

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA F. COLLINS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Laguna Niguel, CA

*Docket No. 00-1662; Submitted on the Record;
Issued July 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective October 16, 1996.

The Office accepted appellant's claim for a lumbar strain. She has not worked since August 1996.¹ Appellant submitted medical evidence to establish that she continued to be disabled after October 16, 1996.

An electromyogram (EMG) and nerve conduction study dated October 3, 1996 was mildly abnormal for the right upper extremity with evidence of mild radiculitis, which might be seen with muscle spasm and was normal for the right lower extremity.

In a report dated October 16, 1996, Dr. Isaias F. Salazar, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination, reviewed x-rays and diagnosed lumbosacral strain with no neurological involvement. He opined that appellant could return to full-time work without any physical restrictions.

In a report dated November 11, 1996, appellant's treating physician, Dr. R. Steven Pulverman, an osteopath, stated that he had been treating appellant for carpal tunnel syndrome and lumbar myofascial fasciitis. He stated that appellant's EMG was negative and signs for symptom magnification were positive. Dr. Pulverman stated that he was confused as to appellant's purpose and pathology and was requesting that someone else treat her.

In a report dated December 4, 1996, Dr. James D. Brown, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed x-rays. He diagnosed right wrist pain and lower back strain. Dr. Brown opined that

¹ Appellant had another claim, No. 13-1120606, which was accepted for bilateral carpal tunnel syndrome, right epicondylitis and bilateral shoulder tendinitis. She also filed a claim for emotional distress filed under claim No. 13-1137897.

appellant was temporarily totally disabled and her complaints of pain in her low back were entirely consistent with the August 20, 1996 lifting incident.

In a report dated June 4, 1997, appellant's treating physician, Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, considered appellant's history of injury and performed a physical examination. He diagnosed strain/sprain injury, lumbosacral spine with possible disc herniation and a strain/sprain injury of the cervical spine. Dr. Einbund stated that appellant's current symptoms were secondary to the injuries she sustained while performing work-related activities.

A magnetic resonance imaging (MRI) scan dated June 9, 1997 showed mild disc degeneration of L4-5 and L5-S1 and no evidence of significant disc protrusion.

In a report dated August 12, 1997, a referral physician, Dr. William C. Boeck, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed the 1996 EMG and 1997 MRI scan. He diagnosed bilateral tendinitis of the wrists, chronic cervical strain and lumbosacral strain. Without specifying whether he was referring to appellant's wrist or back, Dr. Boeck stated that the connection between the current medical conditions and appellant's employment was continuing trauma at her place of work, which apparently continued unabated and represented a continuing problem. He stated appellant could perform her usual work subject to repetitive grip restrictions.

In a supplemental report dated June 26, 1998, Dr. Boeck stated that there was no objective explanation as to why appellant's upper extremity condition continued to be symptomatic even in the absence of work activities for over a year. He also stated that it was not clear that the cervical strain arose from the August 15, 1996 employment injury and therefore he would not state it was part of that injury. Dr. Boeck reiterated his repetitive grip strength restriction.

In a report dated June 3, 1998, Dr. Pulverman opined that he felt appellant was malingering and that, when he had an etiology for her symptoms, she would either change the symptoms or bring "other factors in which clouded the issue."

In a report dated June 24, 1998, Dr. Einbund stated that appellant was in a car accident in August 1987 in which she hurt her neck and back. He stated that appellant returned to work in August 1987 and there was no issue of apportionment regarding her August 20, 1996 employment injuries. Dr. Einbund reiterated his diagnoses of lumbosacral strain/sprain injury and cervical strain/sprain injury and restricted appellant from heavy work and repetitive gripping.

In a report dated October 15, 1998, Dr. Einbund stated that, subsequent to the August 1987 car accident, appellant had residual problems and was precluded from very heavy lifting. He stated that the August 20, 1996 employment injury increased appellant's symptoms and she still could not perform heavy work. Dr. Einbund stated that there should be apportionment between the two disabilities.

By decision dated February 18, 1999, the Office denied appellant's claim, stating that the evidence of record did not support periods of total disability or further residuals of the accepted condition.

By letter dated February 22, 1999, appellant requested an oral hearing before an Office hearing representative.

By decision dated June 3, 1999, the Office hearing representative found that Dr. Boeck's reports were of diminished probative value because he did not address whether appellant had residuals from her lumbosacral strain. He therefore remanded the case for appellant to be referred to another second opinion physician for a medical evaluation regarding the extent and nature of her disability regarding her back injury at work on August 20, 1996.

In a report dated August 30, 1999, the referral physician, Dr. Joseph P. Conaty, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed the 1997 MRI scan. He diagnosed a resolved lumbar strain and mild degenerative changes at L4-5 and L5-S1 per the MRI scan. Dr. Conaty opined that appellant's lumbar strain had resolved because there was no objective evidence that the degenerative changes in the lumbosacral spine were work related. He stated that, although appellant told him she returned to work in September 1998 initially at 20 hours per week and increased up to 32 hours, he believed her total disability from her back injury "should have ceased" by October 16, 1996. Dr. Conaty opined that appellant could work without restrictions.

By decision dated March 21, 2000, the Office terminated benefits, stating that the weight of the medical evidence of record established that the accepted work-related condition of lumbosacral strain was resolved on October 16, 1996 and appellant had no further residuals of her August 20, 1996 employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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.² The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.³

In this case, the August 30, 1999 report of the second opinion physician, Dr. Conaty is complete and well rationalized. He considered appellant's history of injury, performed a physical examination and reviewed the 1997 MRI scan. Dr. Conaty opined that appellant's lumbosacral strain would have resolved on October 16, 1996 and that there was no objective

² *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

³ *Larry Warner*, 43 ECAB 1127, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

evidence that the degenerative changes noted on the MRI scan were work related. He also opined that appellant could work without restrictions.

The medical evidence appellant submitted is insufficient to counter Dr. Conaty's opinion. The EMG for the right lower extremity was normal and the 1997 MRI scan showed mild disc degeneration at L4-5 and L5-S1. In his October 16, 1996 report, Dr. Salazar diagnosed lumbosacral strain but stated that appellant could return to work without restrictions. In his November 11, 1996 and June 3, 1998 reports, Dr. Pulverman who had personal problems with appellant believed she was malingering and did not understand the etiology of her condition. In his June 4, 1997 and June 24 and October 15, 1998 reports, Dr. Einbund diagnosed lumbosacral and cervical sprain/strain injury and generally stated appellant's conditions were related to her employment but did not provide a medical rationale explaining how appellant's current back condition was related to the August 20, 1996 employment injury. Further, in his October 15, 1998 report, he did not explain how the August 20, 1996 employment injury increased her symptoms, but stated appellant could not perform heavy work before and after the work injury. The Board has held that a medical report not containing medical rationale is of little probative value.⁴ In his December 4, 1996 report, Dr. Brown diagnosed lower back strain consistent with the August 20, 1996 lifting incident and stated that appellant was temporarily totally disabled. He, however, also did not provide a medical rationale for his opinion.

Inasmuch as Dr. Conaty's report is complete and well rationalized and concludes that appellant recovered from her August 20, 1996 employment injury, his opinion constitutes the weight of the evidence and establishes that appellant is no longer disabled due to the accepted condition of lumbosacral strain. Dr. Conaty's opinion justifies the Office's termination of benefits.

⁴ See *Ronald C. Hand*, 49 ECAB 113, 118 (1997).

The decision of the Office of Workers' Compensation Programs dated March 21, 2000 is hereby affirmed.

Dated, Washington, DC
July 18, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member