

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEGGY BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 99-45; Submitted on the Record;
Issued March 15, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective August 3, 1998 on the grounds that she had no disability due to her August 25, 1993 employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective August 3, 1998 on the grounds that appellant no longer had disability due to her August 25, 1993 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On August 25, 1993 appellant, then a 41-year-old mail carrier, sustained employment-related cervical, dorsal and lumbosacral strains. Appellant stopped work on August 25, 1993, returned to limited-duty work in October 1993 and was terminated from the employing establishment in October 1997 due to failure to perform her job. By decision dated August 3, 1998, the Office terminated appellant's compensation effective August 3, 1998 on the grounds that she had no disability due to her August 25, 1993 employment injury after that date. The

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

Office based its termination of the opinion of Dr. Hilliard E. Slavick, a Board-certified orthopedic surgeon, to whom it referred appellant for a second opinion.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of the Office referral physician, Dr. Slavick. In a report dated May 21, 1998, he determined that appellant no longer had disability due to her August 25, 1993 employment injury.

In his May 21, 1998 report, Dr. Slavick reported the findings of his examination on May 19, 1998. He indicated that motor strength was intact in all four limbs, truncal bending in all directions was normal, tenderness to palpation over the lumbar spine was negative and sensory testing was unremarkable. Dr. Slavick noted that appellant had multiple subjective complaints but did not have any objective findings. He provided a review of appellant's medical history and stated that the records revealed her symptoms had resolved. Dr. Slavick noted that appellant could return to her regular work and stated, "I find no evidence of any disability and no evidence for continued muscular strain."

The Board has carefully reviewed the opinion of Dr. Slavick and notes that it has reliable, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Slavick's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁵ Dr. Slavick provided medical rationale for his opinion by explaining that appellant had no objective residuals of her employment injury and that the nature of her injury was such that it had resolved itself.

Appellant had received treatment since her injury from Dr. Anthony L. Brown, an attending Board-certified orthopedic surgeon. In a final report dated September 29, 1994, Dr. Brown indicated that appellant had full range of back motion and exhibited essentially normal findings upon examination and diagnostic testing. He noted that there was no basis for restrictions or impairment. In 1995 and 1996, several attending physicians indicated that appellant required work restrictions, but these physicians did not provide a clear diagnosis of appellant's condition or an opinion that the work restrictions were required by her August 25, 1993 employment injury.⁶

In a report dated October 5, 1995, Dr. James Sobeski, an attending physician specializing in orthopedic surgery, indicated that appellant was restricted to lifting 20 pounds. In a report dated January 25, 1996, Dr. Swati Shirali, an attending Board-certified orthopedic surgeon, stated that appellant had "low back pain," should continue with work restrictions and should

⁵ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁶ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

undergo a functional capacity test. These physicians did not, however, provide a diagnosis of appellant's condition or indicate that her restrictions were related to an employment injury. In several reports, dated between early and late 1996, Dr. E. Quinn Regan, an attending Board-certified orthopedic surgeon, indicated that appellant required work restrictions and recommended that she participate in a work hardening program.⁷ Dr. Regan indicated that appellant had "mechanical low back pain" but did not provide a diagnosis of her condition. He indicated that appellant's findings were subjective rather than objective in nature. Appellant participated in a work hardening program in 1996, but several reports revealed that she exerted minimal to moderate effort in the program and exhibited inconsistent pain responses. Dr. Regan did not provide any indication that appellant's problems were due to the August 25, 1993 employment injury.⁸

The decision of the Office of Workers' Compensation Programs dated August 3, 1998 is affirmed.

Dated, Washington, D.C.
March 15, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ In a report dated August 29, 1996, Dr. Regan indicated that appellant could lift 30 pounds but could not lift 70 pounds as required by her regular job.

⁸ Diagnostic testing revealed that appellant had degenerative disc disease of the low back.