

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE RIDDICK and U.S. POSTAL SERVICE,
WAKEFIELD STATION, Bronx, NY

*Docket No. 01-840; Submitted on the Record;
Issued November 20, 2001*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits, causally related to her June 1, 1998 accepted employment injury; and (2) whether appellant had any continuing disability or residuals after April 4, 2000, the date the Office terminated her compensation benefits.

On July 21, 1998 appellant, then a 40-year-old letter carrier, filed a notice of traumatic injury claiming that on June 1, 1998 while working at her desk, her chair was hit from behind causing her back pain and muscle spasms. She indicated in a personal statement that the June 1, 1998 incident aggravated a preexisting back condition.

Appellant was initially treated by Dr. Ralph Yung, a Board-certified internist, on June 29, 1998, at which time she was diagnosed with bulging disc in the back, along with arthritis in the left knee and ankle. A magnetic resonance imaging (MRI) scan conducted on June 11, 1998 demonstrated:

“Mild straightening of the lumbar lordosis compatible with muscular spasm or ligamentous strain and associated minimal posterior annular bulging of the L4-5 and the L5-S1 disc. No evidence of frank disc herniation.”

The Office accepted appellant's claim for low back sprain and herniated nucleus pulposus L4-5 and L5-S1. Appellant returned to limited duty and sustained two recurrences, one on August 4, 1998 and one on September 10, 1998. She has not worked since September 10, 1998.

By letter dated July 12, 1999, the Office referred appellant, together with a statement of accepted facts and the relevant case record, to Dr. Mitchell S. Raps, a Board-certified neurologist, for a second opinion examination. Dr. Raps submitted a report dated July 19, 1999 and indicated that appellant had no objective neurological deficits and no neurological disability. He stated that appellant had reached maximum medical improvement and was able to perform her regular duties without any physical restrictions.

By letter dated September 27, 1999, the Office also referred appellant, together with a statement of accepted facts and the case record, to Dr. John Buckner, a Board-certified orthopedic surgeon, for a second opinion examination, who submitted a report dated October 19, 1999 indicating that appellant's back problem had resolved and that she could perform all the activities of daily living and resume her regular and customary work without restrictions.

On February 17, 2000 the Office issued a notice of proposed termination of compensation benefits, finding that the weight of the medical evidence established that appellant no longer had any residuals from her June 1, 1998 injury.

In response, appellant submitted a note from Dr. Yung dated March 1, 2000, stating: "Above [appellant] is still unable to work because of back pain." She did not submit a narrative medical report from her physician.

By decision dated April 4, 2000, the Office finalized the proposed termination of compensation. The Office found that the second opinions of Drs. Raps and Buckner represented the weight of the medical evidence since Dr. Yung had not submitted a detailed narrative medical report or any objective findings to support his diagnosis of back pain.

By letter dated September 15, 2000, appellant requested reconsideration. In support of her request appellant submitted a report from Dr. Yung dated March 24, 2000 and an addendum report dated August 24, 2000.

In his March 24, 2000 report, Dr. Yung indicated that his examination revealed severe spasm and limitation of motion of the lumbar spine. He opined that appellant had a severe lower back strain as well as severe left knee and ankle strain as a result of her work-related injuries. Dr. Yung stated that appellant was unable to work and remained totally disabled because of her injuries of the back, left knee and left ankle.

Appellant contended that there was a conflict in medical opinion between her physician and the second opinion physicians, and that she should have been referred to an impartial medical examination. She stated that the opinions of Drs. Raps and Buckner should not constitute the weight of the medical evidence. Appellant also alleged that Dr. Raps was not Board-certified and that the opinions of Drs. Raps and Buckner were conclusory and unsupported by medical rationale.

In a decision dated December 5, 2000, the Office denied modification of the April 4, 2000 decision.¹

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

¹ By decision dated December 8, 2000, the Office approved a fee for services rendered by appellant's representative. This decision is not at issue here.

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to employment.⁴ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁵ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁶

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits based on the July 19, 1999 report from Dr. Raps and the October 19, 1999 report from Dr. Buckner. Dr. Raps performed a complete neurological examination and based on the statement of accepted facts and the medical evidence of record, opined that appellant had no neurological deficit and no neurological disability. He stated that there was no need for any further diagnostic studies or any further treatment from a neurological standpoint and that appellant had reached maximum medical improvement. Dr. Rap opined that appellant could perform regular duties without any restrictions.

Dr. Buckner performed a complete orthopedic examination and based on the statement of accepted facts and the medical evidence of record, also opined that appellant's back problem had resolved. He stated that appellant had reached maximum medical improvement and that no further causally related orthopedic evaluation, treatment or testing was needed. Dr. Buckner said that there are "no documented and certainly no evident residuals from the June 1, 1998 injury."

The Board finds that at the time of the termination the opinions of Drs. Raps and Buckner carried the weight of the medical evidence since they were based upon a proper factual and medical background and contained medical rationale and the record was void of a narrative medical report from appellant's attending physician.

The Board further finds that the issue of whether appellant has any continuing disability or residuals after April 4, 2000, the date the Office terminated her compensation, is not is posture for decision and requires further development by the Office.

Section 8123 of the Act⁷ provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician to resolve the conflict.⁸ The Board has interpreted the statute to require more

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁴ *Id.*

⁵ *Virginia Davis-Banks*, 44 ECAB 389 (1993).

⁶ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁷ 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

⁸ *Shirley L. Steib*, 46 ECAB 309, 316 (1994).

than a simple disagreement between two physicians. To constitute a true conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale.⁹

In this case, the Board finds that a conflict in medical opinion exists between the opinion of Dr. Yung and the opinions of Drs. Raps and Buckner. In his March 24, 2000 report, Dr. Yung stated:

“The examination reveals severe spasm and limitation of motion of the lumbar spine and there is limitation and spasm involving both the left knee and the left ankle. Neurological examination is normal in the sense that there is adequate motor power in the lower extremities and sensory deficits are not present. However, her limitation of motion are involving the lower back, left knee and left ankle are all compatible with the stated injuries which were pertaining to the events in 1991 and 1998.

“She has severe lower back strain and severe left knee and left ankle strain because of the injuries sustained. At the present time I have noted that she is unable to work.

“I would say that she is 100 percent disabled because of her injuries of the back, left knee and left ankle.

“After reading the reports of Drs. Raps and Buckner it is incredible that they could reach these conclusions after an examination of this patient for approximately 5 to 10 minutes whereas this patient has been seeing me for the past 7 years on a basis of approximately every 2 weeks to every month. I believe my opinion on this patient more accurately reflects her state of disability in comparison to the two previous orthopedic surgeons.”

The Office received Dr. Yung's report on September 19, 2000, after the date of the termination decision, but the examination was performed on March 24, 2000, prior to the date of termination. The Board finds that since Dr. Yung's report was based on a current medical examination on March 24, 2000 and contains a sufficiently well-rationalized medical opinion that appellant still suffers from residuals, the report creates a conflict between the opinions of Drs. Yung, Raps and Buckner.

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an impartial medical evaluation pursuant to section 8123(a).¹⁰ After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁹ *Adrienne L. Wintrip*, 38 ECAB 373, 379 (1987).

¹⁰ 5 U.S.C. § 8123(a).

The December 5 and April 4, 2000 decisions of the Office of Workers' Compensation Programs are affirmed on the issue of termination. On the issue of continuing disability, the decision is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
November 20, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member