

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of SANDRA S. LEACH and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Ackworth, IA

*Docket No. 00-2228; Submitted on the Record;  
Issued August 10, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation; and (2) whether appellant met her burden of proof to establish that she had any work-related disability after January 11, 2000.

On August 8, 1997 appellant, then a 52-year-old postmaster, filed a traumatic injury claim, which the Office accepted for a lumbar strain and aggravation of spondylolisthesis. Appellant returned to limited-duty work and retired on June 17, 1998.

By letter dated December 8, 1999, the Office proposed to terminate appellant's compensation on the grounds that the weight of the medical evidence established that she had no residual disability or medical condition causally related to her August 8, 1997 employment injury.

By decision dated January 11, 2000, the Office terminated appellant's compensation.

By decision dated June 15, 2000, the Office denied modification of its January 11, 2000 decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.<sup>1</sup>

---

<sup>1</sup> See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>2</sup>

In a report dated February 18, 1998, Dr. Joshua D. Kimelman, a Board-certified orthopedic surgeon, diagnosed spondylolisthesis with back pain and radicular pain in the left leg. He indicated that appellant was partially disabled.

In a report dated March 25, 1998, Dr. Ben F. Gaumer, a physician whose specialty is not indicated in the record, stated that appellant was disabled from her regular job because of numerous medical conditions which included spondylolisthesis.

In a letter dated April 8, 1998, Dr. Kimelman diagnosed spondylolisthesis and stated that appellant was being treated for back pain and sciatica related to her August 8, 1997 employment injury. He recommended that she change her job to avoid bending, twisting and lifting.

In a report dated June 17, 1998, Dr. Kimelman stated that appellant's back pain had gotten worse. He diagnosed chronic back pain with acute exacerbation and spondylolisthesis and indicated that she was unable to work.

In a report dated August 31, 1998, Dr. Dan E. Miulli, a neurosurgeon, noted that appellant had low back pain. He provided findings on examination and diagnosed spondylolisthesis with degenerative disc disease and a herniated disc at L4-S1.

In a report dated December 8, 1998, Dr. Kimelman stated that appellant's preexisting spondylolisthesis and degenerative disc disease were aggravated by her August 8, 1997 employment injury and resulted in continuing chronic low back pain.

In a report dated June 9, 1999, Dr. Peter D. Wirtz, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on examination and diagnosed degenerative disc disease at multiple levels. He indicated that appellant's continuing back problems were due to her preexisting degenerative disc disease rather than her August 8, 1997 employment injury.

By letter dated July 30, 1999, the Office properly referred appellant to Dr. Douglas M. Cooper, a Board-certified orthopedic surgeon and an impartial medical specialist, for an examination and evaluation to resolve the conflict in the medical evidence between appellant's physicians and the Office referral physician, on whether she had any remaining disability or medical condition causally related to her August 8, 1997 employment injury.

In a report dated August 17, 1999, Dr. Cooper provided a history of appellant's condition, findings on examination and the results of magnetic resonance imaging scans. He stated that her low back pain was most likely due to spondylolisthesis at L5-S1 and that her August 8, 1997 employment injury caused a temporary aggravation of her underlying spondylolisthesis. In a supplemental report dated November 8, 1999, Dr. Cooper indicated that

---

<sup>2</sup> See *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

appellant's work-related temporary aggravation of her underlying spondylolisthesis had ceased and her continuing problems were due to her underlying condition.

The Board finds that the August 17 and November 8, 1999 reports of the impartial medical specialist, Dr. Cooper, are based on a proper factual and medical background and are well rationalized. Therefore, as the impartial medical specialist, Dr. Cooper's opinion is entitled to special weight and establishes that appellant had no continuing disability or medical condition causally related to her August 8, 1997 employment injury.

The reports of appellant's physicians are insufficient to overcome the weight of the opinion of the impartial medical specialist, Dr. Cooper.

In a report dated February 18, 1998, Dr. Kimelman diagnosed spondylolisthesis and indicated that appellant was partially disabled. In a letter dated April 8, 1998, he diagnosed spondylolisthesis and stated that she was being treated for back pain and sciatica related to her August 8, 1997 employment injury. In a report dated June 17, 1998, Dr. Kimelman diagnosed chronic back pain and spondylolisthesis and indicated that appellant was unable to work. In a report dated December 8, 1998, he stated that her preexisting spondylolisthesis and degenerative disc disease were aggravated by her August 8, 1997 employment injury and resulted in continuing chronic low back pain. However, in these reports, Dr. Kimelman provided insufficient medical rationale explaining how appellant's disability was causally related to her August 8, 1997 employment injury. Therefore, these reports are not sufficient to establish that appellant had any continuing work-related disability.

In a report dated March 25, 1998, Dr. Gaumer stated that appellant was disabled from her regular job because of numerous medical conditions which included spondylolisthesis. However, he did not state that appellant's preexisting condition of spondylolisthesis continued to be aggravated due to her August 8, 1997 employment injury. Therefore, Dr. Gaumer's report is not sufficient to establish any continuing disability causally related to her August 8, 1997 employment injury.

In a report dated August 31, 1998, Dr. Miulli diagnosed spondylolisthesis with degenerative disc disease and a herniated disc at L4-S1. However, he did not explain how these conditions were causally related to appellant's August 8, 1997 employment injury.

The Board further finds that appellant failed to meet her burden of proof to establish that she had any work-related disability after January 11, 2000.

After termination or modification of compensation, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation.<sup>3</sup>

---

<sup>3</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

After the Office's January 11, 2000 decision, terminating appellant's compensation effective that date, appellant submitted additional medical evidence, which she felt showed that she was entitled to compensation after January 11, 2000 due to residuals of her August 8, 1997 employment injury. Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiner, Dr. Cooper, in terminating appellant's compensation effective January 11, 2000, the burden shifts to appellant to establish that she is entitled to compensation after January 11, 2000. The Board finds that the additional evidence submitted by appellant is in sufficient to establish that appellant had residuals of her August 8, 1997 employment injury after January 11, 2000.

In a report dated January 28, 2000, Dr. Kimelman stated:

"I have no disagreement with Dr. Wirtz or Dr. Cooper's evaluation of [appellant], but rather while most people will get better with an injury at a 2 [to] 3 month period of healing and return to their preinjury level, [appellant] did not. She continues to be symptomatic. [Appellant] has exacerbation of pain with activity and, therefore, I believe that this is ... an exacerbation of a preexisting condition. She requires treatment and has had to alter her normal activity level and lifestyle...."

However, Dr. Kimelman provided insufficient medical rationale in support of his opinion that appellant continued to have residuals from her August 8, 1997 employment injury. Further, the Board notes that as he was on one side of the conflict that Dr. Cooper resolved, the additional report from Dr. Kimelman is insufficient to overcome the weight accorded Dr. Cooper's report as the impartial medical specialist's report or to create a new conflict with it.<sup>4</sup>

---

<sup>4</sup> See *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

The June 15 and January 11, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
August 10, 2001

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member