate compensation entitlement and medical benefits in this case.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 22, 1997 is hereby reversed.

Dated, Washington, D.C.
March 14, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[3] *Harold S. McGough*, 36 ECAB 332 (1984).

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

[5] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[6] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).