

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHAY I. KAMME and U.S. POSTAL SERVICE,
POST OFFICE, Long Island City, NY

*Docket No. 98-2291; Submitted on the Record;
Issued May 17, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective March 11, 1997 on the grounds that she had no further condition or disability due to her accepted employment injury; (2) whether the Office properly terminated appellant's authorization for medical treatment; and (3) whether appellant has established that she had continuing disability after March 11, 1997 causally related to her accepted employment injury.

On May 10, 1996 appellant, then a 39-year-old letter carrier, filed a claim for a traumatic injury occurring on April 29, 1996 in the performance of duty. Appellant stopped work on April 30, 1996 and did not return. The Office accepted appellant's claim for left wrist sprain, left shoulder sprain, left ankle sprain, cervical sprain and lumbar sprain.

By decision dated March 11, 1997, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Leo Arthur Green, a Board-certified orthopedic surgeon who performed a second opinion evaluation, established that she had no further employment-related condition or disability.

In a letter dated February 17, 1996, appellant, through her representative, requested reconsideration and submitted additional medical evidence. The Office determined that the evidence submitted created a conflict in medical opinion regarding whether appellant had any further condition or disability due to her accepted employment injury and referred her to Dr. Richard Nottingham, a Board-certified orthopedic surgeon, for an impartial medical examination.

Based on the opinion of Dr. Nottingham, the Office, in a decision dated April 22, 1998, denied modification of its termination of appellant's benefits.

The Board has duly reviewed the case record in the present appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective March 11, 1997.

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

In the instant case, appellant received treatment following her employment injury from Dr. Barry Jupiter, a Board-certified orthopedic surgeon. Appellant submitted numerous form reports from Dr. Jupiter throughout 1996 in which he diagnosed, *inter alia*, sprains of appellant's ankle, wrist, shoulder, cervical spine and lumbar spine as well as impingement syndrome.⁴ Dr. Jupiter checked "yes" that the conditions were caused or aggravated by employment and found appellant totally disabled from employment. However, the Board has held that a causation finding, which consists only of checking "yes" to a form question, without any explanation or rationale, has little probative value and is not sufficient to establish causation.⁵ Appellant also submitted office visit notes from Dr. Jupiter in which he described appellant's complaints and discussed performing surgery on appellant's shoulder. Dr. Jupiter, however, did not address either causation or provide any explanation in support of his findings and thus his reports are of little probative value.⁶

As the record contained no medical opinion providing rationale for appellant's continued disability, the Office referred her to Dr. Green for a second opinion evaluation. In a report dated December 17, 1996, Dr. Green discussed appellant's history of injury, reviewed the medical evidence of record and listed findings on physical examination. He concluded:

“[Appellant] has no objective findings that indicate that there is a left wrist sprain, a cervical sprain, a left shoulder sprain, a left ankle sprain, or an aggravated lumbar sprain. During the course of the examination I had the impression that

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ On July 8, 1996 appellant underwent a magnetic resonance imaging study of her left wrist which revealed “a small focus of increased signal within the ulnar styloid attachment of the triangular fibrocartilage, which may represent mucoid degeneration, but a small tear can not be entirely excluded.” An MRI of appellant's lumbar spine obtained on July 18, 1996 yielded normal findings, and an MRI of her left shoulder on July 22, 1996 showed supraspinatus tendinitis and outlet narrowing without evidence of a rotator cuff tear.

⁵ *Debra S. King*, 44 ECAB 203 (1992).

⁶ *Linda I. Sprague*, 48 ECAB 386 (1997) (Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

there was a great deal of voluntary guarding of motion. Some of the motions that she could not do in one position she was able to perform in another position.”

Dr. Green further found that appellant required no further medical care and could return to her regular full-time employment. He noted that the findings on the MRIs were “mild” and that his examination yielded no objective findings, which would “indicate that there are specific restrictions in her activities.”

The Board has carefully reviewed the opinion of Dr. Green and finds that it has reliability, probative value and convincing quality with respect to the conclusions regarding the relevant issue in the present case. Dr. Green provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Green provided a proper analysis of his findings on examination, including the results of objective testing and reached conclusions regarding appellant’s condition, which comported with this analysis.⁷ Dr. Green included medical rationale for his opinion by explaining that the findings upon examination and diagnostic testing did not show any objective residuals of appellant’s employment injury.

The remaining evidence of record received prior to the Office’s termination of compensation consists of an office visit note dated February 12, 1997 from Dr. Jupiter in which he noted appellant’s continued complaints of pain and requested authorization for an MRI of appellant’s cervical spine and for arthroscopy of her left shoulder. In an accompany form report of the same date, Dr. Jupiter diagnosed multiple sprains of the wrist, shoulder, neck and back and checked “yes” that the condition was employment related. He did not, however, provide rationale for his opinion and thus it is of little probative value.⁸ The Board, therefore, finds that the Office met its burden of proof to terminate appellant’s compensation benefits.

The Board further finds that the Office properly terminated appellant’s authorization for medical benefits.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁹ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment. The Office met this burden through the report of Dr. Green, who found that appellant had no need for further medical treatment and had no residual condition caused by her employment injury and provided rationale in support of that conclusion.

The Board further finds that appellant has not established that she had continuing disability after March 11, 1997 causally related to her accepted employment injury.

⁷ See *Melvina Jackson*, 38 ECAB 443 (1987).

⁸ See *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁹ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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.¹⁰ To establish a causal relationship between the claimed disability and the employment injury, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹¹

Appellant, with her request for reconsideration, submitted a report dated March 10, 1997 from Dr. Ellen J. Braunstein, a Board-certified neurologist, who noted that "it appears [appellant] has suffered multiple trauma to the left side of her body." She recommended further objective testing. In a form report dated March 25, 1997, Dr. Braunstein diagnosed cervical and lumbar radiculopathy and carpal tunnel syndrome. She checked "yes" that the condition was due to an employment activity.

Dr. Melvin Leeds, a Board-certified radiologist, interpreted an MRI of appellant's cervical spine, obtained on April 30, 1997, as revealing "a shallow midline herniation extending across the middle of the canal at the posterior aspect of the C5-6 interspace. This herniation is seen to touch the anterior margin of the spinal cord, but no lateralization to the exit foramina is appreciated."

In a report dated May 28, 1997, Dr. Jupiter discussed his treatment of appellant since her April 29, 1996 employment injury and noted that an MRI of her cervical spine revealed a herniated disc at C5-6 and degenerative disc disease. He stated:

"[Appellant] presents with significant findings about her neck, back and left arm. Her shoulder remains significantly symptomatic despite much conservative treatment. She has impingement syndrome, which is directly causally related to her fall. She is in need of arthoscopic surgery...."

Dr. Jupiter indicated his disagreement with Dr. Green's findings and opined that appellant remained disabled from her usual job duties.

Based on the evidence submitted with appellant's request for reconsideration, the Office determined that a conflict existed between Dr. Green and Dr. Jupiter regarding whether appellant was totally disabled from employment. The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Nottingham to resolve the conflict in medical opinion. The Office requested that Dr. Nottingham provide a diagnosis of appellant's condition, address whether the MRI of her cervical spine showed a herniated disc and provide an opinion regarding whether any medical condition causally related to her April 29, 1996 prevented her from performing her usual employment duties. The Office further requested that Dr. Nottingham provide an opinion regarding whether appellant required arthoscopic surgery of the left shoulder as a result of her accepted employment injury.

¹⁰ *George Servetas*, 43 ECAB 424, 430 (1992).

¹¹ *John M. Tornello*, 35 ECAB 234 (1983).

In a report dated April 9, 1998, Dr. Nottingham discussed appellant's history of injury, the results of objective testing and listed findings on physical examination. He stated:

“In my opinion [appellant] has no objective evidence of disability related to the above[-]mentioned injury. She has an MRI consistent with impingement syndrome [of the] left shoulder, which in my opinion well predated her injury. It is my feeling that [her] shoulder pain can be completely explained by the natural history of impingement syndrome and has nothing to do with the above[-]mentioned injury. [Appellant's] limitation of motion of the neck in my opinion is voluntary. She has excessive tenderness over the posterior neck and low back regions. There is no evidence of muscle atrophy or spasm. In my opinion MRI of the neck does not show a herniated disc. [Appellant's] symptoms of carpal tunnel syndrome [are] certainly not anatomic and involved the ulnar digits rather than the radial digits. She has no atrophy of the musculature in the hand.

“In conclusion, I find no evidence that [appellant] has any objective findings with disability created by or related to the accident, which occurred at work on April 29, 1996. I, therefore, believe that she is able to return to her former employment without restriction.”

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.¹² The Board concludes that Dr. Nottingham's report is sufficiently well rationalized to constitute the weight of the medical opinion evidence. He interpreted the MRI of appellant's shoulder as showing impingement syndrome unrelated to her employment injury and found that the MRI of her cervical spine did not show a herniated disc.¹³ On physical examination, he noted that there were no findings of muscle atrophy or spasm around the neck or lower back. Dr. Nottingham concluded that appellant had no objective evidence of any further injury-related disability and further opined that she could resume her usual employment.

Appellant, consequently, has not met her burden of proof to establish any employment-related disability.

¹² *Leanne E. Maynard*, 43 ECAB 482 (1992).

¹³ While Dr. Jupiter found that an MRI revealed a herniated cervical disc, he did not specifically relate this finding to appellant's employment injury and therefore the record does not contain a conflict in medical opinion regarding whether appellant sustained an employment-related cervical disc herniation.

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

Dated, Washington, D.C.
May 17, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member