U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUISE E. CLARK and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 01-72; Submitted on the Record;
Issued August 28, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant had any disability or injury residuals after December 5, 1999, the date the Office of Workers' Compensation Programs terminated her compensation.

This is appellant's second appeal before the Board. In the prior appeal, the Board remanded the case for further development to resolve a conflict in medical opinion evidence.[1] The facts and circumstances of the case are set forth in the prior decision and are hereby incorporated by reference.

Upon remand the Office prepared a statement of accepted facts and referred appellant, together with the complete medical record, to Dr. Herbert Stein, a Board-certified orthopedic surgeon selected as the impartial medical specialist.

By report dated December 9, 1998, Dr. Stein reviewed appellant's history of employment injury and medical treatment, reviewed her history on nonemployment injuries, discussed her current complaints, reviewed her radiographic study results, conducted a thorough physical examination and diagnosed "advanced disc degenerative disease L4-5 status post lumbar laminectomy and excision of herniated disc at L4-5." He noted that appellant did have significant underlying disease prior to her sprain episode at work in 1986 and opined that appellant was permanently disabled from any kind of useful work, but also opined that she could do sedentary work provided she could move up and down at her whim. Dr. Stein opined that, "[a]though [appellant] may have had an exacerbation of her underlying disease at the time of her injury in 1986, the significant change in the disc degenerative disease between 1985 and 1989 films would be related to her preexisting condition and her surgery with perhaps exacerbation at work. I believe most of her complaints are related to her nonwork injury that preceded the episode in April 1986." Dr. Stein completed a work capacity evaluation indicating that appellant

[1] Docket No. 95-2640 (issued January 8, 1998).

could work three to four hours per day if she could change positions as required and he indicated specific activity restrictions.[2]

In a December 16, 1998 medical record note, Dr. David R. Pashman stated that appellant had a chronic low back problem and was disabled due to degenerative disease and lumbar radiculopathy. He opined that further objective testing at that point would not be wise and appellant then weighed 230 pounds and had diabetes, which complicated the situation.

By letter dated April 27, 1999, the Office requested clarification of Dr. Stein's report.

By response dated May 11, 1999, Dr. Stein noted: "I do feel [appellant] had recovered, certainly when I saw her, from any injury that she may have sustained at work on April 21, 1986. I believe her present diagnosis that I indicated in my initial report is related to the previous injury/surgery and postoperative status."

By letter dated June 1, 1999, the Office again asked Dr. Stein for his clarification regarding whether appellant's accepted condition of soft tissue lumbosacral muscular strain had resolved and whether there were any injury-related residuals.

By response dated June 11, 1999, Dr. Stein noted as follows:

> "I indicated that the diagnosis that I had originally made was related to the previous injury, surgery and postoperative status. I am referring to the nonwork injury in May 1984. This is not related to the injury at work on September 18, 1975. It was the injury in 1984 that resulted in the significant symptomatology that caused her to have surgery and possible disc space infection from my review of that history. The significant degenerative disc disease that she has at L4-5 is related to that herniated disc, surgery and postoperative situation."

On June 24, 1999 the employing establishment offered appellant a sedentary modified distribution clerk position for four hours per day in accordance with the activity restrictions delineated by Dr. Stein.[3]

Appellant responded on July 2, 1999 neither accepting nor refusing the offered position, but indicating that she was in the process of seeing her treating physician to discuss whether the offered position was suitable.

By letter dated July 8, 1999, the Office advised appellant that she had been offered a part-time four-hour per day modified distribution clerk position in accordance with the activity restrictions specified by Dr. Stein. The Office advised that it found the offered position to be suitable to her partially disabled condition and in accordance with her activity restrictions, that it

[2] Working four hours per day, sitting up to three hours per day, walking/standing up to one hour per day, no twisting, pushing, pulling, lifting, squatting, kneeling, climbing and the ability to change positions as needed.

[3] *See supra* note 2. The offered job required working four hours per day, sitting up to three hours per day, walking/standing up to one hour per day, no twisting, pushing, pulling, lifting, squatting, kneeling, climbing and the ability to change positions as needed.

was still available to her, that upon acceptance of this position she would receive compensation for the four hours per day she did not work and any difference in pay that might result between the modified position and her date-of-injury position, and that she had 30 days within which to accept the position or to provide reasons why she was refusing the position. The Office also advised appellant of the provisions of 5 U.S.C. § 8106(c)(2).

By letter dated July 9, 1999, the Office again requested of Dr. Stein clarification on whether appellant's accepted condition of soft tissue lumbosacral muscular strain had resolved and whether there were any injury-related residuals.

In a July 14, 1999 report, Dr. Pashman noted that appellant had not been doing her back exercise program as it hurt too much, that she had abnormalities with range of motion, that she was hyporeflexic with positive sitting root and straight leg raising tests, but that she was neurologically intact. He opined that appellant was not a candidate for work-related activities.

In a final clarification dated July 28, 1999, Dr. Stein noted that he had again reviewed appellant's records and opined: "I do not feel [appellant] has any residuals related to her injuries of September 18, 1975 and April 21, 1986. I felt that the symptomatology that she had was strictly related to her injury of May 1984."

By letter dated August 9, 1999, the Office noted that it received Dr. Pashman's July 14, 1999 report and that it had considered her reasons for refusing the offered position and found them to be unacceptable, as Dr. Pashman was on one side of the conflict resolved by the impartial medical reports of Dr. Stein. The Office advised appellant that she had 15 days within which to accepted the suitable position, that no further reasons for refusal would be considered and that it still found the offered position suitable.

On August 21, 1999 appellant signed the employing establishment form accepting the offered light-duty position. She annotated the form "As long as it is within Dr. Stein's guidelines and limitations. I am waiting for the modifications of the job changes and the chair with a back that I will need."

By notice dated October 6, 1999, the Office proposed to terminate appellant's compensation benefits on the basis that the weight of the medical evidence of record supported that she no longer had disability or residuals, causally related to her 1975 or 1996 lumbosacral muscular strain injuries.[4]

On November 16, 1999 the Office finalized its proposed termination of compensation finding that the weight of the medical evidence of record supported that appellant no longer had disability or residuals, causally related to her 1975 or 1996 lumbosacral muscular strain injuries.

By letter dated November 17, 1999, appellant, through her representative, requested a hearing on the termination of her compensation.

[4] The Office had earlier accepted that on September 18, 1975 appellant sustained low back muscular strain while unloading mail from a truck. On January 13, 1976 appellant returned to work part time for five hours per day and on July 9, 1976 appellant resumed her regular duties.

On November 30, 1999 appellant submitted an October 13, 1999 report from Dr. Pashman which stated that he did not feel that it was realistic that she would be able to return to work. Dr. Pashman, however, opined that appellant would be a candidate for home bound sedentary work.

Appellant returned to work at the part-time light-duty position with the employing establishment on September 11, 1999 but alleged that she experienced increased pain and discomfort in her back and legs and stopped work again on September 25, 1999.

In January 4, 2000, the Office received a duplicate copy of Dr. Pashman's December 16, 1998 report.

A hearing was held on April 12, 2000. Appellant submitted a statement in which she claimed that after two weeks of part-time light-duty work she had more problems with her back and had to stop work. Appellant also submitted a February 11, 2000 report from Dr. Pashman in which he reviewed her history of treatment, stated that when seen on July 14, 1999 he recommended that appellant return to work-related activities and noted that she was last seen on October 13, 1999 complaining of significant discomfort after attempting to return to work. Dr. Pashman opined that appellant was unable to return to work-related activities and that her degenerative lumbar spinal problems were the result of her employment injuries. Additionally submitted were medical reports dating from 1984 through 1994.

By decision dated July 30, 2000, the hearing representative affirmed the November 16, 1999 termination of compensation.

The Board finds that appellant had no disability or injury residuals after December 5, 1999, causally related to her April 21, 1986 soft tissue lumbosacral muscular strain injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[5] 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.[6] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[7] 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.[8]

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

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

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

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

Title 5 U.S.C. § 8123(a) states in pertinent part: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

In the instant case, appellant's treating physician, Dr. Pashman, found that appellant had injury-related disability and residuals, while the Office referral physician, Dr. Gerald Williams, found that she could return to work with restrictions. In its prior decision, the Board determined that a conflict between Drs. Pashman and Williams existed, which required resolution.

The Office properly referred appellant, together with a statement of accepted facts, questions to be addressed and the medical records to Dr. Stein.

When there exist opposing medical reports of virtually equal weight and rationale, 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, must be given special weight.[9]

However, when the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.

In the present case, Dr. Stein gave a detailed initial report but did not provide a clear opinion regarding whether appellant had any continuing disability or injury residuals, causally related to her accepted soft tissue muscular strain injuries. The Office requested Dr. Stein to clarify his opinion is several follow-up letters. Dr. Stein determined, in well-rationalized reports based upon complete and accurate factual and medical histories, that appellant had recovered from any 1986 soft tissue muscular strain employment injury, that her present conditions and symptomatology were related to her nonwork-related back surgery and its residuals, and that appellant had no residuals from either her 1975 or 1986 soft tissue muscular strain injuries. Dr. Stein's reports, taken together, provide a complete evaluation of appellant's conditions and symptomatology, are based upon a complete and accurate factual and medical history, including review of appellant's record and diagnostic testing. The opinion of Dr. Stein is well rationalized and entitled to special weight. Dr. Stein's medical opinion establishes that appellant had no further disability or injury-related residuals, causally related to either her 1975 or her 1986 soft tissue muscular strain injuries.

The Office accordingly, met its burden of proof to terminate appellant's compensation benefits.

Following the termination of compensation, appellant submitted further medical evidence from Dr. Pashman. The Board notes that Dr. Pashman's November 30, 1999 report merely repeated a prior assessment and opinion on causal relationship, and hence were repetitive.[10]

[9] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

[10] Dr. Pashman never did explain, pathophysiologically, in any of his reports how two soft tissue muscular strain injuries in 1975 or 1986 aggravated, contributed to or caused increasingly severe osteodegenerative spinal problems.

Moreover, as Dr. Pashman was on one side of the conflict that Dr. Stein resolved, his additional report is insufficient to overcome the special weight accorded Dr. Stein's opinion or to create a new conflict with it.[11]

Accordingly, the decisions of the Office of Workers' Compensation Programs dated July 30, 2000 and November 16, 1999 are hereby affirmed.

Dated, Washington, DC
August 28, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[11] *Dorothy Sidwell*, 41 ECAB 857 (1990); *see Helga Risor (Windell A. Risor)*, 41 ECAB 939 (1990) (additional reports from Office medical adviser, who was on one side of a conflict resolved by an impartial medical specialist, could not be used as a basis for creating another conflict in medical opinion).