

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILMA J. HIBBLER and U.S. POSTAL SERVICE,  
NORTH SUBURBAN MAIL SORTING CENTER, River Gorge, IL

*Docket No. 02-1694; Submitted on the Record;  
Issued December 4, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation.

On November 9, 1978 appellant, then a 22-year-old letter sorting machine operator, sat down in a chair which dropped suddenly. She developed back pain and stopped working on November 10, 1978. She returned to work on December 18, 1978 and received continuation of pay for the period she did not work. The Office accepted appellant's claim for a contusion of the back. Appellant worked intermittently thereafter, often working four hours a day and receiving compensation for the hours she did not work. On May 2, 1986 appellant filed a claim for chronic back pain which she attributed to work. She indicated that she first related her back condition to her employment on January 17, 1985. The Office accepted appellant's claim for a chronic lumbosacral strain. Appellant stopped working on January 28, 1989 and did not return to work thereafter. She used four hours of leave and four hours of leave without pay until February 9, 1989 when she exhausted her sick and annual leave. The Office began payment of temporary total disability compensation.

In a December 14, 1999 decision, the Office terminated appellant's compensation on the grounds that she had no continuing residuals or disability due to her employment injury and that any current disability was not related to her employment injury. In a July 12, 2000 letter, appellant requested reconsideration. In a September 29, 2000 merit decision, the Office denied appellant's request for modification of the December 14, 1999 decision.<sup>1</sup>

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

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<sup>1</sup> Appellant's first correspondence to the Board concerning her case was sent by certified mail, dated July 14, 2001. This correspondence is treated as appellant's request for an appeal and therefore was timely filed within one year after the Office's last merit decision on September 29, 2000. 20 C.F.R. § 501.3(d).

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.<sup>2</sup>

In an October 21, 1997 report, Dr. Anita Ong, a Board-certified internist, stated that appellant injured her back in 1985 when she threw a mailbag into the system. Dr. Ong indicated that appellant had intermittent neck and back pain since that time. She reported that a recent examination showed that appellant's diagnosis remained lumbosacral and cervical strain. Dr. Ong noted that appellant had recurrent spasms of her neck and back muscles in spite of muscle relaxants and anti-inflammatory medications. She stated that appellant was incapable of performing the duties of her former position as a mail clerk because she was incapable of any strenuous exercise. Dr. Ong commented that appellant was incapable of doing most activities of daily living. She concluded that appellant was not expected to return to work any time soon.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon, for an examination and second opinion on whether her condition was causally related to her employment. In a March 16, 1999 report, Dr. Sidell stated that appellant had subjective complaints of back stiffness which were not functionally disabling. He commented that appellant appeared to have some general back stiffness and minor back complaints compatible with her age and stated level of physical activity. Dr. Sidell indicated that appellant had no objective physical findings, particularly findings that could be related to her employment injury. He noted that appellant did not give a history of a specific work injury. In response to questions posed by the Office, Dr. Sidell stated that there were no objective findings to show that appellant's work-related chronic lumbosacral strain was still active and causing objective symptoms. He indicated that appellant had no apparent residuals from any employment injury. Dr. Sidell commented that, based on a normal musculoskeletal examination, there was no orthopedic reason why appellant could not return to her preinjury position as a mail distribution clerk. He stated that any disability appellant had was unrelated to the musculoskeletal system and unrelated to any work-related symptoms. Dr. Sidell concluded that appellant could work an eight-hour day.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Michael Kornblatt, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence. In a July 12, 1999 report, Dr. Kornblatt noted that appellant complained of constant middle lower back pain over the prior 10 years. He noted that x-rays showed sacralization of L5 with a vestigial L5-S1 disc space. He reported that the rest of the disc spaces were well maintained with no obvious bony pathologic change. Dr. Kornblatt commented that appellant's history showed she sustained a lumbosacral strain in 1985. He stated that lumbosacral strains were not permanent injuries, with symptoms resolving in three to four months. Dr. Kornblatt concluded therefore that appellant did not have any active employment injury causing her symptomatology. He indicated that appellant had some psychogenic component to her pain complaints, pointing out that she exhibited give away weakness of all

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<sup>2</sup> Jason C. Armstrong, 40 ECAB 907 (1989).

muscle groups of the arms and legs. Dr. Kornblatt concluded that appellant did not have a work-related chronic lumbosacral strain causing objective symptoms. He stated that appellant did not have any residuals of a work-related injury. Dr. Kornblatt indicated that appellant could return to work as a mail distribution clerk with no restrictions.

In situations when there exists opposing medical reports of virtually equal weight and rationale 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, must be given special weight.<sup>3</sup> In this case, Dr. Kornblatt presented a well-reasoned report, based on an accurate history of appellant's condition. His report therefore is entitled to special weight and, in the circumstances of this case, constitutes the weight of the medical evidence. Dr. Kornblatt's report establishes that appellant's employment-related condition had ceased. His report satisfies the Office's burden of proof in terminating appellant's compensation.

In a May 31, 2000 report, Dr. Ong stated that appellant was being treated for fibromyositis, cervical and lumbosacral strain and sprain, peptic ulcer disease and depression. Dr. Ong commented that appellant had not been able to work for many years because of her medical problems and employment injuries. She indicated that despite maximum medical and physical therapy appellant remained incapacitated. Dr. Ong stated that appellant was unable to stand or walk for prolonged periods, do repetitive motions, and could not lift over five pounds, all of which were required by her previous position. She concluded that appellant's restrictions and disability would be permanent due to the chronic and recurrent nature of her condition. Dr. Ong, however, did not provide any report of physical findings to support that appellant was disabled. She also did not give a rationalized explanation on how appellant's condition remained related to her employment injury. Dr. Ong's report therefore has limited probative value and is insufficient to overcome the weight of Dr. Kornblatt's report.

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<sup>3</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

The decision of the Office of Workers' Compensation Programs dated September 29, 2000 is hereby affirmed.

Dated, Washington, DC  
December 4, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member