

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDI SNYDER and U.S. POSTAL SERVICE,
POST OFFICE, Dana Point, CA

*Docket No. 00-2298; Submitted on the Record;
Issued April 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective December 21, 1999, on the grounds that she refused an offer of suitable work; and (2) whether appellant's accepted cervical and lumbar conditions ceased on or before December 21, 1999.

On December 18, 1987 appellant, then a 45-year-old distribution clerk, sustained a lumbosacral strain, a cervical strain and a strain and contusion of the left knee requiring arthroscopic surgery, medial meniscectomy and partial synovectomy on November 28, 1988.¹ The Office also accepted that the "work injury on December 18, 1987 aggravated the degeneration of disc space at level L5."²

Appellant sought treatment from Dr. A. Jack Kouzelos, a Board-certified orthopedic surgeon, beginning on December 29, 1987. He performed left knee arthroscopy on November 18, 1988. Appellant returned to limited duty four hours a day on January 20, 1989 and to full time unrestricted duty in April 1989.

¹ The controlling claim number for this file is A13-846189, originally filed for low back pain, spasms, neck and shoulder pain on or before April 1, 1989. Appellant also had a number of other claims accepted, now included under Claim No. A13-846189: A13-561634, regarding an October 31, 1978 injury, lumbar sprain, off work November 2 to 19, 1978; A13-580359, for a May 21, 1979 fractured left fifth toe; A13-5966617 for a December 12, 1979 lumbar strain and left sciatic nerve irritation, sustained when she lifted a heavy parcel, and was off work intermittently from December 12, 1979 to February 1, 1980; and A13-846189 for low back pain, spasms, neck and shoulder pain on or before April 1, 1989.

² Appellant filed a claim for a schedule award. There is no final decision of record with regard to the schedule award claim.

In an October 27, 1989 report, Dr. Kouzelos opined that appellant was totally disabled for work on and after September 19, 1989 due to neck and back pain.³ The Office accepted a recurrence of disability from September 19, 1989 to March 3, 1990. Appellant returned to part-time limited duty on March 4, 1990, gradually increasing to full time.

By decision dated February 23, 1993, the Office found that the light-duty clerk position appellant had performed since March 5, 1990 fairly and reasonably represented her wage-earning capacity. She remained in this position through August 1993.

Appellant stopped work on August 13, 1993 and did not return. Her case was replaced on the periodic rolls.

In a September 23, 1993 report, Dr. Kouzelos recommended surgical decompression at L4-5 with laminectomy, discectomy and fusion. He opined that appellant was totally disabled for work due to her cervical and lumbar disc disease. Dr. Kouzelos submitted periodic reports from May 24, 1994 through November 4, 1997, diagnosing an acute exacerbation of chronic cervical, thoracic and lumbosacral strains and degenerative disc disease of the cervical and lumbar spine. He noted objective paraspinal muscle spasm in the cervical and thoracic regions and intermittent limitation of cervical and lumbar motion. Dr. Kouzelos opined that appellant had reached maximum medical improvement. He also noted that appellant's left knee condition had improved.

In a July 15, 1997 note, Dr. Kouzelos stated that appellant was permanently disabled for all work, as "even modified light-duty work would exacerbate her chronic symptoms (*ie.*) prolonged standing, sitting, walking, twisting torso."

The Office referred appellant, the medical record and a statement of accepted facts to Dr. Thomas Dorsey, a Board-certified orthopedic surgeon, for a second opinion examination. In a January 30, 1998 report, he diagnosed subjective neck pain, lower back pain and status-post left knee arthroscopy. Dr. Dorsey opined that appellant's mild degenerative lumbar disc disease was not work related. He limited standing and walking to six hours, pushing and pulling to 50 pounds, lifting to 25 pounds and proscribed squatting, kneeling and climbing.

On March 28, 1998 the employing establishment offered appellant a modified clerk position within Dr. Dorsey's restrictions. She refused the position on April 16, 1998. By notice dated May 19, 1998, the Office advised appellant that the offered modified-clerk position was suitable work and that her compensation benefits would be terminated should she refuse the offer. Appellant was afforded 30 days to accept the offer, or provide her reasons for refusing the job. She responded on June 17, 1998 that she remained totally disabled for work due to back and neck pain. Appellant submitted an April 30, 1998 note from Dr. Kouzelos, stating that she was

³ Appellant was placed on the periodic rolls effective September 30, 1989. On January 10, 1991 the Office made a preliminary finding of a \$3,348.49 overpayment of compensation as she received compensation for temporary total disability from September 30, 1989 to June 30, 1990, although she worked part-time for part of this period. By decision dated February 27, 1991, the Office finalized the preliminary determination and waived recovery of the overpayment due to financial hardship.

permanently disabled for work due to degenerative cervical and lumbar disc disease and post-traumatic arthritis of the left knee.

In a July 1, 1998 letter, the Office advised appellant that she submitted insufficient grounds for refusing the job offer and afforded her an additional 15 days in which to accept the offered position or face termination of her compensation. In response, appellant submitted a May 26, 1998 report from Dr. Kouzelos, diagnosing chronic lumbosacral strain with degenerative arthritis, a L4-5 disc herniation with left-sided sciatica and post-traumatic degenerative arthritis of the left knee. He noted that appellant continued to require physical therapy and medication and remained disabled for work.

The Office then determined that there was a conflict of medical opinion between Dr. Dorsey, for the government and Dr. Kouzelos, for appellant, regarding whether she was disabled for work. To resolve this conflict, the Office referred appellant, the medical record and a statement of accepted facts to Dr. Edwin M. Clark, a Board-certified orthopedic surgeon.

In an October 20, 1998 report, Dr. Clark reviewed the history of injury and treatment. He stated that on examination, there were no objective findings of a continuing cervical or lumbar condition, other than radiographic findings of degenerative disc disease indicative of normal aging.⁴ Dr. Clark noted that appellant's left knee showed no degeneration, effusion, instability or decreased range of motion. He concluded that appellant's degenerative disc disease, already visible on December 29, 1987 x-rays, was related to the normal aging process and not to the work injuries or other employment factors. Dr. Clark noted that appellant admitted working out with a Swiss ball and treadmill. He diagnosed status-post left knee arthroscopy, resolved cervical and lumbosacral strains and degenerative disc disease of the cervical and lumbar spine without radiculopathy. Dr. Clark concluded that the December 18, 1987 lumbar and cervical sprains had resolved.

In an attached work restriction evaluation, Dr. Clark limited sitting to 4 hours a day, standing and walking to 2 hours a day, pushing, pulling and lifting to 1 hour each a day, up to 1 hour of climbing, no squatting or kneeling and lifting up to 35 pounds. He started appellant at 4 hours a day, gradually increasing to eight hours.

In a November 2, 1998 letter, the employing establishment offered appellant a position as a general clerk for 4 hours a day, gradually increasing to 8 hours a day after 60 days. The position required sedentary clerical duties within the restrictions prescribed by Dr. Clark. The employing establishment included relocation expenses in the job offer, as appellant had moved out of the commuting area.

By notice dated November 2, 1998, the Office advised appellant that the general clerk position was suitable work within her medical restrictions. The Office again advised appellant of the penalty provisions under section 8106(c) for refusing suitable work. She was afforded 30

⁴ Dr. Clark obtained x-rays showing disc narrowing at L4-5, facet arthropathy at L3-4 and L4-5 "with a three millimeter subluxation," "possible old mild flattening of the superior endplate of L3" and degenerative disc narrowing at C4-5 and C5-6.

days in which to either accepted the offer and return to work, or provide her explanation for declining the position.

By notice dated November 3, 1998, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that her work-related conditions had resolved, based on Dr. Clark as the weight of the medical evidence. Appellant was given 30 days in which to submit additional evidence.

On November 9, 1998 appellant refused the job offer, asserting that she experienced severe pain requiring traction and medication. She submitted additional evidence.

In a November 17, 1998 report, Dr. Kouzelos noted treating appellant since early 1988 for the December 18, 1987 “strains to the neck, lower back, as well as to the left knee.” Dr. Kouzelos noted that “[t]hrough the course of years to follow [appellant] developed degenerative changes of her axial spine, as well as internal derangement of the left knee ... leading to left knee surgery in 1988. Dr. Kouzelos noted that appellant continued to complain of cervical and left-sided lumbar pain with intermittent sciatica, secondary to degenerative discs disease at multiple levels. On examination, he noted limited cervical and lumbar range of motion, tenderness and spasm on palpation throughout the neck and back and left knee crepitus with trace effusion. Dr. Kouzelos diagnosed “[c]hronic cervical and lumbosacral strains with associated degenerative changes, including cervical spondylosis, degenerative lumbar disc disease with facet joint arthritis and incompetence,” leading to mechanical lumbar instability.” Dr. Kouzelos also diagnosed mild post-traumatic degenerative arthritis of the left knee. He found appellant disabled for “even modified work ... due to inability to stand, sit or twist her torso on any prolonged basis.”

On January 8, 1999 appellant underwent a right shoulder rotator cuff repair, acromioplasty and subacromial bursectomy. Dr. Kouzelos stated that appellant had “injured her right shoulder lifting weights several years ago ... for exercise.”

In a January 8, 1999 letter, the Office advised appellant that the reasons set forth in her November 9, 1998 letter were insufficient grounds for refusing the employing establishment’s November 2, 1998 job offer. The Office afforded appellant 15 days to accept the offer.

In a January 13, 1999 letter, the Office advised appellant of the type of additional medical and factual information required to determine if the January 8, 1999 right shoulder surgery was a sufficient reason to refuse the offer of suitable work.

In a January 21, 1999 note, Dr. Kouzelos stated that appellant was totally, temporarily disabled for work for the next four months due to the surgical rotator cuff repair.

In a March 24, 1999 report, an occupational health field nurse related appellant’s account that she injured her right shoulder in May 1997 while doing weight lifting exercises.

In a June 3, 1999 report, Dr. Kouzelos stated that appellant’s right shoulder condition and surgery were “felt to be work related.”

To ascertain if there was any causal relationship between appellant's right shoulder condition and the accepted injuries, the Office referred appellant to Dr. Clark. In an October 4, 1999 report of an August 17, 1999 examination, he related appellant's account of injuring her right shoulder in May 1997 while lifting weights at a health club, exacerbated by falling on the shoulder two weeks later. Based on this account, Dr. Clark concluded that appellant's right shoulder condition was not employment related. He commented that there continued to be no objective evidence of causal relationship between appellant's cervical and lumbar spine complaints and the accepted work injuries. Dr. Clark explained that appellant's cervical strain had resolved and her symptoms were due to the "natural progression of preexisting degenerative joint changes of the cervical and lumbar spine." Dr. Clark stated that there were "no objective findings to support her subjective complaints." He reviewed the light-duty job offer and found that appellant remained medically able to perform the position.

In a November 18, 1999 letter, the Office advised appellant that the offered general clerk position remained available and that the employing establishment was still willing to pay relocation expenses.⁵ Appellant was given 15 days in which to return to work, or her benefits would be terminated.

In a November 24, 1999 letter, appellant elected the Office of Personnel Management (OPM) disability retirement benefits effective December 5, 1999.

By decision dated December 21, 1999, the Office terminated appellant's compensation benefits on the grounds that she refused an offer of suitable work under section 8106(c) of the Federal Employees' Compensation Act. The Office also found that appellant's cervical and lumbar spine conditions were no longer related to the accepted December 18, 1987 injuries, based on Dr. Clark's opinion as the weight of the medical evidence.

Appellant disagreed with this decision and in a January 5, 2000 letter, requested a review of the written record by a representative of the Office's Branch of Hearings and Review.

By decision dated and finalized June 8, 2000, the Office hearing representative affirmed the December 21, 1999 decision. The hearing representative found that Dr. Clark's report was sufficiently detailed and rationalized to establish that appellant no longer had residuals of the December 1987 cervical and lumbar strains and that the offered general clerk position was suitable work within appellant's medical limitations. The hearing representative further found that the Office followed the applicable procedural requirements regarding advising appellant of the status of the position as suitable work, that the position remained available and that her unjustified refusal to accept the job would result in termination of her compensation.

The Board finds that the Office properly terminated appellant's compensation benefits effective December 21, 1999 on the grounds that she refused an offer of suitable work under section 8106(c) of the Act.

⁵ In a September 27, 1999 letter, appellant advised the Office that she relocated from California to Arizona.

Section 8106(c)(2) of the Act⁶ provides in pertinent part, “A partially disabled employee who ... refuses or neglects to work after suitable work is offered ... is not entitled to compensation.”⁷ To prevail under this provision, the Office must show that the work offered was suitable and must inform the employee of the consequences of refusal to accept such employment. An employee who refuses or neglects to work after suitable work has been offered has the burden of showing that such refusal to work was justified.⁸

In the present case, the record reflects that on November 2, 1998 the employing establishment offered appellant reemployment in a modified-duty clerk position 4 hours a day, increasing to 8 hours in 60 days. There is nothing in the medical restrictions provided by Dr. Clark, a Board-certified orthopedic surgeon and impartial medical examiner, in his October 20, 1998 report, that would preclude appellant from performing the offered position. While Dr. Kouzelos, appellant’s attending Board-certified orthopedic surgeon, opined in April 30 and May 26, 1998 reports that appellant was totally disabled for work due to back and neck pain, he provided no objective findings or medical rationale explaining how and why the December 18, 1987 injuries continued to disable appellant for all work. Accordingly, the Board finds that the medical evidence of record establishes that, at the time the job offer was made, appellant was capable of performing the modified position.⁹

In order to properly terminate appellant’s compensation under 5 U.S.C. § 8106, the Office must provide appellant notice of its finding that an offered position is suitable and give appellant an opportunity to accept or provide reasons for declining the position.¹⁰ The record in this case indicates that the Office properly followed the procedural requirements. Following appellant’s November 9, 1998 rejection of the November 2, 1998 light-duty job offer, the Office advised appellant by January 8, 1999 letter that her reasons for refusing the position were insufficient. The Office advised appellant that a partially disabled employee who refused suitable work was not entitled to compensation, that the offered position had been found suitable and allotted her 15 days to either accept or provide reasons for refusing the position.

As appellant underwent right shoulder surgery on January 8, 1999 the Office conducted additional development to determine if the surgery represented a sufficient reason to refuse the November 2, 1998 offer of suitable work. The case was referred back to Dr. Clark, who opined that appellant’s right shoulder condition, by her own admission, was related to nonoccupational weight lifting at a gym in May 1997 and that she remained medically able to perform the duties of the offered position. Based on Dr. Clark’s opinion, by letter dated November 18, 1999, the Office advised appellant that the reason given for not accepting the job offer was unacceptable. She was given an additional 15 days to respond. In lieu of accepting the offered position,

⁶ 5 U.S.C. §§ 8101-8193.

⁷ 5 U.S.C. § 8106(c)(2).

⁸ See *Michael I. Schaffer*, 46 ECAB 845 (1995).

⁹ See *John E. Lemker*, 45 ECAB 258 (1993).

¹⁰ See *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff’d on recon.*, 43 ECAB 818 (1992).

appellant elected OPM retirement benefits instead of compensation benefits effective December 5, 1999.

There is no evidence of a procedural defect in this case as the Office provided appellant with proper notice. The record, therefore, establishes that appellant was offered a suitable position by the employing establishment and such offer was refused. Under 5 U.S.C. § 8106(c) her compensation was properly terminated on December 21, 1999.

Given that the Office has shown that the limited-duty position offered to appellant was suitable based on her work restrictions at that time, the burden then shifted to appellant to show that her refusal to work in that position was justified.¹¹ As appellant presented insufficient rationalized evidence supporting her refusal of the modified position, she failed to demonstrate that the termination of compensation on December 21, 1999 for refusal of suitable work was not justified.¹²

Regarding the second issue, the Board finds that appellant's medical conditions, other than the left knee condition, ceased on or before December 21, 1999.

When an employee claims a recurrence of or continuing disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must submit rationalized medical evidence based on a complete and accurate factual and medical background showing causal relationship.¹³ The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁴ must be one of reasonable medical certainty¹⁵ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁶ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.¹⁷

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed condition on and after

¹¹ See *Henry P. Gilmore*, 46 ECAB 709 (1995).

¹² Regarding appellant's recurrence claim, the Board notes that section 8106(c) serves as a bar to receipt of further compensation under section 8107 of the Act for a disability arising from the accepted employment injury. 5 U.S.C. §§ 8106-8107; see *Merlind K. Cannon*, 46 ECAB 581 (1995).

¹³ See *Armando Colon*, 41 ECAB 563 (1990).

¹⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁷ *Ausberto Guzman*, 25 ECAB 362 (1974).

December 21, 1999 and her December 18, 1987 cervical and lumbar strains and aggravation of L5 disc disease.¹⁸

Dr. Kouzelos did not provide sufficient medical rationale explaining the pathophysiologic connection between appellant's continuing symptoms on or after December 21, 1999 and the December 18, 1987 work injury. In his November 17, 1998 report, Dr. Kouzelos diagnosed chronic cervical and lumbar strains superimposed on degenerative disc disease and an L4-5 disc herniation. He stated that following the December 18, 1987 injuries, appellant "developed degenerative changes of her axial spine ...," leading to a total disability for all work. However, Dr. Kouzelos did not explain how and why the diagnosed cervical and lumbar strains would cause or aggravate degenerative disc disease. The Board has held that medical opinion not fortified by medical rationale is of little probative value.¹⁹

Regarding appellant's right shoulder condition, Dr. Kouzelos noted in a June 3, 1999 report that the January 8, 1999 right rotator cuff repair was "felt to be work related." However, in the January 8, 1999 operative report, Dr. Kouzelos stated that appellant had injured her shoulder lifting weights in May 1997. She informed a vocational rehabilitation nurse on March 24, 1999 that she injured her shoulder in May 1997 while lifting weights at a gym. The Board finds there is no indication that the right shoulder condition is work related.

In contrast, Dr. Clark, submitted two well-rationalized reports, based on the complete medical record and appropriate clinical examinations, explaining that the accepted cervical and lumbar strains had resolved with no objective residuals. In an October 20, 1998 report, Dr. Clark noted that appellant's degenerative disc disease was already visible on December 29, 1987 x-rays, taken within two weeks of the December 18, 1987 injury. In an October 4, 1999 report, Dr. Clark stated that appellant's symptoms were caused by the normal progression of preexisting, age-related degenerative disc disease and arthritis and that her subjective pain complaints were out of proportion to the objective findings. The Board finds that Dr. Clark's reports are sufficiently detailed and rationalized to represent the weight of the medical evidence in this case. Also, Dr. Clark's status as an impartial medical examiner lends additional probative value to his opinion.²⁰

Consequently, appellant has not met her burden of proof, as she submitted insufficient medical evidence indicating that her December 18, 1987 work-related injuries caused or aggravated her lumbar and cervical spine conditions on and after December 21, 1999.

The decision of the Office of Workers' Compensation Programs dated and finalized June 8, 2000 is hereby affirmed.

¹⁸ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

¹⁹ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

²⁰ Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion on such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight. *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

Dated, Washington, DC
April 8, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member