

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ETHEL M. WALKER ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 01-1856; Submitted on the Record;
Issued December 20, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on May 13, 1996 because she had no further disability or residuals causally related to her employment injury of August 3, 1984.

This case has been before the Board on a prior appeal. In a March 15, 2001 decision, the Board found that appellant submitted a timely request for reconsideration and remanded the case to the Office.¹

On August 3, 1984 appellant, then a 31-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she injured her back while pushing a cage. The claim was accepted for a mild back strain. Appellant stopped working on August 3 until October 5, 1984 when she returned to limited duty. She had several subsequent intermittent absences. She has received ongoing medical treatment and worked light duty since returning to work.

Appellant's treating physician, Dr. James Kim, a Board-certified orthopedic surgeon, submitted an October 27, 1995 letter indicating that he had examined appellant and could find no orthopedic problem to attend. He noted that appellant was scheduled to have a neurological examination by Dr. Bernard Gran and discharged her from his office.

In a November 20, 1995 report, Dr. Gran, a Board-certified neurologist, found negative straight leg raising, reflexes symmetrical but diminished with down going toes, good strength throughout, diffuse low back tenderness, no sciatic notch tenderness and no paraspinal muscle spasm. His impression was that appellant had a lumbar sprain with no evidence of radiculopathy. Dr. Gran reported that appellant could continue to work as usual with no

¹ Docket No. 1999-1284 (March 15, 2001).

limitations but he also prescribed pain medications. A November 8, 1995 electromyogram (EMG) of the lower extremities was reported as normal with no evidence of denervation.

In a January 19, 1996 report, Dr. Gran stated that he had reviewed appellant's prior testing and her magnetic resonance imaging (MRI) as well as electrical studies, finding them unremarkable.

In a February 9, 1996 letter, the Office referred appellant to Dr. Elliott Lang, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a March 18, 1996 report, Dr. Lang reviewed appellant's history of injury and medical treatment, noting her prior complaint was of back pain radiating to the right leg. He stated:

“Based upon my examination of [appellant] and the medical record review the following conclusions were reached. [She] had sustained a lumbosacral strain of a mild nature. There are no objective findings or residual based on my examination. [Appellant] may work at a restricted-duty basis and should have a 50-pound lift limitation along with no constant bending. She may lift, however, from the bent knee position without bending at the lumbosacral spine. These are the only limitations we have placed on [appellant] based upon my examination. There is no motor atrophy, nor any objectivity with respect to [her] examination as of this date. [Appellant] was deemed to have reached maximum medical improvement three months after her initial injury.”

In a May 13, 1996 decision, the Office denied appellant's claim for ongoing disability based on the medical reports of Drs. Kim, Gran and Lang, finding no objective evidence, orthopedic or neurological, to support continuing disability related to the accepted injury.

In a June 3, 1996 letter, appellant requested reconsideration. She submitted several reports from Dr. William Bacon, her prior attending physician, that were of record, but no new medical reports. She contended that she had been diagnosed with having a lumbar disc syndrome in 1984.

In a November 25, 1996 decision, the Office denied modification of the May 13, 1996 decision, finding the weight of the medical evidence rested with Drs. Kim, Gran and Lang. The Office noted that the medical evidence submitted by appellant did not address the issue of whether she had residuals after May 13, 1996 related to her accepted condition.

Appellant requested reconsideration and submitted additional evidence. In a February 24, 1997 report, Dr. Michael B. Wittels, Board-certified orthopedist, stated that appellant was treated for back pain when she exerted herself or ambulated too much. He noted that appellant had an ulcer in her stomach that prevented her from taking her pain medication on a repetitive basis. He stated: “appellant could work in a light[-]duty type capacity as she has been doing for three previous years.”

By decision dated December 23, 1998, the Office denied reconsideration on the grounds that the request was untimely and did not present clear evidence of error.

Appellant filed an appeal with the Board in Docket No. 1999-1284. By decision dated March 15, 2001, the Board found that she submitted a timely request for a hearing and remanded the case for further review.

In a November 19, 1998 report from Dr. John E. Vinsant, a Board-certified orthopedic surgeon reported the following:

“[Appellant] was first seen several months ago on August 31, 1998 in reference to injuries, which she states was [sic] incurred on August 3, 1984 during the course of her work when she injured her back. Detailed questioning revealed no other orthopedic injuries other than those of August 3, 1984, therefore, the symptoms which she exhibits in my opinion based on her history and based on the fact there was no other injuries are the direct result of the injuries of August 3, 1984 where she injured her back. I reviewed the MRI report of January 15, 1993 that indicated disc dehydration at L4-5, bulging at L3-4 and [L]4-5. She also had EMG testing performed and nerve conduction studies performed by Dr. Jeffery Gelbum. The impression was ‘evidence of mild chronic left radiculopathy with superimposed mild peripheral sensory neuropathy.’

“These findings were indeed compatible with appellant’s examination. The most recent visit was on October 31, 1998. She was still having some pain in the cervical spine with the main concern being her back. There was some tenderness restriction of motion, continued difficulty with repetitive bending. Examination and objective diagnostic testing in cooperation with the appellant’s history does indicate an injury of August 3, 1984 with persistent symptoms.”

In an April 10, 2001 decision, the Office denied modification finding Dr. Vinsant’s report insufficient to establish residual disability after May 13, 1996. The Office noted that his report was insufficient because the only basis he gave to relating appellant’s medical condition after May 13, 1996 to her accepted lumbar strain in 1984, was the fact that she reported no other orthopedic injuries.

The Board finds that the Office met its burden of proof to establish that appellant fully recovered from her 1984 accepted injury.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

compensation benefits.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁵

Dr. Gran found in his November 20, 1995 report that appellant had sustained a lumbar sprain with no indication of radiculopathy; and that while he was adjusting appellant's medication, she could work with no limitations.

In his March 18, 1996 report, Dr. Lang found that appellant had sustained a mild lumbosacral sprain but he could find no residual disability. He opined that she could continue to work in a restricted-duty basis.

In his February 24, 1997 report, Dr. Wittels indicated that, while appellant complains of back pain, an MRI showed no indication of a herniated disc. He opined that she could continue to work as she has been doing for the previous years.

The Board finds that the weight of the medical evidence establishes that appellant had no continuing disability due to her August 3, 1984 employment injury.

The April 10, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 20, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).