

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANETTE D. FAUNTLEROY and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Little Rock, AK

*Docket No. 01-1713; Submitted on the Record;  
Issued August 13, 2002*

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DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective May 30, 1993; and (2) whether appellant met her burden of proof to establish that she had any disability after May 30, 1993 causally related to her employment injury.

On June 18, 1985 appellant, then a 48-year-old clerk, sustained an employment-related lumbosacral strain and on May 9, 1986 sustained a low back strain that was also work related.<sup>1</sup> The Office continued to develop the claim and on October 7, 1992 referred appellant, along with the medical record, a set of questions and a statement of accepted facts, to Dr. Harold H. Chakales, a Board-certified orthopedic surgeon, for a second-opinion evaluation. By letter dated March 30, 1993, the Office informed appellant that it proposed to terminate her compensation, based on the opinion of Dr. Chakales. In a April 14, 1993 letter, she disagreed with the proposed termination and submitted additional evidence. By decision dated May 18, 1993, the Office terminated her benefits, effective May 30, 1993, on the grounds that her injury-related disability had ceased.

On May 24, 1993 appellant requested reconsideration and submitted additional evidence. In a June 9, 1993 decision, the Office denied modification of its prior decision. On August 25, 1993 appellant requested a hearing. In a January 11, 1994 decision, an Office hearing representative denied her request on the grounds that she had previously requested reconsideration. On March 4, 1994 appellant filed an appeal with the Board and by decision dated February 13, 1995, the Board remanded the case to the Office, noting that the Branch of Hearings and Review denied appellant's hearing request on an incorrect issue, *i.e.*, whether factors of employment caused an emotional condition. On remand the Branch of Hearings and

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<sup>1</sup> The 1985 injury was initially developed by the Office under file number 160098092 and the 1986 injury under 160112995. The claims were doubled on February 16, 1996.

Review was to issue an appropriate decision pursuant to 5 U.S.C. § 8124(b)(1), to be followed by a merit decision.<sup>2</sup>

By decision dated August 2, 1995, an Office hearing representative denied appellant's hearing request on the grounds that it was untimely filed. The Office stated that appellant was not, as a matter of right, entitled to a hearing since she had previously requested reconsideration. The Office noted that it had considered the matter in relation to the issue involved and indicated that appellant's request was denied on the basis that the issue was medical in nature and could be addressed through a reconsideration application.

On October 25, 1995 appellant again requested reconsideration and submitted additional evidence. By decision dated February 15, 1996, the Office denied her reconsideration request on the grounds that it had not been filed within one year of the June 9, 1993 decision and did not show clear evidence of error. On April 23, 1996 appellant again filed an appeal with the Board. In a decision dated December 27, 1996, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record, to be followed by an appropriate decision to protect appellant's appeal rights.<sup>3</sup> On July 16, 1998 the Office issued a second decision denying appellant's reconsideration request on the grounds that it had not been filed within one year of the June 9, 1993 decision and did not show clear evidence of error.

On July 21, 1998 appellant filed an appeal with the Board. On September 1, 1999 the Director of the Office filed a motion requesting the Board to set aside the July 16, 1998 decision. The Director acknowledged that the Office did not fully comply with the Board's orders dated February 13, 1995 and December 27, 1996 in that the Office did not issue merit decisions to protect appellant's appeal rights. By decision dated October 5, 1999, the Board granted the Director's Motion to Remand.<sup>4</sup> In a decision dated November 2, 1999, the Office denied modification of its June 9, 1993 decision.

On January 19, February 22 and May 29, 2000 and February 26, 2001, appellant requested reconsideration and submitted additional medical evidence. In decisions dated February 9 and March 17, 2000 and January 23 and March 26, 2001, the Office denied modification of its prior decision. The instant appeal follows.

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

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.<sup>5</sup>

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<sup>2</sup> Docket No. 94-1379.

<sup>3</sup> Docket No. 96-1694.

<sup>4</sup> Docket No. 99-337.

<sup>5</sup> See *Patricia A. Keller*, 45 ECAB 278 (1993).

The medical evidence relevant to the termination of appellant's compensation includes reports from appellant's treating Board-certified family practitioner, Dr. J.D. Calhoon who diagnosed acute and chronic low back pain. In a report dated May 7, 1992, he advised that he had treated appellant for many years and recommended that she undergo work hardening and pain management.<sup>6</sup> By report dated October 13, 1992, Dr. William F. Blankenship, a Board-certified orthopedic surgeon, noted that appellant complained of pain on a back examination. Straight leg raising was negative bilaterally. He diagnosed lumbosacral strain by history, carpal tunnel syndrome by history and recent onset diabetes mellitus.

A November 18, 1992 electromyographic study revealed no evidence of either cervical or lumbosacral nerve root irritation.<sup>7</sup> A November 18, 1992 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated L5-S1 disc degeneration with a herniation that abutted the right S1 nerve rootlet with hypertrophy at L4-5 and L5-S1.

In a report dated December 2, 1992, Dr. Chakales noted appellant's complaints of pain and history of injury. He diagnosed L5-S1 disc herniation and lumbar syndrome with degenerative disc disease and advised that this would prevent appellant from returning to her normal job duties. In a work restriction evaluation dated December 3, 1992, Dr. Chakales advised that appellant could work four to six hours per day with restrictions. In a supplementary report dated January 29, 1993, he advised that appellant's disc herniation was not employment related and, while she was medically disabled, it was not due to the employment injury and the restrictions provided were due to the lumbar degenerative disc disease and disc protrusion. Dr. Chakales concluded that her back strain "should have healed by now."

Dr. Calhoon provided reports dated February 1 and 24, 1993 in which he diagnosed acute and chronic low back pain.

By report dated May 6, 1993, Dr. Edward H. Saer, a Board-certified orthopedic surgeon, noted appellant's complaints of pain and history of injury. On examination he noted nonspecific tenderness of the lumbar spine with guarding. Straight leg raising was negative. He noted the MRI scan finding of disc herniation.<sup>8</sup>

The Board finds that the weight of the medical evidence regarding the termination of appellant's compensation rests with the opinion of Dr. Chakales who advised that appellant's disability was not employment related. While appellant submitted additional evidence, none of the physicians advised that she was disabled from work. As Dr. Chakales provided comprehensive, well-rationalized reports, in which, he explained his findings and conclusions, the Board finds that the weight of the medical evidence rests with his opinion and, therefore, finds that appellant had no employment-related disability on or after May 30, 1993 and the Office met its burden of proof to terminate her compensation benefits on that date.

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<sup>6</sup> The record indicates that appellant completed these programs.

<sup>7</sup> Appellant was also noted to have carpal tunnel syndrome on the right.

<sup>8</sup> The record indicates that this report was submitted to the Office with appellant's reconsideration request dated May 24, 1993.

The Board further finds that appellant failed to establish that she had an employment-related disability after May 30, 1993.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had disability causally related to her accepted injury.<sup>9</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>10</sup> Causal relationship is a medical issue<sup>11</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty 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.<sup>12</sup>

The evidence relevant to any continuing disability includes a report dated June 25, 1993 in which Dr. Anthony F. Oliva, an osteopathic physician, noted his findings on examination and diagnosed osteoarthritis and chronic low back pain. In a treatment note dated August 1, 1993, Dr. William A. Eason, who is Board-certified in family practice, noted appellant's complaints of pain and findings on examination. In a work restriction evaluation dated August 23, 1993, Dr. Oliva remarked that appellant continued to have spasms with activity and advised that appellant could possibly work four hours per day with restrictions provided by an orthopedic surgeon. Dr. Oliva also provided disability slips dated October 18 and November 9, 1993.

In a report dated January 10, 1994, Dr. Blankenship diagnosed chronic low back pain, degenerative disc disease on the right and degenerative arthritis. He further noted that appellant's symptoms were on the left. Dr. Jerry L. Thomas, a Board-certified orthopedic surgeon, provided a March 30, 1994 report in which he noted that he had seen appellant eight years previously. He noted symptoms of radiating low back pain and diagnosed increased lumbar lordosis with degenerative changes at the L5-S1 level.

Dr. Blankenship continued to submit reports in which he reiterated his diagnosis of degenerative disc disease of the lumbar spine with radiation into the left lower extremity. In a January 16, 2001 report, Dr. Calhoun advised that he had cared for appellant since 1985 and noted x-ray findings of degenerative changes in the lower lumbar area with increased lumbar lordosis. She was seen on December 8, 2000 with complaints of back pain. He concluded that she had received a considerable amount of conservative treatment.

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<sup>9</sup> See *George Servetas*, 43 ECAB 424 (1992).

<sup>10</sup> See 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>11</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>12</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In the instant case, appellant continued to submit additional medical evidence after the Office properly terminated her compensation benefits in which arthritis and chronic back pain were diagnosed. In none of the medical reports, however, did a physician provide a cause of appellant's condition. The Board further notes that the accepted conditions were lumbosacral and low back strains. The record therefore, contains no evidence that appellant continued to be disabled after May 30, 1993 due to the employment injury and she did not meet her burden of proof to establish that she is entitled to compensation benefits after that date.

The decisions of the Office of Workers' Compensation Programs dated March 26 and January 23, 2001 are hereby affirmed.

Dated, Washington, DC  
August 13, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member