

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHYLLIS M. BATTAFARANO and U.S. POSTAL SERVICE,  
POST OFFICE, Youngstown, OH

*Docket No. 00-1507; Submitted on the Record;  
Issued December 18, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective May 22, 1999.

On September 21, 1987 appellant, then a 60-year-old clerk, injured her shoulder, arms and cervical area when opening a gate on a mail machine. Appellant stopped work and returned to a limited-duty position on January 4, 1988. The Office accepted the claim for right cervical strain and aggravation of cervical disc degeneration. Appellant was paid appropriate compensation.

Subsequently, appellant submitted emergency room records from September 28, 1987 and treatment notes from Dr. Thomas P. Fogarty, an osteopath, dated November 2 to 9, 1987. The emergency room records from September 28, 1987 noted a history of appellant's injury and indicated that appellant was treated for neck and shoulder pain. The records reflected that appellant was discharged the same day and released to light duty. The treatment notes from Dr. Fogarty dated November 2 to 9, 1987 noted that appellant was being treated for an employment-related injury. Dr. Fogarty indicated that appellant had returned to limited duty but her duties were aggravating her symptoms. He recommended physical therapy.

On April 4, 1989 appellant filed a CA-2, notice of recurrence of disability, for a recurrence of disability on March 31, 1989. She indicated a recurrence of shoulder and neck pain which occurred since the employment-related injury of September 21, 1987. Appellant stopped work at this time and did not return.

On January 4, 1990 the Office accepted appellant's claim for recurrence of disability and paid appropriate compensation.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians.

Appellant continued submitting treatment notes from Dr. Fogarty and Dr. Glenn J. Novak, an osteopath, indicating that she remained disabled and under treatment for cervical strain with radiculopathy.

On November 9, 1996 appellant's treating physician, Dr. Novak, referred appellant to Dr. Lynn Mikolich, Board-certified in physical medicine and rehabilitation, for evaluation. Dr. Mikolich diagnosed appellant with a history of an industrial injury on September 22, 1987 which caused a displacement of cervical intervertebral disc without myelopathy; right shoulder adhesive capsulitis; neck strain; and nonwork-related injuries of myofascial pain syndrome; vertebral spondylitic disease; and mild osteoarthritis. She also noted that appellant showed signs of pain magnification and deconditioning. Dr. Mikolich indicated that she "did not feel that the present complaints of [appellant] are all related to the injury of September 1987." She noted that the injuries caused by the work incident; specifically, displacement of cervical intervertebral disc; right shoulder adhesive capsulitis; and neck strain, are static injuries that resolve within a reasonable period of time and it was reasonable to expect that these injuries had stabilized. Dr. Mikolich indicated that the majority of appellant's difficulties were probably related to underlying degenerative spondylitic changes related to age, relative deconditioning, and pain magnification with myositis.

In a letter dated July 31, 1997, the Office requested clarification from Dr. Mikolich regarding whether appellant's work-related injuries had resolved and whether appellant continues to have residuals of the work-related injury of September 21, 1987.

In a report dated August 14, 1997, Dr. Mikolich indicated that she did not believe appellant's current complaints were related to the injury of September 1987. Dr. Mikolich noted that the right cervical strain and aggravation of a cervical disc degeneration due to the September 1987 injury had resolved. She further indicated that appellant's current condition and complaints were related to degenerative spondylitic changes and myositic pathology.

Thereafter, appellant submitted treatment notes from Dr. Novak dated May 6 to November 22, 1997. Dr. Novak indicated that appellant had been treated on a regular basis for her ongoing neck and back pain and recommended further physical therapy modalities. In his letter dated May 16, 1997, he noted that he reviewed Dr. Mikolich's report and concurred in her conclusion that appellant's work-related injury had resolved.

Subsequently, appellant submitted several reports from Dr. Robert Naples, an osteopath, dated November 3, 1997 through April 7, 1998 and a magnetic resonance imaging (MRI) scan of the right and left shoulder dated March 2, 1998. Dr. Naples diagnosed appellant with cervical strain and sprain and right shoulder capsulitis. He noted upon physical examination that appellant demonstrated decreased range of motion of the shoulder and neck with spasms. The MRI of the right shoulder revealed a partial tear or tendinosis of the right rotator cuff; and the MRI of the left shoulder revealed minimal impingement with a partial tear of the rotator cuff.

The Office determined that a conflict of medical opinion had been established between Dr. Naples, appellant's treating physician, who indicated that appellant was disabled, and experiencing residuals of her work-related injury and Dr. Mikolich, a specialist who evaluated

appellant at the request of her prior treating physician and who determined that appellant did not suffer residuals from her work-related injury.

Appellant was referred to a second opinion physician, Dr. Richard S. Kaufman, a Board-certified orthopedic surgeon. In a medical report dated April 23, 1998, Dr. Kaufman indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Upon physical examination Dr. Kaufman noted some restriction of all motion in the neck; no spasm in the trapezius muscles; and no neck tenderness in the ligaments or paraspinal muscles. He indicated that he reviewed the diagnostic studies and noted x-rays of the cervical spine showed moderate degenerative changes in levels C3 through C7. Dr. Kaufman diagnosed appellant with degenerative arthritis of the cervical spine. He indicated that appellant's present symptoms were due to the degenerative arthritis and not to the work-related sprain to her neck. Dr. Kaufman indicated that he came to this conclusion because appellant had no tenderness or spasm in the paraspinal muscles which one would expect if these areas were still injured. He noted that appellant's cervical disc degeneration was a normally progressive condition and was not aggravated or accelerated by the work trauma. Dr. Kaufman further noted that appellant did not need further treatment for her industrial injury of September 1987 and that she could return to work full time to her regular duties.

In a letter dated April 30, 1998, the Office requested clarification from Dr. Kaufman with regard to whether appellant's cervical strain had resolved. In a report dated May 5, 1998, Dr. Kaufman indicated that the injury to appellant's neck had resolved and that her present symptoms were due to the degenerative arthritis and not to the soft tissue injury. He noted that appellant's degenerative arthritis was neither aggravated nor accelerated by the work-related injury. Dr. Kaufman noted that appellant had no pain in the neck, no spasms or tenderness in the muscles and ligaments, which indicated that any injury to these soft tissue structures were healed.

On April 9, 1999 the Office issued a notice of proposed termination of compensation and medical benefits on the grounds that Dr. Kaufman's reports dated April 23 and May 5, 1998 established no continuing disability as a result of the September 21, 1987 employment injury.

Subsequently, appellant submitted a letter from her massotherapist dated April 26, 1999; a report from Dr. Naples dated April 26, 1999 and a narrative statement. The massotherapist indicated that she had been treating appellant since 1989 with neuromuscular therapy for her cervical sprain and strain. In his April 26, 1999 report, Dr. Naples indicated that he reviewed Dr. Kaufman's reports which diagnosed appellant with cervical sprain; right shoulder capsulitis and aggravation of preexisting cervical condition. He indicated that appellant's present condition was directly related to the aggravation of degenerative arthritis in her neck. Dr. Naples indicated that he treated appellant on a regular basis for complaints of pain in the neck region and noted decreased range of motion and spasms in this area. Appellant's narrative statement indicated that she disagreed with the findings of both Drs. Kaufman and Mikolich. She noted that she could not work eight hours a day as she still experienced chronic pain.

By decision dated May 19, 1999, the Office terminated appellant's benefits effective May 22, 1999 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her September 21, 1987 employment injury.

By letter dated June 7, 1999, appellant through her attorney requested an oral hearing before a hearing representative. The hearing was held on November 16, 1999. Appellant testified that she disagreed with Dr. Kaufman's findings regarding her condition. She further testified that she is still disabled due to her work-related injury of September 21, 1987.

In a decision dated February 3, 2000, the hearing representative affirmed the decision of the Office dated May 19, 1999 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her work-related condition.

The Board finds that the Office has met its burden of proof to terminate benefits effective May 22, 1999.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> After it has been 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.<sup>2</sup>

In this case, the Office accepted appellant's claim for a right cervical strain and aggravation of cervical disc degeneration and paid appropriate compensation. In April 1998 the Office referred appellant for a second opinion to Dr. Kaufman. In his reports dated April 23 and May 5, 1998, he diagnosed appellant with degenerative arthritis of the cervical spine. Dr. Kaufman indicated that appellant's present symptoms were due to the degenerative arthritis and not to the sprain in her neck. He indicated that the injury to appellant's neck had resolved and that her present symptoms were due to the degenerative arthritis and not to the soft tissue injury. Dr. Kaufman noted that appellant's degenerative arthritis and cervical disc degeneration were neither aggravated nor accelerated by the work-related injury. He further noted that appellant did not need further treatment for her industrial injury of September 1987 and that she could return to work full time in her regular duties.

Appellant submitted numerous reports from her treating physicians, particularly Dr. Naples, whose reports diagnosed appellant with cervical strain and sprain; and right shoulder capsulitis. However, he did not provide a history of appellant's injury nor did he indicate that appellant's condition was employment related, he merely noted his diagnosis. The Board notes that a medical opinion based on an incomplete history is insufficient to establish causal relationship.<sup>3</sup> Additionally, Dr. Naples' reports do not include a rationalized opinion regarding

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

the causal relationship between appellant's right cervical strain and aggravation of cervical disc degeneration and the factors of employment believed to have caused or contributed to such condition.<sup>4</sup>

Further, reports from other physicians, including Dr. Mikolich and Dr. Novak, prior to the termination of compensation, did not specifically support that appellant had a continuing work-related condition.

The Board finds the opinion of Dr. Kaufman is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant's work-related condition has ceased. Dr. Kaufman indicated that appellant did not suffer residuals from the condition of right cervical strain and aggravation of cervical disc degeneration. He noted that the condition was resolved.

After issuance of the pretermination notice, appellant submitted a letter from her massotherapist; a report from Dr. Naples dated April 26, 1999 and a narrative statement. The massotherapist indicated that she had been treating appellant since 1989 with neuromuscular therapy for her cervical sprain and strain. However, such report is not considered medical evidence as a massotherapist is not considered a physician under the Federal Employees' Compensation Act.<sup>5</sup> Appellant also submitted a report from Dr. Naples dated April 26, 1999 which diagnosed appellant with cervical sprain; right shoulder capsulitis and aggravation of preexisting cervical condition. He indicated that appellant's present condition was directly related to the aggravation of degenerative arthritis in her neck. Although Dr. Naples opinion somewhat supports causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>6</sup> Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>7</sup> Therefore, this report is insufficient to overcome that of Dr. Kaufman or to create a new medical conflict.<sup>8</sup> Appellant's narrative statement indicated that she could not work eight hours a day and that she still experienced chronic pain; however, a second opinion physician, Dr. Kaufman, and appellant's treating physician, Dr. Novak, all indicated that appellant had no

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<sup>4</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

<sup>5</sup> See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary); see also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

<sup>6</sup> *Supra* note 4.

<sup>7</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

<sup>8</sup> See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Naples' report does not contain new findings or rationale upon which a new conflict might be based.

residuals from her accepted employment injury of September 21, 1987 and noted the right cervical strain and aggravation of cervical disc degeneration had resolved.

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.<sup>9</sup> Appellant did not submit any additional evidence in support of her claim.

The Board finds that there is no medical evidence which supports disability in this case. Dr. Kaufman had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time wage-loss benefits were terminated he clearly opined that appellant had absolutely no work-related reason for disability. His opinion is found to be probative evidence and reliable. The Board finds that Dr. Kaufman's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.<sup>10</sup>

The decisions of the Office of Workers' Compensation Programs dated February 3, 2000 and May 19, 1999 are hereby affirmed.

Dated, Washington, DC  
December 18, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; *see Howard Y. Miyashiro, supra* note 8.

<sup>10</sup> With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).