

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA E. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 00-2274; Submitted on the Record;
Issued June 14, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated compensation benefits effective December 2, 1999; and (2) whether appellant met her burden of proof following the Office's termination to establish that she had any employment-related disability after December 2, 1999.

On August 25, 1998 appellant, then a 40-year-old mailhandler, filed a traumatic injury claim alleging that she injured her back while bending to remove a container of mail from a hamper. The Office accepted the claim for low back sprain. Appellant stopped work on August 25, 1998 and returned to a modified job working four hours per day effective November 6, 1999.

In a report dated February 9, 1999, Dr. Daniel J. Feuer, a second opinion Board-certified neurologist, concluded that appellant had no neurological disability causally related to her accepted employment injury. In support of his conclusion, Dr. Feuer, indicated that appellant's neurological examination failed to "demonstrate objective deficits referable to the central or peripheral nervous system" and that "no objective neurological findings" were found on examination to support appellant's subjective complaints. The physician indicated that appellant was "neurologically stable to engage in full active employment as a mailhandler without restriction" and no work hardening program or functional capacity evaluation were required.

In letters dated May 20 and March 8, 1999, Dr. Antenor P. Vilceus, an attending Board-certified neurologist with a subspecialty in clinical neurophysiology, indicated that he had treated appellant "for lumbosacral [r]adiculopathy secondary work-related injuries" and opined that appellant was disabled from working. In his June 11, 1999 letter, Dr. Vilceus opined that appellant could return to work for four hours per day provided no heavy lifting or frequent bending was required.

On October 8, 1999 the Office issued a proposed notice to terminate appellant's compensation benefits on the basis that she no longer had any residuals or continuing disability due to her accepted employment injury, relying upon the opinion of Dr. Feuer.

On December 2, 1999 the Office finalized the termination of benefits effective December 2, 1999 on the basis that appellant no longer had any disability or any residuals due to her accepted employment injury.

In a letter dated December 28, 1999, appellant requested reconsideration and submitted an October 29, 1999 report by Dr. Vilceus in support of her request. In a report dated October 29, 1999, he noted his disagreement with Dr. Feuer's February 2, 1999 report and conclusions. Dr. Vilceus attributed appellant's disability to her employment injury and noted that appellant's "[n]eurological examinations perform[ed] on March 8, May 20, July 14, August 9, September 20 and October 20, 1999 revealed weakness 4+/5 weakness of great toe dorsiflexion, which is sometimes the only sign of L5 radiculopathy." In addition, he noted that appellant's November 5, 1998 magnetic resonance imaging (MRI) scan "revealed disc at L5-S1 and straightening lumbar lordosis" and that her lumbosacral electromyogram (EMG) "revealed neurophysiologic findings consistent with L5 [r]adiculopathy."

On February 7, 2000 an Office medical adviser reviewed Dr. Vilceus report and concluded that there was "no significant evidence of disability." The Office medical adviser stated that "Dr. Vilceus' report does not substantiate disability. The only [physical] finding is mild weakness of toe ext. (sic). The MRI scan is marginal."

In a March 17, 2000 merit decision, the Office denied appellant's request for reconsideration on the basis that Dr. Feuer's report constituted the weight of the medical evidence as Dr. Vilceus failed to provide any rationalized report to support his opinion that appellant continues to suffer residuals from her accepted employment injury.

The Board finds that the Office properly terminated compensation benefits effective December 2, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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 right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.³ Thus, the burden of proof is on the Office rather than the

¹ *Gewin C. Hawkins*, 52 ECAB ____ (Docket No. 99-798, issued January 29, 2001); *Alice J. Tysinger*, 51 ECAB ____ (Docket No. 98-2423, issued August 29, 2000).

² *Mary A. Lowe*, 52 ECAB ____ (Docket No. 99-1507, issued January 19, 2001).

³ *Id.*; *Leonard M. Burger*, 51 ECAB ____ (Docket No. 98-1532, issued March 15, 2000).

employee with respect to the period subsequent to the date when compensation is terminated or modified.⁴

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.⁵

In this case, the Office accepted that appellant sustained an employment-related low back sprain and subsequently referred her to Dr. Feuer for a second opinion evaluation. The Board finds that the weight of the medical evidence rests with Dr. Feuer who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant did not exhibit any employment-related residuals as of June 22, 1994. Dr. Vilceus' opinion, as set forth in his reports dated March 8, May 20 and June 11, 1999, are of diminished probative value because he did not explain how the accepted low back sprain caused her continuing disability.

The Board, therefore, finds that Dr. Feuer's report established, at that time, that appellant ceased to have any disability or condition causally related to employment, thereby justifying the Office's December 2, 1999 termination of benefits.⁶ Thus, the burden of proof shifted to appellant to establish that her disability subsequent to December 2, 1999 continued to be causally related to her employment.

Regarding the second issue, the Board finds that the case is not in posture for decision, due to an unresolved conflict of medical opinion between Drs. Feuer and Vilceus regarding any employment-related disability subsequent to that time. As discussed above, the Office has met its burden of proof in terminating appellant's compensation on December 2, 1999 based on the well-rationalized opinion of Dr. Feuer. The burden of proof, therefore, shifted to appellant to establish that she had an employment-related disability after that date.

Following the Office's termination of compensation, appellant submitted an October 29, 1999 report from Dr. Vilceus. He indicated his disagreement with Dr. Feuer's report opined that appellant's back symptoms were permanently worsened as the result of work-related activities, explaining that the weakness of the great toe dorsiflexion, which appellant exhibited in her neurological examinations, is sometimes the only sign of L5 radiculopathy and that appellant's lumbosacral EMG supported the finding of L5 radiculopathy due to her employment injury.

⁴ *Eddie Franklin*, 51 ECAB ___ (Docket No. 98-1240, issued December 14, 1999).

⁵ *See Connie Johns*, 44 ECAB 560 (1993).

⁶ *See Joe Bowers*, 44 ECAB 423 (1993).

To resolve the conflict of medical opinion, the Office should, pursuant to section 8123(a) of the Federal Employees' Compensation Act,⁷ refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for a reasoned opinion as to whether appellant has any residuals causally related to her employment-related injury, a lumbosacral strain. If the specialist finds that appellant does have continuing residuals, the specialist should provide a reasoned opinion discussing the period of any disability caused by such residuals and whether such residuals are sufficient to require continuing medical treatment. After such development as it deems necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated December 2, 1999 is affirmed and the March 17, 2000 decision is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC
June 14, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ 5 U.S.C. § 8123(a) states in pertinent part: "If there is 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." See generally 5 U.S.C. §§ 8101-8193.