

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOYCE M. SMITH and U.S. POSTAL SERVICE,  
LOOP STATION, Chicago, IL

*Docket No. 02-626; Submitted on the Record;  
Issued August 14, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
WILLIE T.C. THOMAS

The issue is whether the effects of appellant's March 7, 1999 employment injury resolved by September 28, 2001.

On March 19, 1999 appellant, then a 51-year-old distribution clerk, filed a claim for a traumatic injury to her left hip and low back sustained on March 7, 1999, when a chair tipped over. The Office of Workers' Compensation Programs initially accepted that appellant sustained a lumbosacral strain and later also accepted an aggravation of degenerative disc disease and aggravation of a bulging disc. The Office authorized buy-back of leave appellant used until her return to work on May 14, 1999 and paid compensation for temporary total disability after she again stopped work in July 1999.

In a report dated February 10, 2000, appellant's attending Board-certified orthopedic surgeon, Dr. Samuel J. Chmell, stated:

"I believe [appellant's] full and complete diagnosis is degenerative disc disease of the lumbosacral spine aggravated by a lumbosacral strain.

"[Appellant] had an underlying condition known as degenerative disc disease (as manifest by bulging discs on) [the] MRI [magnetic resonance imaging] scan. This condition was made worse (aggravat[ed]) by her falling off a chair at work on March 7, 1999. This is permanent.

"[Appellant's] CT [computerized tomography] scan of August 3, 1987 showed 'mild degree of bulging discs.' A March 19, 1999 MRI showed marked worsening of her condition which, in part, is causally related to the March 7, 1999 occurrence."

On May 19, 2000 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. Julie M. Wehner, a Board-certified orthopedic surgeon, for a second

opinion on her condition and its relationship to her March 7, 1999 employment injury. In a report dated June 7, 2000, Dr. Wehner set forth appellant's history and findings on examination and on the March 19, 1999 MRI. Dr. Wehner concluded:

"My impression is that [appellant] sustained an injury on March 7, 1999, when she fell on the floor. It was mostly a lumbar sprain/contusion. She had preexisting degenerative changes of her back. The MRI documents that [appellant] had degenerative changes on March 19, 1999 and these would not have developed in such quick succession. Therefore, she had a preexisting condition of degenerative changes in her back. [Appellant] had an exacerbation of this when she fell on the floor. On exam[ination] today she had normal neurologic findings and normal range of motion. Therefore, it appears that the lumbar sprain/contusion is no longer active. [Appellant] has no neurologic findings on exam[ination] today. She has no significant canal lesions on her MRI. Therefore, I feel that she has a resolved sprain of her lumbosacral spine. This occurred approximately three months from the date of injury. At that point in time, she went back to her baseline status of having a degenerative disc with chronic low back pain. Therefore, I feel she had a temporary exacerbation of a lumbar sprain on top of a preexisting degenerative disc, which resolved approximately three months from the date of injury.

"At this point in time, she can resume her previous occupation of a distribution clerk based on the injury of March 7, 1999.

"There is no further treatment warranted and no further tests necessary for the aggravation of the condition. [Appellant] has ongoing chronic back pain and treatment can be directly related to that.

"[Appellant's] back degeneration will progress in a normal manner as degenerative arthritis does over a very slow period of time, over the next 20 to 30 years. Working as a distribution clerk will not accelerate this degeneration in any way."

On November 27, 2000 the Office referred appellant, the case record and a statement of accepted facts to Dr. James W. Milgram, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion between Drs. Chmell and Wehner. In a report dated December 19, 2000, Dr. Milgram set forth appellant's history and findings on examination, which included good extension and side bending of the back, ability to bend and touch her toes, vague soreness but no localized area of pain in the back, normal muscle and sensory examinations, negative straight leg raising and 2+ ankle and knee jerks. After noting that appellant used no walking aid and walked without a limp from the street to the office and reviewing the prior medical evidence, including the 1987 CT scan, the March 19, 1999 MRI and a normal nerve conduction study, Dr. Milgram stated:

"While [appellant] may have sustained a sprain as a result of the accident, certainly the changes on the MRI are preexisting and are not traumatic types of changes. There is no evidence that [appellant] has sustained any type of traumatic

abnormality of discs and even though you have accepted an aggravation of bulging discs as an event that is really something with which I disagree. One cannot aggravate a bulging disc in any way in my opinion. Bulging discs are degenerative abnormalities that take long periods of time to develop and are not anything that occurs as a result of a special traumatic event.”

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“My conclusions after reviewing [appellant’s] history, her physical examination records and the x-rays that I obtained in the office, is, [she] has much in the way of exaggerated symptomatology which has no medical foundation. I do not believe that [appellant] is significantly disabled and I think that she could return to a regular job at the [employing establishment] as a clerk. I think because of her myriad of complaints, it would be better to have her avoid heavy lifting; heavy means 50 [pounds] or greater, but I would permit her to do eight hours of work regularly. I think the idea of a motorized wheelchair for this lady is ludicrous and totally unnecessary. I feel that [appellant] is capable of a regular job and can work normally. She takes public transportation to work and can do that. [Appellant] lives by herself and has no helper and I do not see significant medical disease here. I find no significant permanent disability arising out of an injury of March 1999. The abnormalities on the [MRI] testing are all preexisting and at most she might have suffered a soft tissue sprain. However, much time has passed now and those abnormalities have healed, thus leaving us with a patient who has a normal exam[ination] and many unjustified complaints in my opinion.”

On February 14, 2001 the employing establishment offered appellant a position as a distribution clerk with a lifting limitation of 50 pounds. She accepted this offer and returned to work on March 29, 2001.

On August 28, 2001 the Office issued a notice of proposed termination of compensation, on the basis that the weight of the medical evidence established that her medical conditions caused by her March 7, 1999 injury had ceased.

Appellant submitted additional reports from Dr. Chmell, including a September 12, 2001 report stating that it was “very clear to me that [appellant] sustained a traumatic aggravation of her underlying degenerative disc disease of the lumbar spine in her work-related injury of March 7, 1999. This opinion is based upon a reasonable degree of medical and orthopedic surgical certainty.”

By decision dated September 28, 2001, the Office terminated appellant’s compensation including her entitlement to medical treatment at the Office’s expense on the basis that the weight of the medical evidence established that her medical conditions caused by her March 7, 1999 injury had ceased.

The Board finds that the weight of the medical evidence establishes that the effects of appellant’s March 7, 1999 employment injury resolved by September 28, 2001.

There was a conflict of medical opinions between appellant's attending Board-certified orthopedic surgeon, Dr. Chmell and the Office's referral Board-certified orthopedic surgeon, as to whether appellant's March 7, 1999 employment injury aggravated her preexisting degenerative disc disease and whether appellant continued to have residuals of her employment injury. To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,<sup>1</sup> referred appellant, the case record and a statement of accepted facts to Dr. Milgram, a Board-certified orthopedic surgeon.

In situations where there are opposing medical reports of virtually equal weight and rationale 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, must be given special weight.<sup>2</sup> Dr. Milgram's December 19, 2000 report was based on a proper factual background and a review of the prior medical evidence. Dr. Milgram concluded that appellant's abnormalities on the March 19, 1999 MRI, were all preexisting and that the soft tissue sprain she sustained on March 7, 1999 had healed.

Dr. Milgram's report constitutes the weight of the medical evidence and is sufficient to establish that the effects of appellant's March 7, 1999 employment injury resolved by September 28, 2001. The September 12, 2001 report from Dr. Chmell that appellant submitted in response to the Office's notice of proposed termination of compensation is essentially similar to his prior reports and is insufficient, as the report of a physician on one side of the conflict of medical opinion, to overcome the weight of the report of Dr. Milgram, the impartial medical specialist resolving the conflict, or to create a new conflict of medical opinion.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

<sup>2</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>3</sup> *See Dorothy Sidwell*, 41 ECAB 857 (1990).

The September 28, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
August 14, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member