

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUAPALUPE O. HERNANDEZ and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Oxnard, CA

*Docket No. 01-808; Submitted on the Record;
Issued October 22, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective August 10, 1999 on the grounds that she had no disability after that date due to her April 2, 1991 employment injury.

The Board finds that the Office properly terminated appellant's compensation effective August 10, 1999.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On April 2, 1991 appellant, then a 35-year-old mailhandler, sustained employment-related thoracic and lumbar strains when she lifted a box at work. Appellant received compensation for periods of disability.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ By decision dated June 14, 1994, the Office terminated appellant's compensation effective June 14, 1994 on the grounds that she had no disability after that date due to her April 2, 1991 employment injury. However, by decision dated June 25, 1997, the Board reversed the Office's termination of appellant's compensation on the grounds that the Office did not present sufficient medical evidence to support its termination.

By decision dated August 10, 1999, the Office terminated appellant's compensation effective August 10, 1999 based on the opinion of Dr. Jerold T. Litoff, a Board-certified orthopedic surgeon who served as an impartial medical examiner. By decisions dated April 3 and December 20, 2000, the Office affirmed its August 10, 1999 decision.

In this case, the Office properly determined that there was a conflict in the medical opinion between Dr. Arthur S. Harris, an attending Board-certified orthopedic surgeon, and Dr. Paul Tsou, a Board-certified orthopedic surgeon acting as an Office referral physician, regarding whether appellant continued to have residuals of her April 2, 1991 employment injury. In a report dated November 6, 1997, Dr. Harris determined that appellant continued to be partially disabled due to her April 2, 1991 employment injury. In contrast, Dr. Tsou noted in an August 29, 1997 report that appellant's lumbar and thoracic strains had resolved and she had no residuals of her April 2, 1991 employment injury.

To resolve the conflict, the Office referred appellant, pursuant to section 8123(a) of the Act, to Dr. Litoff for an impartial medical examination and an opinion on appellant's continuing employment-related disability.⁶ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Litoff, the impartial medical specialist selected to resolve the conflict in the medical opinion. The June 29, 1999 report of Dr. Litoff establishes that appellant had no disability due to her April 2, 1991 employment injury after August 10, 1999.

Dr. Litoff detailed appellant's factual and medical history and reported his findings on examination. He diagnosed resolved lumbar and thoracic strains and nonwork-related facet joint syndrome at L5-S1 and plantar fasciitis. Dr. Litoff indicated that appellant's employment-related lumbar and thoracic strains resolved several months after their occurrence. He indicated that there was no objective evidence relating appellant's subjective symptoms to the April 2, 1991 employment injury. Dr. Litoff noted the fact that appellant did not exhibit degenerative disc problems upon diagnostic testing until 1994 showed that this condition was not related to the April 2, 1991 employment injury. He stated that appellant's continuing medical problems were due to her nonwork-related facet joint syndrome at L5-S1 and plantar fasciitis.

The Board has carefully reviewed the opinion of Dr. Litoff and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of this case. Dr. Litoff's opinion is based on a proper factual and medical history in that he reviewed an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.

⁶ Section 8123(a) of the Act provides 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." 5 U.S.C. § 8123(a).

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

Moreover, Dr. Litoff provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition which comported with this analysis.⁸ Dr. Litoff provided medical rationale for his opinion by explaining that there was no objective evidence of the April 2, 1991 employment injury, a light-tissue injury which had long since resolved. He further explained that appellant's continuing medical problems were due to her nonwork-related facet joint syndrome at L5-S1 and plantar fasciitis.

Appellant submitted additional reports of Dr. Harris, but these reports are of limited probative value on the relevant issue because they do not contain adequate medical rationale in support of their opinions on causal relationship.⁹ In a report dated November 6, 1997, Dr. Harris indicated that appellant was partially disabled due to degenerative disc disease at L5-S1 and plantar fasciitis. He indicated that appellant developed degenerative disc disease due to a "straining injury" on April 2, 1991. Dr. Harris indicated that straining injuries to the lumbar spine can result in development of disc degenerative over a period of years.¹⁰

Appellant's claim was accepted for lumbar and thoracic strains and Dr. Harris did not adequately support his assertion that appellant sustained degenerative disc disease due to these injuries in April 1991. Dr. Harris presented his argument in general terms without adequately explaining how the specific circumstances of appellant's condition supported his argument. Such medical rationale is particularly necessary in this case because appellant exhibited normal results on several diagnostic tests for years after the April 2, 1991 injury.¹¹

⁸ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

¹⁰ He asserted that patients who sustain straining injuries may not demonstrate any significant degeneration, bulging or herniation upon initial diagnostic testing.

¹¹ In a report dated October 21, 1991, Dr. Harris indicated that appellant was partially disabled due to various conditions, including a chronic myofascial lumbar spine strain, but he did not provide any clear opinion on the cause of these disabling conditions.

The December 20 and April 3, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
October 22, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member