

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANETTE E. GLYNN and DEPARTMENT OF THE NAVY,
NAVAL SURFACE WARFARE CENTER, Philadelphia, PA

*Docket No. 01-740; Submitted on the Record;
Issued August 9, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's benefits on the grounds that the accepted work-related conditions had resolved without residuals.

The Board finds that there remains an unresolved conflict in the medical evidence and the case must be remanded for further development.

On January 4, 1990 appellant, then a 29-year-old warehouse worker, filed a claim alleging that she sustained injuries when she tripped over a pallet and fell onto her back in the performance of duty. The Office accepted the claim for lumbar strain/sprain and a later subsequent condition of disc reabsorption syndrome. Appellant stopped work on the date of injury, returned to a modified position of data transcriber for four hours per day on May 19, 1991 and was terminated in April 1993, when the employing establishment closed. When appellant's part-time job was eliminated, appellant returned to receiving total disability compensation benefits.

In a report dated April 24, 1995, Dr. Robert J. Braunfeld, appellant's treating osteopath, indicated that appellant's medical condition remained the same. Appellant still complained of persistent pain which she described as making it extremely difficult for her to maintain any one position for a prolonged period of time, thereby causing extreme difficulty for her to obtain gainful employment. Dr. Braunfeld opined that most of appellant's symptomatology was subjective, but advised that he did not feel comfortable in releasing her to obtain any type of employment with the amount of discomfort she was having. In a July 23, 1996 report, he noted that appellant had tried to return to work in a sedentary capacity, but felt that she was unable to perform these activities due to constant back pain. Dr. Braunfeld reiterated that most of appellant's complaints were purely subjective and recommended that appellant seek the care of a different physician as he found that he was unable to provide her any treatment which afforded her benefit. In a report dated June 17, 1997, he examined appellant and opined that she was

unable to perform her date-of-injury employment. No findings were described other than reports of pain.

In a report dated January 26, 1998, Dr. John T. Williams, a Board-certified orthopedic surgeon and an Office referral physician, noted the results of his examination and opined, based upon the history of injury and the physical examination, that appellant's acute lumbosacral sprain/strain/contusion, by history, was resolved. He stated that in the physical examination, there were no positive objective findings to correlate to appellant's complaints and concluded that she had fully recovered from the soft-tissue injuries incurred at the time of the work injury. Dr. Williams further stated that appellant had the disc reabsorption syndrome prior to her accident of January 4, 1990 and that, although the accident may have aggravated the underlying pathology, the aggravation would have been temporary and transitory, resolving, leaving appellant with her preexisting pathology, which was going to age as she aged and degenerate as she degenerates. Because of this preexisting process, which was nonwork related, Dr. Williams opined that appellant should be on restrictions.

In a May 12, 1999 progress note, Dr. Braunfeld stated that appellant's condition was unchanged. He further stated that appellant remained disabled "due to severe, recurrent and unremitting back pain."

The Office found that a conflict in the medical evidence existed on the issue of whether the effects of the January 4, 1990 injury had resolved and referred appellant, along with the medical records and an updated statement of accepted facts and list of questions, to Dr. Thomas A. Corcoran, a Board-certified orthopedic surgeon, for an impartial examination.¹ In a report dated November 8, 1999, he noted the history of injury and treatment appellant underwent along with the fact that appellant has difficulty with many activities and has been out of work for the past six years. Dr. Corcoran provided the results of his physical examination and diagnosed chronic low back pain. He opined that appellant has completely recovered from a soft tissue injury which occurred on January 4, 1990. Dr. Corcoran stated, however, appellant does continue to suffer from lower back pain. He noted that appellant only has subjective findings on examination. Dr. Corcoran opined that appellant was not currently employable. He stated that, if appellant was to continue to have pain, then modifications to her employment, such as lifting restrictions, would be reasonable.

In a December 23, 1999 letter to Dr. Corcoran, the Office noted that he felt that appellant had completely recovered from a soft tissue injury which occurred on January 4, 1990. The Office advised that it had accepted an aggravation of a disc reabsorption syndrome. The Office noted that Dr. Williams opined:

"On the basis of the studies, it is my opinion that the findings are compatible with what would be determined as an *isolated* disc reabsorption syndrome. However,

¹ Where there exists a conflict in the medical evidence 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 on a proper factual background, is entitled to special weight. *Brady L. Fowler*, 44 ECAB 343 (1992).

this was not caused by the accident of January 4, 1990. It would have preexisted the accident but the accident *could* have triggered it.”

* * *

“It is obvious that the injury of January 4, 1990 did not cause this problem and that it preexisted the work[-]related injury. The accident did obviously aggravate it but it would be my opinion that the aggravation was of a temporary and transitory nature which resolved leaving her with the preexisting pathology.

“It is my medical opinion that [appellant] incurred soft tissue injury to the lumbosacral area which has fully resolved.”

The Office requested Dr. Corcoran to respond as to whether appellant suffered an aggravation of a disc reabsorption syndrome, the aggravation was of a temporary and transitory nature, which resolved.

In a supplemental report dated March 11, 2000, Dr. Corcoran stated that it was his opinion that appellant has basically resolved her soft tissue injury. He further advised that he had not diagnosed a disc reabsorption syndrome.

The November 8, 1999 and March 11, 2000 reports of Dr. Corcoran do not, however, resolve the issue in question. In this case, the Office accepted the conditions of lumbar strain/sprain and disc reabsorption syndrome as a result of the work injury of January 4, 1990. Although Dr. Corcoran had opined that the soft tissue injury had resolved, he failed to respond to the Office’s inquiry as to whether the accepted condition of disc reabsorption syndrome was of a temporary and transitory nature and had resolved. Rather, he merely noted that he had not diagnosed disc reabsorption syndrome.

The Board finds that the conflict in the medical evidence is not resolved by the opinion of Dr. Corcoran.²

² The Board notes that, when the impartial medical specialist’s statement of clarification or elaboration is not forthcoming to the Office or if the physician is unable to clarify or elaborate on the original report or if the physician’s report is vague, speculative or lacks rationale, the Office must refer the employee to another impartial specialist for a rationalized medical opinion on the issue in question. *Terrance R. Stath*, 45 ECAB 412 (1994).

The decision of the Office of Workers' Compensation Programs dated December 7, 2000 is reversed.

Dated, Washington, DC
August 9, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member