

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN L. CASALE and DEPARTMENT OF AGRICULTURE,
BLACK HILLS NATIONAL FOREST, Custer, SD

*Docket No. 00-690; Submitted on the Record;
Issued March 1, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant had any continuing disability or residuals after November 7, 1998, the date the Office of Workers' Compensation Programs terminated her compensation benefits.

The Office accepted that on April 7, 1986 appellant, then a 56-year-old office worker, slipped on ice and fell while in the performance of duty, sustaining a low back strain and lumbar neuritis. She stopped work on the date of injury and did not return. Appellant was placed on the periodic rolls for receipt of compensation.

An unsigned May 29, 1986 medical progress note indicated that appellant had "a little, not really significant sciatic notch tenderness and this maybe seems to hurt when she externally rotates her hip. She feels the pain in her right buttock and all the way down the lateral aspect of the leg." The examiner concluded "I am not certain where this pain is coming from."

A June 6, 1986 bone scan was reported as showing "increased uptake in the acromioclavicular joint on the right and the sacroiliac joints bilaterally," but little changed from the 1982 study.

A September 5, 1986 CA-20 attending physician's form report indicated that appellant experienced two injuries, one at work on April 7, 1986 and the other at home on July 31, 1986. The report listed the diagnoses as severe fibromyalgia, possible intervertebral disc and indicated that appellant was totally disabled with permanent effects anticipated including chronic pelvic and hip pain.

A September 23, 1986 report from Dr. Steven C. Stocks, a Board-certified internist, noted that appellant felt that she was not able to go back to work and wanted to go on disability due to her April 1986 fall and the July 31, 1986 fall at home, which appellant claimed was due to the

employment injury¹. He noted that appellant had severe degenerative arthritis and pain in her right hand at the base of her thumb which she believed was due to a December 1979 fall at a skating rink. Dr. Stocks noted that appellant now walked with a cane due to severe right hip and leg pain.

In a November 6, 1986 report, Dr. Timothy Gill, a Board-certified orthopedic surgeon, noted that appellant complained that her back was “killing” her and she could not get around. Appellant had constant pain in her back and right lower extremity and shooting pain into her foot with some numbness. Dr. Gill noted that appellant’s computerized axial tomography (CAT) scan and electromyogram (EMG) were negative. He stated that x-rays revealed osteoporosis in the lumbar spine and he diagnosed “chronic low back pain with irritation in the right lower extremity. There may be some nerve root irritation, but this has not been seen on previous exam[ination]s.” Dr. Gill answered questions posed by the Office, stating that appellant “does continue to suffer from residuals of her injury of April 7, 1986 along the lines of back pain and right lower extremity pains. He could not say whether this was a preexisting disability or a permanent condition and that it might go on for several months or a year. Appellant was limited in her ability to ride in a car or do bending, stooping and lifting and Dr. Gill could not determine when she would be able to return to work. Dr. Gill recommended that appellant undergo a myelogram, which she had refused in the past.

In a July 16, 1987 report, Dr. Gill addressed appellant’s claimed limitations and daily activities and diagnosed “chronic low back and right lower extremity pain, etiology unknown.” He stated: “I have no idea what is going on with [appellant] why she continues to have pain. The only possible thing would be perhaps send her to a back program see if they could help her deal with her situation.” By addendum dated September 22, 1987, Dr. Gill added: “You are correct in stating that I did say that [appellant’s] back pain etiology was unknown. However, just because we do not know the reason for her pain, does not mean that she does not have pain and that the pain did not result from her accident. At this point, there is no objective way of determining whether or not the pain in the back arose from the accident.”

By report dated September 9, 1988, Dr. Stocks noted that he had last seen appellant in 1986 with a diagnosis of severe fibromyositis of the right hip and neck with degenerative arthritis, right first metacarpal² and possible intervertebral disc syndrome causing severe pelvic girdle and right leg pain. He stated that her current diagnoses remained the same and that his findings upon examination were the same as on previous evaluations. Dr. Stocks opined that these conditions were related to appellant’s slip on ice at work in April 1986 and that she had no prognosis for recovery.

Dr. Stocks saw appellant again on August 16, 1990, found that her diagnoses were the same as on September 9, 1988, that her conditions resulted from the April 1986 slip and fall injury.

¹ A medical report dated March 11, 1986, provided by Dr. Stocks, noted that he had treated appellant since February 1982 for moderately severe degenerative arthritis and migraine headaches.

² The Board notes that none of these three conditions has been accepted by the Office as being employment related.

Dr. Stocks saw appellant again on May 24, 1993. He noted by report dated June 10, 1993 that appellant's diagnoses were the same, that he did not see any change, that the relationship with her previous employment injury had been fully discussed and that her prognosis was poor.

On April 27, 1998 the Office referred appellant for a second opinion examination by Dr. John Dowdle, an orthopedic surgeon.

By report dated June 20, 1998, Dr. Dowdle reviewed appellant's factual and medical history and present complaints. He noted that she recently sustained another injury at a grocery store when she was hit in the low back by a young man pushing carts, which she claimed resulted in left-sided low back pain. Dr. Dowdle reviewed appellant's present symptoms and treatment and conducted a complete standing, sitting and supine physical examination. He noted subjective findings included diffuse hypersensitivity, audible groaning and grimacing, multiple pain behaviors, a positive axial compression test and a positive rotation distraction test. Dr. Dowdle diagnosed lumbar strain, right sacroiliac joint inflammation, chronic pain syndrome, subjective complaints beyond objective findings and gross functional overlay. He stated:

“In view of [appellant's] examination, she had a relatively minor injury in 1986. I cannot find objective findings of any permanent residuals from that condition. Based on objective medical evidence, there are no disabling residuals as a result of the fall of April 10, 1986. She has gross functional illness at this point. I think it would be worthwhile, since it has been over 10 years since any substantial evaluation has been completed, that an MRI [scan] be performed of the lumbar spine to see if there is any objective evidence of residuals. It would be my opinion that this would be related to the intervening cause, the injury at Albertson's, rather than the original injury in 1986.

“[Appellant] also has now a new intervening cause with the injury at Albertson's. She has a psychological illness. I am not certain that [appellant] will do well going back to work, but there is not specific objective evidence that there was a disabling condition from the April 10, 1986 injury....”

On July 31, 1998 the Office issued appellant a notice of proposed termination of compensation finding that the report of Dr. Dowdle constituted the weight of the medical opinion evidence of record and established that she was no longer disabled due to the work-related April 7, 1986 injury. The Office found that the most recent reports of Dr. Stock were not rationalized and identified no objective evidence of disability. The Office provided appellant 30 days within which to submit further evidence if she disagreed with the proposed disposition of the case.

On September 2, 1998 the Office received an October 29, 1997 report from Dr. Stocks, who noted that appellant was seen that date for complaints of pain to her neck, shoulders, arms, elbows, hands, hips and legs. Appellant claimed to sleep about four hours per night and that her left side was now hurting her as much as the previously injured right side. Dr. Stocks noted upon examination that appellant had tight muscles all the way in the neck and upper shoulder area, that range of motion of the neck was tender even on the slightest range of motion and was markedly restricted. Appellant had pain diffusely in the sacroiliac areas, the back and thigh musculature

and legs and that could barely get up out of a chair. He noted that appellant walked stooped over with a cane and tended not to put much weight on the right leg, but that the left leg was also obviously painful. Dr. Stocks noted that appellant had some mild degenerative arthritic changes in the hands, but no acute inflammatory reactions, swellings or rheumatoid nodules. He opined that appellant had chronic severe pain in the right leg and right sacroiliac areas for some years and suspected underlying degenerative joint disease and severe fibromyalgia.

Medical reports dating from 1983 through 1997 regarding treatment provided by Dr. Stocks were also submitted.

Also on September 2, 1998 the Office received an affidavit from Dr. Stocks who stated that during April 1986 he “began treating [appellant] for an injury she suffered at work related to a fall” and that “[d]uring the more than 12 years that [I] ... treated her for this injury, she has shown consistent right side problems related to the injury.” He also indicated that he had reviewed and disagreed with Dr. Dowdle’s report, stating there were various objective findings reported.

In a report dated September 28, 1998, Dr. Dowdle clarified that he found no objective findings on examination, only subjective complaints, exaggerations and five positive Waddell’s signs. He noted that he had recommended an MRI scan to determine if there was any objective evidence of any underlying illnesses or conditions which would be amenable to further treatment. Dr. Dowdle did not believe that there were any structural lesions that he could determine were caused by the 1986 injury and opined strongly that appellant did not have disabling residuals due to the April 7, 1986 injury.

By decision dated October 26, 1998, the Office finalized its termination of compensation finding that the opinion of Dr. Dowdle constituted the weight of the medical opinion evidence and established that appellant had no continuing disability for work or injury-related residuals that required further medical treatment after November 7, 1998.

Appellant disagreed with the termination decision and through her representative requested an oral hearing. The hearing was held on June 22, 1999 at which she testified.

By decision dated August 25, 1999, the Office hearing representative affirmed the October 26, 1998 decision finding that Dr. Dowdle’s report constituted the weight of the medical opinion evidence of record.

The Board finds that the Office did not meet its burden of proof to terminate compensation due to an unresolved conflict in medical opinion evidence.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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

³ *Harold S. McGough*, 36 ECAB 332 (1984).

employment.⁴ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁵ 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.⁶

Dr. Stocks, an internist and appellant's attending physician, provided numerous medical reports identifying the occurrence of the accepted April 7, 1986 employment-related slip and fall injury. He noted the occurrence of a subsequent July 31, 1986 fall while at home, which appellant attributed to existing right-sided weakness due to the April 7, 1986 injury. Although the Office only accepted the conditions of low back strain and lumbar neuritis as being the result of the April 7, 1986 slip and fall injury, Dr. Stocks also diagnosed fibromyalgia, possible intervertebral disc problems and chronic pelvic and hip pain which he attributed to the April 7, 1986 occurrence. He continued to treat appellant from the time of injury in 1986 until 1997, noting her continuing medical conditions diagnosed as including severe fibromyositis of the right hip, possible intervertebral disc syndrome causing pelvic and right leg pain and degenerative arthritis and opining that these conditions which continued to totally disable appellant were causally related to her April 7, 1986 slip and fall on ice. The most recent report of record from Dr. Stocks supporting injury-related continuing disability was rendered on October 29, 1997.

On the other hand, Dr. Dowdle, an orthopedic surgeon, examined appellant and opined that she had five positive Waddell's signs, including audible groaning and pain behavior, diffuse hypersensitivity and positive axial compression and rotation distraction tests. He opined that appellant had only subjective complaints beyond his physical findings and a gross functional overlay. Dr. Dowdle also diagnosed lumbar strain, an accepted condition, right sacroiliac joint inflammation and chronic pain syndrome. He stated that there were no objective findings on physical examination caused by the 1986 injury nor disabling residuals at the time of his examination in 1998.

The Board finds that the medical reports of Dr. Stocks create a conflict with the report of Dr. Dowdle on the issue of whether appellant has any further disability for work and residuals causally related to her April 7, 1986 injury.

Section 8123(a) of the Federal Employees' Compensation Act provides 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."

As there is a conflict in medical opinion between Drs. Stocks and Dowdle the Office did not meet its burden of proof to terminate appellant's compensation benefits.

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁶ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 25, 1999 is hereby reversed.

Dated, Washington, DC
March 1, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member