

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY M. LULL and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Dallas, TX

*Docket No. 01-828; Submitted on the Record;
Issued September 10, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation for wage loss and medical benefits effective August 28, 2000.

The Office accepted that appellant sustained a lumbosacral strain, multiple contusions and lumbosacral radiculopathy after a fall at work on February 28, 1996. By letter dated June 29, 2000, the Office advised appellant that it proposed to terminate her compensation. The Office stated that the weight of the medical evidence was represented by Dr. Benjamin Agana, Board-certified in physical medicine and rehabilitation, selected as an impartial medical specialist.

In a decision dated August 28, 2000, the Office terminated compensation for wage loss and medical benefits on the grounds that appellant's employment-related condition had resolved. By decision dated December 18, 2000, the Office denied modification.

The Board finds that the Office met its burden of proof to terminate compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.²

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Furman G. Peake*, 41 ECAB 361 (1990).

In this case, the Office properly found that a conflict in the medical evidence existed between appellant's attending physician, Dr. Frank Lonergan, a family practitioner, and Dr. Farooq Selod, an orthopedic surgeon selected as a second opinion physician, regarding her employment-related disability.³ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁴ The Office determined that the medical evidence established that appellant's employment-related condition had resolved, based on reports from the impartial medical specialist, Dr. Agana.

In his January 17, 2000 report, Dr. Agana provides a history and results on examination. He diagnosed chronic lumbar strain and preexisting lumbar degenerative disc disease and stated that appellant "can perform the duties of her previous job." On March 5, 2000 Dr. Agana recommended limitations on standing, lifting and bending, but noted that such restrictions were within appellant's date-of-injury position. In the April 3, 2000 report, Dr. Agana reviewed electrodiagnostic studies and stated that they were fairly unremarkable, and he was not sure why appellant continued to be symptomatic. Finally, Dr. Agana stated in his May 21, 2000 report that "the only thing that seems to be persistent is a subjective level of pain threshold, which is precluding this patient from returning to her previous job. I do not feel there are any objective findings, which could be related to the February 28, 1996 injury after examining her and going over her diagnostic studies." Dr. Agana concluded that he saw no contraindications which would preclude appellant from returning to her date-of-injury job.

The Board finds that Dr. Agana provided a reasoned medical opinion, based on a complete background, establishing that appellant's employment-related condition had resolved. He noted only subjective symptoms without any objective evidence to support a continuing employment-related condition.⁵ It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁶ The Board finds that the report of Dr. Agana is entitled to special weight and represents the weight of the evidence in this case.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence

³ 5 U.S.C. § 8123(a) provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.

⁴ *William C. Bush*, 40 ECAB 1064 (1989).

⁵ Dr. Agana indicated in a work restriction evaluation dated January 24, 2000 that appellant could return to work four to six hours per day, but his reason was "subjective pain" only.

⁶ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

that she had an employment-related disability which continued after termination of compensation benefits.⁷

With her request for reconsideration, appellant submitted reports dated September 15, and 22, 2000 from Dr. Lonergan. He noted that appellant had multiple medical problems and had sustained falls in which her right leg collapsed underneath appellant. Dr. Lonergan stated that the weakness in appellant's leg was related temporally to the February 1996 injury, without further explanation. Dr. Lonergan did not provide a reasoned medical opinion with respect to a continuing employment-related condition. Moreover, additional reports from a physician on one side of the conflict that is properly resolved by an impartial specialist are insufficient to overcome the weight accorded the impartial specialist's report or create a new conflict.⁸ The Board finds that appellant has not established a continuing employment-related condition after August 28, 2000.

The decisions of the Office of Workers' Compensation Programs dated December 18 and August 28, 2000 are affirmed.

Dated, Washington, DC
September 10, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁸ *See Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Dorothy Sidwell*, 41 ECAB 857 (1990).