

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAY L. VANMETER and U.S. POSTAL SERVICE,
POST OFFICE, Peoria, IL

*Docket No. 01-1174; Submitted on the Record;
Issued April 16, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective February 14, 2000.

On October 26, 1998 appellant, then a 37-year-old letter carrier, filed a claim alleging that she sustained an aggravation of her preexisting right hip osteoarthritis while carrying mail and walking her mail route. She did not stop work but returned to a limited-duty position. The Office accepted the claim for temporary aggravation of osteoarthritis of the right hip. Appellant was paid appropriate compensation.

Appellant submitted treatment notes from Dr. Timothy Morgan, a Board-certified orthopedic surgeon, dated August 15, 1997 to October 5, 1998; a magnetic resonance imaging (MRI) scan of the hips dated September 25, 1998; and several duty status reports from November 1998. Dr. Morgan's treatment notes dated August 15, 1997 to October 5, 1998 diagnosed appellant with advanced osteoarthritis of the right hip. The MRI scan of the hips dated September 25, 1998 revealed osteoarthritic changes of the right hip. The duty status reports from November 1998 indicated that appellant was treated for osteoarthritis, which was aggravated by the walking required by her job. Appellant was placed on limited duty subject to restrictions on lifting, walking, standing and climbing.

By letter dated November 16, 1998, the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury. The Office particularly advised appellant of the type of medical evidence needed to establish her claim.

Appellant submitted treatment notes from Dr. Roger Rodriguez, a specialist in orthopedics, dated November 10, 1998; and Dr. Morgan dated December 2, 1998. Dr. Rodriguez's report dated November 10, 1998 indicated a history of appellant's treatment and noted her osteoarthritic changes were probably caused and worsened by her current employment duties, which involved carrying a mailbag and walking. He noted that appellant

was placed on permanent work restrictions for a limited-duty position at the employing establishment. Dr. Rodriguez indicated that appellant was a candidate for surgery. Dr. Morgan, in his report dated December 2, 1998, diagnosed appellant with advanced osteoarthritis of her right hip. He noted that the symptoms related to this disease were significantly aggravated by her duties as a letter carrier. Dr. Morgan indicated that the original etiology of the osteoarthritis of her right hip was unclear, however, her mail duties served as an ongoing aggravating factor.

On November 10, 1998 appellant accepted a limited-duty position, which conformed to the restrictions set forth by Dr. Rodriguez.

On April 1, 1999 the Office referred appellant for a second opinion to Dr. Julie Wehner, a Board-certified orthopedic surgeon. The Office provided Dr. Wehner with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated April 23, 1999, Dr. Wehner indicated that she reviewed the records provided to her and performed a physical examination of appellant. She noted a history of appellant's condition. Dr. Wehner indicated that upon examination appellant experienced tenderness on internal rotation and external rotation of the right hip. She further indicated that she did not believe that appellant's employment duties contributed to her osteoarthritic condition nor did she believe her work contributed to an acceleration of the underlying bony changes. Dr. Wehner noted appellant's position would temporarily aggravate the symptoms she experienced from her osteoarthritic condition. She indicated that because appellant had taken a position which no longer entailed doing repetitive climbing or lifting, the temporary exacerbation of her preexisting condition had abated. Dr. Wehner noted that this condition abated approximately one week after appellant took her limited-duty position. She noted that appellant's symptomatic complaints indicate a possible need for corrective surgery.

On May 10, 1999 the Office issued a notice of proposed termination of compensation and medical benefits on the grounds that Dr. Wehner's report dated April 23, 1999 established no continuing disability as a result of the accepted employment injury.

Appellant submitted a letter from Dr. Rodriguez dated June 1, 1999, who indicated that he disagreed with Dr. Wehner's assessment of appellant's condition. He noted appellant's osteoarthritic condition was caused by wear and tear of repetitive activity. Dr. Rodriguez further noted that, contrary to Dr. Wehner's conclusions, he believed appellant's employment as a mail carrier was the inciting incident in the symptomatic cause of appellant's pain.¹

The Office determined that a conflict of medical opinion was created between Dr. Rodriguez, who indicated that appellant was disabled and experiencing residuals of her work-related injury and Dr. Wehner, the Office referral physician, who determined that appellant did not have any residuals from her work-related injury.

¹ The record indicates that appellant underwent a right total hip joint replacement on June 16, 1999 and was totally disabled from June 16 to September 1999.

Appellant was referred to a referee physician, Dr. Joseph Newcomer, Board-certified in orthopedic surgery. In a medical report dated September 30, 1999, he indicated that he reviewed the records provided to him and performed a physical examination of appellant. Dr. Newcomer noted a history of appellant's work-related injury. Upon physical examination he noted a well-healed incision following a total hip arthroplasty; with adequate range of motion; and equal leg lengths. Dr. Newcomer reviewed the diagnostic studies and noted x-rays of the hips were consistent with significant osteoarthritis of the hip. He opined that appellant's osteoarthritis was a preexisting condition temporarily aggravated by her duties at work. Dr. Newcomer indicated that he did not believe appellant's duties as a postal worker were the precipitating event to cause her condition. He noted that appellant's symptoms abated one week after she was placed on work restrictions. Dr. Newcomer concluded that appellant sustained a temporary aggravation of her preexisting condition which ceased when placed in her light duties. He noted that appellant had undergone a total hip replacement and indicated that he would not address the appropriateness of the surgery because he did not believe appellant's condition was a permanent aggravation of her underlying osteoarthritic condition.

Appellant submitted a November 10, 1999 attending physician's report prepared by Dr. Rodriguez and a duty status report prepared by Dr. Jerome Kraft, a Board-certified orthopedic surgeon, dated December 16, 1999. The attending physicians report prepared by Dr. Rodriguez indicated that appellant was being treated for right hip osteoarthritis which required surgery. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by her employment duties specifically standing, walking and carrying 20 pounds or more daily. Dr. Rodriguez indicated that appellant was permanently disabled from June 16 to September 25, 1999 and partially disabled from September 25, 1999. He released appellant to a limited-duty position on September 25, 1999. The duty status report prepared by Dr. Kraft indicated that appellant was status post total hip replacement and subject to permanent work restrictions.

By decision dated February 14, 2000, the Office terminated appellant's benefits effective that date on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her accepted employment injury.

By letter dated February 28, 2000, appellant requested an oral hearing before a hearing representative, which was held on November 8, 2000. She testified that she underwent hip replacement surgery on June 16, 1999. Appellant returned to a limited-duty position after the surgery in September 1999 and, by February 14, 2000, her condition had resolved. She indicated that she was currently on regular duty.

In a decision dated January 22, 2001, the hearing representative affirmed the decision of the Office dated February 14, 2000 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her work-related condition.

The Board finds that the Office met its burden of proof to terminate benefits effective February 14, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² 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 employment.³

The Office accepted appellant's claim for temporary aggravation of osteoarthritis of the right hip and paid appropriate compensation. In April 1999, the Office referred appellant for a second opinion to Dr. Wehner. In her report dated April 23, 1999, she indicated that appellant's employment duties did not contribute to her osteoarthritic condition nor did she believe this type of work contributed to an acceleration of the underlying bony changes. Dr. Wehner indicated that appellant's position would temporarily aggravate the symptoms appellant experienced from her osteoarthritic condition; however, since appellant had taken a position which no longer entails doing repetitive climbing or lifting, her temporary exacerbation of her preexisting condition had abated approximately one week after appellant took her limited-duty position.

After issuance of the pretermination notice, appellant submitted a June 1, 1999 report from Dr. Rodriguez, which indicated that he disagreed with Dr. Wehner's assessment of appellant's condition. Dr. Rodriguez believed appellant's condition was caused by her mail carrier duties.

Consequently, the Office referred appellant to Dr. Newcomer to resolve the conflict between Drs. Wehner and Rodriguez.

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 of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁴

The Board finds that the opinion of Dr. Newcomer is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Dr. Newcomer reviewed appellant's history, reported findings and noted that appellant's osteoarthritis was a preexisting condition temporarily aggravated by her duties at work. He indicated that he did not believe appellant's duties as a postal worker were the precipitating event to her condition. Dr. Newcomer concluded that appellant's condition represented a temporary aggravation of her preexisting condition and indicated appellant's symptoms abated one week after she was placed on limited duty. Dr. Newcomer indicated that appellant did not suffer residuals from the condition of temporary aggravation of osteoarthritis of the right hip. He noted that the condition was resolved.

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Aubrey Belnavis*, 37 ECAB 206 (1985).

Appellant submitted an attending physicians report dated November 10, 1999 prepared by Dr. Rodriguez and a duty status report prepared by Dr. Kraft dated December 16, 1999. The attending physicians' report indicated that appellant was permanently disabled from June 16 to September 25, 1999 and partially disabled from September 25, 1999. He indicated with a check mark "yes" that appellant's condition was caused or aggravated by her employment duties specifically standing, walking and carrying 20 pounds or more daily. The duty status report prepared by Dr. Kraft indicated that appellant was status post total hip replacement and subject to permanent work restrictions.

The Board finds that Dr. Newcomer's report does not resolve the issue of whether appellant's hip surgery and resulting disability, if any, was necessitated by the accepted condition of temporary aggravation of osteoarthritis of the right hip. While Dr. Newcomer generally indicated that appellant's work-related condition was only temporary, he never addressed whether the hip replacement surgery of June 16, 1999 and any resulting disability was a result of the temporary aggravation of osteoarthritis of the right hip. Dr. Newcomer indicated that appellant had undergone a total hip replacement and noted he would not address the appropriateness of the surgery but indicated her duties of ambulating up to seven miles carry 35 pounds could have accelerated the process of degenerative joint disease.

The Board finds that Dr. Newcomer did not address the issue of whether appellant's total hip replacement was necessitated by the accepted work-related condition and whether appellant had any disability due to her employment. Therefore, the case will be remanded for further medical development on this issue.

The case will be remanded to the Office for further medical development on the issue of whether appellant's hip replacement surgery and resulting disability was necessitated by the accepted temporary aggravation of the right hip. Following this and such other development as is deemed necessary, the Office shall issue an appropriate merit decision.

The decision of the Office of Workers' Compensation Programs dated January 22, 2001 is affirmed in part and set aside in part and remanded for further development consistent with this opinion.

Dated, Washington, DC
April 16, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member