

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY LOU McBRIDE and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Broomall, PA

*Docket No. 00-1229; Submitted on the Record;
Issued February 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective January 31, 1999 on the grounds that she had no residual medical condition or disability causally related to her accepted employment injuries; and (2) whether appellant met her burden of proof in establishing that she had an employment-related disability which continued after termination of benefits.

On January 17, 1979 appellant, then a 28-year-old management analyst, slipped on ice and injured her back. She stopped work on January 17, 1979 and returned to work intermittently until she stopped completely. The Office accepted the claim for low back strain and sciatic nerve injury. Appellant was paid appropriate compensation.

Subsequently appellant submitted various medical records from Dr. David C. Cottrell, a Board-certified orthopedic surgeon, dated January 25 to August 7, 1979; and Dr. Robert Slater, a Board-certified neurologist, dated June 21 to September 4, 1979. Dr. Cottrell's treatment notes from January 25 to August 7, 1979 indicated that appellant was being treated for a fall she sustained at her place of employment. He diagnosed appellant with traumatic coccygodynia and acute lumbar strain of the back. Dr. Cottrell noted x-rays of the cervical spine and dorsal spine were unremarkable. He indicated that appellant's symptoms were the result of her fall on January 17, 1979. Dr. Slater's report's from June 21 to September 4, 1979 indicated that appellant was being treated for a fall she sustained at work. He noted that an electromyogram was performed which revealed equivocal L5 root signs. Dr. Slater diagnosed appellant with sciatic type pain originating at the root level from a disc injury to the sciatic nerve. Appellant was hospitalized on August 10, 1979 for a sciatic nerve injury and back sprain.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to impartial medical examiners.¹

¹ This included referring appellant to three-second opinion physicians in 1984 and 1986 as well as an impartial specialist in 1985.

Appellant continued submitting treatment notes from Dr. Slater indicating that she remained totally disabled and under treatment for sciatic nerve injury and low back strain. He diagnosed appellant with post-traumatic nerve injury secondary to a fall in 1979, which was the sole cause of her disability. Appellant also submitted reports from Dr. Arnold Gessel, a specialist in psychiatry, indicating that appellant was undergoing biofeedback and neuromuscular training.

On February 14, 1995 the Office referred appellant for a second opinion to Dr. Kathleen Maloney, a Board-certified neurologist. The Office provided Dr. Maloney with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties. A medical report dated March 23, 1995, indicated that she reviewed the records provided to her and performed a physical examination of appellant. She noted a history of appellant's condition. Dr. Maloney noted the physical examination was essentially normal. Appellant subjectively complained of discomfort throughout her right buttocks and lower back region. Dr. Maloney determined there was no objective neurological impairment demonstrated. She noted that the radiographic studies were unremarkable. Dr. Maloney noted that appellant was not currently disabled, however, he recommended that she undergo a magnetic resonance imaging (MRI) scan because of her history of protracted complaints.

Thereafter, appellant submitted a report from Dr. Slater dated March 27, 1995. He indicated that appellant continued to be totally disabled as a result of the January 17, 1979 injury to her sciatic nerve. Dr. Slater noted that appellant's disability was judged to be permanent. Appellant also underwent an MRI scan of the lumbar spine on April 10, 1996, which revealed no abnormalities.

The Office requested Dr. Maloney submit a supplemental report commenting on the additional diagnostic studies performed. In a January 7, 1997 report, Dr. Maloney indicated that she reviewed the MRI findings as well as an electromyograph (EMG) study performed on August 10, 1996. She noted that the EMG revealed minor chronic denervation changes in the paraspinal muscles of both sides, but was otherwise normal. Dr. Maloney determined that appellant had no objective findings to substantiate her ongoing back and right leg complaints. She concluded that appellant did not have objective evidence of neurologic impairment and had no continuing disability as a result of the work injury of January 17, 1979.

On May 28, 1998 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Maloney's reports dated March 23, 1995 and January 7, 1997 established no continuing disability as a result of the January 17, 1979 employment injury.

In a letter dated June 29, 1998, appellant through her attorney noted that there was a conflict in opinion between appellant's treating physicians and Dr. Maloney and that the conflict must be resolved before termination was appropriate.

Thereafter, the Office determined that a conflict of medical opinion had been established between Dr. Slater, appellant's treating physician, who indicated that appellant was permanently disabled and unemployable and Dr. Maloney, a prior Office referral physician, who determined that appellant did not suffer residuals from her January 17, 1979 accepted injury.

To resolve the conflict appellant was referred to a referee physician, Dr. Richard H. Bennett, a Board-certified neurologist.

In a medical report dated September 22, 1998, Dr. Bennett indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Upon physical examination he noted the cranial nerve testing was normal; motor power was normal, with no muscle wasting noted; reflexes were equal and symmetrical; sensation was intact; and the straight leg raises were normal bilaterally. The musculoskeletal testing revealed pain in the midline of her lower lumbar region radiating towards her right buttock and down the right thigh. Dr. Bennett indicated that he review the diagnostic studies and noted that they revealed no abnormalities. He noted that despite appellant's subjective complaints her physical examination remained entirely normal. Dr. Bennett indicated that he could not identify any structural pathology; neurologic or otherwise to account for her ongoing complaints. He concluded that there was no evidence of a sciatic nerve injury resulting from the reported work incident of 1979 and that appellant could return to her job without restrictions.

On October 23, 1998 the Office issued a notice of proposed termination of compensation on the grounds that Dr. Bennett's report dated September 22, 1998 established no continuing disability as a result of the January 17, 1979 employment injury.

Appellant submitted an EMG performed November 16, 1998 which revealed a borderline-abnormal study because of suggestive evidence of chronic denervation in the S1 innervated right leg muscle; and noted that these findings could be explained by her sciatic nerve stretch injury 19 years ago.

In a letter dated November 20, 1998, appellant, through her attorney, indicated that she was still disabled as a result of her accepted sciatic nerve injury and noted that she also suffered from a peripheral psychological injury. She submitted a copy of Dr. Slater's June 3, 1998 report in support of her continued permanent disability.

In a letter dated November 30, 1998, the Office requested that Dr. Bennett provide a supplemental report commenting on the results of the November 16, 1998 EMG study. In a supplemental report dated December 2, 1998, Dr. Bennett indicated that the EMG revealed giveaway weakness of the right hip flexion and extension, with inconsistent decreased light touch and sensation along the entire right leg, which he found inconsistent with S1 radiculopathy. He reaffirmed his opinion as set forth in his September 22, 1998 report and noted that there was still no objective evidence of impairment and believed appellant could return to work without restrictions.

By decision dated January 13, 1999, the Office terminated appellant's compensation benefits effective January 31, 1999 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her January 17, 1999 employment injury.

By letter dated July 9, 1999 appellant, through her attorney requested a review of the written record. She argued that she still had residuals from the work-related injury of January 17, 1979. Appellant submitted an additional report from Dr. Slater dated January 20, 1999. He noted that he disagreed with Dr. Bennett's findings and believed appellant was still totally disabled as a result of her work-related injury of January 17, 1979.

By decision dated October 20, 1999, a hearing representative affirmed the decision of the Office dated January 13, 1999.

By letter dated November 22, 1999, appellant requested reconsideration and submitted a report from Dr. Robert I. Winer, a Board-certified neurologist, dated November 15, 1999. Dr. Winer indicated that appellant had evidence of right L4-5 dysfunction which extended to the L3 and S1 level. He noted upon examination decreased flexion, extension and lateral flexion of the lumbar spine; straight leg raises were positive at 90 degrees; and noted signs of paresthesias. Dr. Winer concluded that appellant continued to be disabled and that her condition was rooted “in either the sciatic nerve or the lumbosacral plexus.”

In a decision dated February 18, 2000, the Office denied appellant’s request for reconsideration on the grounds that the evidence was insufficient to warrant modification of the prior decision.

The Board finds that the Office has met its burden of proof to terminate benefits effective January 31, 1999.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has a 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.³

In this case, the Office accepted appellant’s claim for low back strain and sciatic nerve injury and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant’s attending physician, Dr. Slater, who disagreed with Dr. Maloney concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Bennett to resolve the conflict.

Where there exists a conflict of medical opinion 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, is entitled to special weight.⁴

The Board finds that, under the circumstances of this case, the opinion of Dr. Bennett is sufficiently well-rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant’s work-related condition has ceased.

Dr. Bennett reviewed appellant’s history, reported findings and noted that appellant sustained a low back strain and sciatic nerve injury on January 17, 1979. He noted that despite appellant’s subjective complaints her physical examination remained entirely normal. Dr. Bennett indicated that he could not identify any structural pathology; neurologic or

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Aubrey Belnavis*, 37 ECAB 206 (1985).

otherwise, to account for her ongoing complaints. He concluded that there was “clearly no evidence of a sciatic nerve injury resulting from the reported work incident of ... 1979” and noted that appellant could return to her job without restrictions.

After issuance of the pretermination notice, appellant submitted a January 20, 1999 report from Dr. Slater, who indicated that appellant remained disabled and was unemployable. However, Dr. Slater’s report is similar to his prior reports and is insufficient to overcome that of Dr. Bennett or to create a new medical conflict as Dr. Slater was on one side of the conflict that Dr. Bennett resolved.⁵

The Board finds that, under the circumstances of this case, the opinion of Dr. Bennet is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence and established that appellant’s work-related condition has ceased. Dr. Bennett indicated that appellant did not suffer residuals from the condition of low back strain and sciatic nerve injury. He noted that the condition was resolved.

After it has been established that termination or modification of compensation benefits is clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁶ 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, which continued after termination of compensation benefits.⁷

Subsequent to the Office’s proper termination of compensation, appellant requested reconsideration and submitted medical evidence supportive of her contention that she had residual disability from the accepted condition of sciatic nerve injury. However, medical evidence submitted by appellant after termination of benefits either did not specifically address how any continuing condition was due to the January 17, 1979 work injury or was duplicative evidence previously considered by the Office. Dr. Winer’s report of November 15, 1999 indicated that appellant had evidence of right L4-5 dysfunction which extended to the L3 and S1 level. However, Dr. Winer’s report merely reiterated and summarized information previously considered by the Office, and never addressed the causal relationship of appellant’s condition to the accepted employment injury of January 17, 1979. Dr. Winer did not provide a rationalized opinion specifically addressing how any continuing residual condition was causally related to the January 17, 1979 work injury,⁸ nor did he otherwise explain the medical reasons by which the accepted condition continued. Additionally, the doctor’s report was equivocal as to the cause of appellant’s condition indicating that it was “rooted in either the sciatic nerve or the lumbosacral plexus.” The Board has held that speculative and equivocal medical opinions regarding causal

⁵ See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Slater’s report does not contain new findings or rationale upon which a new conflict might be based.

⁶ *Gary R. Sieber*, 46 ECAB 215 (1994).

⁷ *Id.*; see also *Wentworth M. Murray*, 7 ECAB 572 (1955).

⁸ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

relationship have no probative value.⁹ Therefore, this report is insufficient to meet appellant's burden of proof.

The Board finds that there is no medical evidence which supports that appellant's disability was causally related to her accepted work-related condition. Dr. Bennett had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated he clearly opined that appellant had absolutely no work-related reason for disability. His opinion is found to be probative evidence and reliable. The Board finds that Dr. Bennett's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

The decisions of the Office of Workers' Compensation Programs dated February 18, 2000 and October 20, 1999 are affirmed.

Dated, Washington, DC
February 25, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ Speculative and equivocal medical opinions regarding causal relationship have no probative value; *see Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).