

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NICOLE ROBERTS and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, New York, NY

*Docket No. 98-2010; Submitted on the Record;
Issued March 13, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has any disability or injury residuals after May 24, 1998, causally related to her October 7, 1996 cervical, thoracic and lumbar strain employment injuries.

Appellant, 23-year-old a computer clerk, claimed that she sustained an injury on October 7, 1996 when the elevator that she was riding up in fell five floors down from the 17th floor and jerked to a stop.¹ She stopped work that date and did not return. The Office of Workers' Compensation Programs accepted her claim for cervical, thoracic and lumbar strains.

On October 22, 1996 appellant came under the care of Dr. Leo Parnes, an osteopathic family practitioner, who diagnosed traumatic cervical derangement, torticollis, lumbosacral derangement and dorsal sprain and continued to indicate that she was totally disabled and unable to work due to her injuries.

Diagnostic spinal x-rays taken on November 8, 1996 were reported by Dr. Harold S. Parnes, a Board-certified radiologist, as demonstrating no evidence of fractures or dislocations, straightening of the cervical and lumbar normal curvature, visualized bony elements intact and a Schmorl's node at the superior endplate at T12.

On February 1, 1997 Dr. Leo Parnes indicated that appellant was able to resume regular work on February 3, 1997.

¹ The building manager and the elevator manufacturer both, however, stated that it was not possible for that elevator to free fall due to the nature of their design, but that when an elevator rises and decelerates more quickly than usual it can give the sensation of falling. A later conference memorandum with the General Services Administration indicated that the elevator could only drop/fall five floors if the cables were broken and the brakes failed, which was not the case here.

In response appellant resigned from the employing establishment on February 1, 1997. However, appellant continued to submit CA-8 forms and to receive compensation for temporary total disability.

On March 1, 1997 Dr. Leo Parnes indicated that appellant had returned to a different job on February 3, 1997, and he noted activity restrictions on kneeling, standing, bending, twisting and lifting. However, on June 23, 1997 and thereafter Dr. Leo Parnes indicated that appellant was totally disabled for an indefinite period and noted diagnoses of bilateral L5-S1 radiculopathy, cervical derangement with sprain, torticollis, lumbosacral derangement and dorsal sprain, and on September 30, 1997 he noted new injury-related findings of posterior bulging discs at L2-3, L3-4, L4-5 and L5-S1.

On May 3, 1997 Dr. Harold Parnes noted that a magnetic resonance imaging (MRI) scan revealed posterior bulging discs at L2-3, L3-4, L4-5 and L5-S1, and he suggested that a clinical correlation be made. No opinion on causal relation was given and no finding of any disc bulge-related disability or need for medical treatment was made.

On September 24, 1997 the Office referred appellant to Dr. Sanford R. Wert, a Board-certified orthopedic surgeon, together with a statement of accepted facts, questions to be addressed and the pertinent medical records, for a second opinion examination. In a thorough and well-rationalized report dated September 24, 1997, Dr. Wert reviewed appellant's history of injury and the medical records, performed a complete physical examination, fully discussed his objective findings and opined:

"I found [appellant's] responses on physical examination to be extremely excessive or more likely exaggerated. She complained of pain upon the slightest touch and was voluntarily guarding against all movements. The EMG/NCV [electromyographic/nerve conduction velocity] report revealed findings of a left radiculopathy. This was not consistent with the physical examination as [appellant] complained of pain on straight leg raising bilaterally. Also [appellant] did not offer any complaints of shoulder pain. Yet on physical examination she was barely able to move her shoulders. This is most unusual as well. She also had a positive confusion test, which as previously stated is indicative of an individual who is intentionally attempting to influence the examination. It is therefore my opinion that there is no orthopedic related disability."

Dr. Wert further noted:

"The MRI report of the lumbar spine revealed findings of bulging discs at L2-3, L3-4, L4-5 and L5-S1. This report did not indicate if there was any spinal cord compression. In any event, it is not likely [appellant] injured four discs as a result of one incident. I am therefore recommending an independent radiological review of the actual MRI films.

"[Appellant] has been receiving physical therapy for the past 11 months and still claims to be in excruciating pain. As this type of treatment has not helped her I see no reason to allow her to continue. It is my opinion that maximum medical

improvement within my specialty has been achieved. There is no further orthopedic-related treatment indicated. There is no need for continued physical therapy. [Appellant] is capable of resuming light-duty employment or of working in a sedentary position. These restrictions are subject to change pending the independent radiologist's report."

Dr. Wert indicated that appellant could work 8 hours per day, no kneeling, bending, twisting or reaching and with a lifting limit of 10 pounds.

The MRI films were referred to Dr. Sondra J. Pfeffer, a Board-certified radiologist, for a second opinion radiologic evaluation. By report dated January 2, 1998, Dr. Pfeffer opined that there was no evidence of post-traumatic disc injuries, herniations or pathologic bulges. She additionally stated that there was no evidence of neuroforaminal or exiting nerve root compromise and no paraspinal soft tissue injuries. Dr. Pfeffer concluded that the lumbar MRI scan performed seven months post accident was completely normal and that there were no MRI scan findings to account for any alleged neurological deficit or disability of a permanent nature.

On January 16, 1998 Dr. Wert concurred with Dr. Pfeffer's findings and opinion and he opined that appellant was capable of resuming full-time normal employment with no restrictions or limitations. He opined that "as a result of the accident of October 7, 1996 appellant at most sustained a lumbosacral spine strain which has since resolved."

The Office then determined that a conflict in radiologic opinion between the interpretation provided by Dr. Harold Parnes and Dr. Pfeffer on the presence of lumbar disc bulges, and it referred the film to Dr. Harold C. Heintz, a Board-certified radiologist, for an impartial radiologic examination.

However, by report dated April 2, 1998, Dr. Joseph Scrivani, a Board-certified radiologist in practice with Dr. Heintz, noted that the lumbar vertebral bodies showed normal alignment without fractures, displacement or other type abnormality, that the lumbar discs were normal without evidence of herniation or degeneration, that the conus medullaris and subarachnoid space were normal, that the nerve roots showed no displacement, that the facet joints were normal and without foraminal encroachment and that the soft tissues were unremarkable. He opined that the films demonstrated a normal lumbar MRI scan without post-traumatic changes.

By notice of proposed termination of compensation dated April 17, 1998, the Office advised appellant that the weight of the medical evidence of record established that she had no further disability or injury residuals causally related to her October 7, 1996 muscular soft tissue strain injuries. The Office gave appellant 30 days within which to submit evidence supporting that she still had injury-related disability or residuals.

In response to the proposed termination, appellant submitted an April 23, 1998 letter directly and through her congressional representative. Appellant claimed that Dr. Wert lied in his report concerning the examination he performed, but did not provide any supporting evidence and claimed that she disagreed with the findings of the report. Appellant also submitted nursing notes dating from the date of injury.

By decision dated May 22, 1998, the Office determined that the weight of the medical opinion evidence supported that appellant had no further disability or injury residuals of her October 7, 1996 injury. The Office found that Dr. Wert's well-rationalized opinion based upon an accurate statement of accepted facts and supported by objective evidence outweighed Dr. Leo Parnes' opinion based upon subjective symptomatology, and that since it was provided by a Board-certified orthopedic surgeon, it had greater probative value than the opinion of an osteopathic family practitioner in establishing that appellant had no further disability or continuing injury residuals. The Office also found that the impartial medical examiner, Dr. Scrivani, resolved the conflict in radiologic film interpretation between Drs. Pfeffer and Harold Parnes, and determined that appellant had a normal MRI scan without signs of disc herniation or degeneration. The Office terminated appellant's compensation and medical benefits entitlement effective May 24, 1998.

The Board finds that appellant has no disability or injury residuals requiring further medical treatment after May 24, 1998, causally related to her October 7, 1996 cervical, thoracic and lumbar strain employment injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² 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.³ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁴ 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.⁵

In this case, the Office met its burden of proof to terminate appellant's compensation and medical benefits entitlement. The Office properly found that Dr. Wert's opinion, which was based upon objective findings and was given by a Board-certified specialist in the field, probatively outweighs the opinions of Dr. Leo Parnes, an osteopathic family practitioner not a specialist in the field of musculoskeletal injuries, which did not provide objective findings or evidence to support his opinion on continuing disability.⁶ Dr. Wert's well-rationalized opinion establishes that appellant has no further disability or need for medical treatment.

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁵ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

⁶ *See Cleopatra McDougal-Sadler*, 47 ECAB 480 (1996) (opinions of physicians having training and knowledge in a specialized medical field have greater probative value than those of nonspecialists concerning questions peculiar to that field); *see also Connie Johns*, 44 ECAB 560 (1993) (to be probative, opinions supporting causal relation must be supported with affirmative evidence).

Further, the conflict in radiographic evidence interpretation as to whether appellant sustained disc bulges at L2-3, L3-4, L4-5 and L5-S1 which was identified by the Office is not dispositive,⁷ as the Office never accepted that appellant sustained injury-related disc bulges, and as Dr. Harold Parnes' opinion that they exist on May 3, 1997 contains no opinion on causation or causal relation to the October 7, 1996 soft tissue muscle strain injuries. Therefore, Dr. Harold Parnes' report does not support that these bulges are injury related and Dr. Leo Parnes' recitation of the May 3, 1997 MRI scan findings without any explanation supporting causal relation also does not establish that these bulges are injury related, so a conflict as to whether they exist is not dispositive. Consequently, appellant has not established that she sustained multiple disc bulges on October 7, 1996 in the performance of duty.

Accordingly, the decision of the Office of Workers' Compensation Programs dated May 22, 1998 is hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ This "conflict" however, was not successfully resolved as Dr. Scrivani, Dr. Heintz's associate, performed the examination. As Dr. Scrivani was not the selected physician in accordance with Office procedures, his opinion was improperly relied upon by the Office to resolve the radiologic "conflict." *Shirley L. Steib*, 46 ECAB 309 (1994).