

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VELMA COBB and U.S. POSTAL SERVICE,  
POST OFFICE, New York, NY

*Docket No. 00-2365; Submitted on the Record;  
Issued January 3, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue are whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective January 1, 1997 and whether appellant had any continuing disability after the date of termination.

On October 24, 1996 appellant, then a 53-year-old parcel postworker, filed a claim alleging that on that date she injured her back and lower stomach when the elevator she was riding in dropped six floors. Appellant did not return to work.

In an x-ray report dated October 28, 1996, Dr. Alexander V. Tallis, Board-certified in nuclear medicine and radiology, noted the coccyx, on the lateral view, most likely was fractured. Dr. Tallis opined that it was difficult to interpret the coccyx but the overall appearance suggested "most likely a healing fracture."

In an x-ray report dated October 31, 1996, Dr. Stanley Wolfson, a radiologist, diagnosed an avulsion fracture along the dorsal surface of the navicular bone of the left foot, mild level of scoliosis of the mid lumbar spine, a normal pelvis and sacrum. In a December 4, 1996 x-ray report, Dr. Wolfson found no acute fracture or dislocation of the left foot.

In an October 31, 1996 disability certificate, Dr. Donald I. Goldman, an orthopedist and appellant's treating physician, noted that appellant was seen in his office due to injuries sustained on October 24, 1996. He indicated that appellant was totally disabled and diagnosed a fracture of the left foot, a fracture of the coccyx, lumbar derangement and fasciitis.

In a November 30, 1996 report, Dr. Stephen D. Kornfeld,<sup>1</sup> Board-certified in physical medicine and rehabilitation, indicated that he saw appellant on October 26, 1996 for low back

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<sup>1</sup> The report is signed by Drs. Kornfeld and Jeffery L. Cole, Board-certified in physical medicine and rehabilitation.

complaints. He stated that appellant had back pain for many years, recently exacerbated on October 24, 1996 by the elevator incident. Dr. Kornfeld also found that appellant had a significant back injury following a car accident in 1991, which caused her to be out of work for 11 months due to “whole back” whiplash. He noted that in 1993, appellant fell down steps and landed on her knees on cement and was out of work from January to April for a “sports ligamentous injury,” but Dr. Kornfeld found that she no longer complained of that injury. He also indicated that 1991 back x-rays showed possible osteoarthritis. Dr. Kornfeld found that appellant had a lumbosacral paraspinal muscular strain, a possible coccygeal fracture and post-traumatic sacroiliac joint pathology.

In a report dated January 9, 1997, Dr. Jonathan V. Goldstein, a Board-certified surgeon, stated that he examined appellant and noted her history of injury. Dr. Goldstein diagnosed either muscle strain or a traumatic ventral hernia. He stated that if she had a muscle strain, this would continue to improve, if she had a hernia, this would not improve unless repaired.

In a report dated January 21, 1997, Dr. Goldman noted the history of injury and noted that he first saw appellant on October 31, 1996. Dr. Goldman found that x-rays taken of the left foot, sacrum and coccygeal area and lumbar spine inclusive of the pelvis, revealed a fracture of the navicular bone of the foot and possible coccygeal fracture. He diagnosed fracture of the left foot, lumbar derangement and radiculopathy and coccydynia. Dr. Goldman also continued submitting reports indicating that appellant remained disabled.

In a February 19, 1997 report, Dr. Julius Feldman, Board-certified in physical medicine and rehabilitation, noted appellant’s history of injury and found that appellant was disabled from her normal routine. Dr. Feldman stated his clinical impression was cervical and or lumbar discopathy. He recommended further diagnostic testing and stated that appellant’s physical injuries were causally related to the work-related accident of October 24, 1996.

In a March 6, 1997 report, Dr. Osafradu Opam, a neurologist, noted appellant’s history of injury and stated that her past medical history was noncontributory. He stated that appellant complained of neck and back pain and noted that further diagnostic testing was warranted. Dr. Opam’s clinical impression was post-concussion syndrome, post-traumatic headaches, cervicgia, cervical radiculopathy, lumbosacral sprain and lumbosacral radiculopathy. Dr. Opam opined that patient was disabled at this time and that the patient should begin a program of physical therapy.

In a May 21, 1997 decision, the Office denied appellant’s claim. Appellant requested a hearing on June 2, 1997, which was held on Thursday, July 2, 1998.

Prior to the hearing, appellant submitted an October 6, 1997 report from Dr. Goldman that diagnosed a healed fracture of the left foot, coccydynia and lumbar derangement and radiculopathy. He opined that appellant’s injuries were related to the incident of October 24, 1996 and that her injuries were permanent. In an April 8, 1998 report, Dr. Goldman noted appellant’s history of injury and stated that coccygeal x-rays taken in his office were inconclusive but that x-rays from the New York Hospital Medical Center of Queens<sup>2</sup> revealed

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<sup>2</sup> The x-rays are those taken by Dr. Tallis on October 28, 1996.

that appellant had a fracture of the distal aspect of the coccyx. Dr. Goldman requested that a fracture of the coccyx should be added to appellant's list of injuries.

In a September 10, 1998 decision, a hearing representative set aside the May 21, 1997 decision. The hearing representative found that appellant had submitted sufficient evidence to establish that the injury occurred at the time, place and in the manner alleged and that the injury resulted from the specific event or incident. However, the hearing representative noted that the diagnosis of causally related conditions was in question and remanded the file for further development to address the issue of whether appellant injured her neck in the employment incident and whether appellant sustained a fracture of the coccyx. Additionally, the preexisting back problems also needed to be addressed in relation to the employment-related condition.

By letter dated November 12, 1998, the Office referred appellant to Dr. Richard S. Goodman, a Board-certified orthopedic surgeon, for a second opinion examination.

In a November 25, 1998 report, Dr. Goodman indicated that he had examined appellant and noted her history of injury and treatment. He stated that appellant had no evidence of organic disease and that there was no evidence or report of a fractured foot or a fracture of the coccyx and that there was no organic evidence of a lumbar derangement or radiculopathy. Dr. Goodman also found that there was no evidence of sensory, motor or reflex changes in the lower extremities or evidence of any organic injury-related condition. He further opined that appellant was never totally disabled due to this event on an orthopedic basis and she could return to her normal duty work without restrictions and had reached maximum medical improvement from any organic condition.

In a December 17, 1998 notice of clarification, the Office requested that Dr. Goodman, review the medical documentation and determine what conditions appellant sustained from the injury of October 24, 1996, even if the conditions had since resolved.

In a December 30, 1998 addendum, Dr. Goodman noted that the records did not contain an x-ray report of a fractured left foot, therefore, there was no evidence of a fractured left foot. He also stated that there was no report by a radiologist or anyone else of a fractured coccyx, although he noted a one-page report of a healing fracture of the coccyx, which was not diagnostic and should be dismissed. Dr. Goodman further noted that there was a question of lumbar derangement, based purely on appellant's symptoms and there was no objective evidence of lumbar derangement. He further found that the diagnosis of lumbosacral paraspinal muscular strain, possible coccygeal fracture and post-traumatic sacroiliac joint pathology, again, are all based upon symptoms without substantiation of organic findings. Dr. Goodman also noted that there was no evidence of any finding of a traumatic ventral hernia and that on the day of the incident, appellant had a normal examination. He also indicated that the orthopedic condition appellant suffered from was contusions and sprains on the day of the injury, which resolved within hours of the injury.

On January 7, 1999 the Office determined that Dr. Goodman had been nonresponsive and referred appellant together with a statement of accepted facts and medical records to Dr. Michael J. Katz, a Board-certified orthopedic surgeon, for a second opinion examination.

In a February 4, 1999 report, Dr. Katz, indicated that he examined appellant and noted her history of injury. Dr. Katz found that there were conflicting notations in the file regarding what was injured. In particular, he noted that appellant's treating physician indicated that there was a fracture of the left foot, fracture of the coccyx, lumbar derangement and radiculopathy. Dr. Katz noted that another physician gave a diagnosis of lumbosacral paraspinal muscle strain, possible coccygeal fracture and post-traumatic sacroiliac joint pathology, while another physician diagnosed a post-concussive syndrome, post-traumatic headaches, cervicgia, cervical radiculopathy, lumbosacral strain, lumbosacral radiculopathy. He also noted a diagnosis of muscle strain and traumatic ventral hernia. Dr. Katz determined that appellant appeared to have suffered from a coccyx fracture, as documented in the record which healed. He noted that the lumbar derangement appeared to be related to a 1991 motor vehicle accident, which appear to have been mildly exacerbated by the October 24, 1996 incident. Dr. Katz further opined that the foot injury appeared to be an old injury, which he could not place at any particular time and that it did not appear to be an acute fracture as no cast was applied. Dr. Katz also determined that appellant did not appear to have suffered a neck injury on October 24, 1996, however, it did appear that she suffered one in the motor vehicle accident of 1991 and that the fracture of the coccyx was also related to this. He noted that appellant's injury appeared to be an aggravation, in a temporary manner, of a preexisting condition. Dr. Katz opined that the extent and duration of appellant's disability was six weeks for the lower back and eight weeks for the coccyx fracture with the outer limit of ten weeks. He found that no further treatment was necessary.

On February 16, 1999 the Office accepted appellant's claim for a resolved lumbar strain and fracture of the coccyx, which resolved within 10 weeks. The Office advised appellant that she was due continuation of pay (COP) for the first 45 days of disability and that she was entitled to compensation for leave without pay for the remaining portion of her 10 weeks of disability.

In a March 16, 1999 decision, the Office terminated appellant's compensation subsequent to January 1, 1997, on the grounds that the injury-related disability had ceased 10 weeks after the injury of October 24, 1996.

By letter dated April 20, 1999, appellant requested reconsideration of the Office's prior decision and submitted duplicate medical evidence in support of her request.

In a decision dated April 30, 1999, the Office found the arguments and evidence submitted to be of a repetitious nature and, therefore, insufficient to warrant merit review of the claim.

By letter dated May 24, 1999, appellant requested reconsideration of the Office's prior decision and submitted medical evidence in support of her request.

In a May 17, 1999 report, Dr. Goldman, noted treating appellant since her October 24, 1996 work incident. He stated that the fracture in the sacral coccyx area and injury to appellant's lumbar spine resulted in residual pain. Dr. Goldman stated that appellant persistently complained of low back pain in the sacral coccyx area and discomfort in the buttocks, low back and SI joint areas. He stated that although the fracture had healed, the significant trauma that caused this fracture resulted in nerve pain and lower back pain due to the severity of the injury. Dr. Goldman further opined that coccydynia was a specific diagnosis causing severe pain and

long term consequences especially when sitting on a hard surface for a long period of time. He indicated that appellant had to use a donut to sit down due to persistent pressure and pain exerted on the coccyx area. Dr. Goldman further noted that appellant had sustained a permanent disability to the sacral coccyx and lumbar area that had not resolved and that she was disabled.

In a merit decision dated July 1, 1999, the Office found that the information submitted with appellant's request for reconsideration was insufficient to warrant modification of the prior decision.

By letter dated March 27, 2000, appellant requested reconsideration. Appellant's representative argued that Dr. Katz did not have the benefit of a magnetic resonance imaging (MRI) scan or a computerized axial tomography (CAT) scan report at the time of his examination and, therefore, his report did not appear to be accurate. The additional evidence consisted of several diagnostic reports and a report from Dr. Stephen J. Becker, an internist.

In his March 14, 2000 report, Dr. Becker noted appellant's history of injury and treatment and indicated that she had lumbar disc herniation at L4-5 with spasm and radiculopathy, coccydunia, S/P coccyx fracture and a fracture of the left foot which had healed. He stated that these diagnoses were related to appellant's elevator accident of October 24, 1996. Dr. Becker further opined that the MRI scan of January 24, 1992 revealed only mild desiccation of all lumbar discs, except for L5-S1, while an MRI scan on January 7, 2000 revealed an L4-5 central/left subligamentous disc herniation, which he felt in addition to her coccyx fracture was causally related to her accident of October 24, 1996. Dr. Becker further noted that appellant's overall prognosis was guarded since her pain and disability had persisted since her accident of October 24, 1996 and this had impaired her from unrestricted work. He stated that appellant's disability was permanent.

In a merit decision dated June 13, 2000, the Office found that the information submitted with appellant's request for reconsideration was insufficient to warrant modification of the prior decision.

The Board finds that the Office properly terminated appellant's compensation effective January 1, 1997.

Under the Federal Employees' Compensation Act,<sup>3</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>4</sup> After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>5</sup>

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.<sup>6</sup> Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after January 1, 1997 and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

In the present case, the Office initially terminated appellant's compensation based on the report of Dr. Katz. In his examination, Dr. Katz took a complete history noting the details of her October 24, 1996 injury in the elevator. He further obtained a thorough medical history of appellant noting that she had preexisting back problems due to a nonemployment-related motor vehicle accident in 1991 and an accepted work-related injury for sprain of the left knee, sprain of the left hand and contusions of the knee. Dr. Katz noted her hysterectomy in 1985 and that her current complaints consisted of back and pelvis pain. He reviewed the reports of the various treating physicians of record and noted the specific diagnoses they accorded appellant and observed some conflicting notations. After observing the various reports, Dr. Katz found that appellant did appear to suffer from a coccyx fracture, as documented in the record which healed. He explained that appellant's lumbar derangement appeared to go back to her 1991 motor vehicle accident as it appeared to have been exacerbated in a mild way by the accident of October 24 1996. Dr. Katz found that the purported foot fracture appeared to be an old injury that could not be placed at any particular time at this point and that it appeared to be an ossicle over the navicular bone, which may have occurred with any type of trauma in the past. He explained that it was not possible to document whether this was an acute fracture or a chronic finding, however, he observed that it did not appear to be an acute fracture as no cast was applied. Dr. Katz reported that appellant had a temporary aggravation of a preexisting condition based on her 1991 motor vehicle accident and the October 24,1996 incident. He further noted that appellant had a coccyx fracture and lumbar derangement that appeared to be aggravated by the October 24, 1996 incident and determined that the maximum extent and duration of appellant's disability was six weeks for the lower back and eight weeks for the coccyx fracture.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *William Kandel*, 43 ECAB 1011 (1992).

<sup>5</sup> *Carl D. Johnson*, 46 ECAB 804 (1995).

<sup>6</sup> *Dawn Sweazey*, 44 ECAB 824 (1993).

<sup>7</sup> *Mary Lou Barragy*, 46 ECAB 781 (1995).

Dr. Katz explained that there were longer periods for complications and the outer limit of disability for complications and difficulty with a coccyx fracture would be 10 weeks. However, he could see no objective evidence that a permanent aggravation had occurred and opined that no further treatment was necessary. The doctor based his report upon a proper factual background and provided sufficient medical rationale.

Appellant submitted the reports of Drs. Goldman, Kornfeld, Goldstein, Feldman and Opam, along with x-rays. Dr. Goldman indicated that appellant was totally disabled and unable to work in various disability slips and throughout several reports from October 31, 1996 to April 8, 1998. He further opined that appellant's disability was permanent. However, Dr. Goldman did not provide any rationale for his conclusion that appellant's condition was permanent and that she was unable to work. Moreover, Dr. Goldman's reports were based on an incomplete and inaccurate history of injury as he never referenced or referred to any of appellant's previous injuries or explained why or how appellant's condition was or was not affected by them. The Board had held that medical reports not containing rationale on causal relationship are entitled to little probative value.<sup>8</sup> Additionally, medical reports based on an incomplete or inaccurate history are also entitled to little probative value.<sup>9</sup>

Dr. Kornfeld obtained an accurate history of appellant's previous injuries and diagnosed a lumbosacral paraspinal muscle strain, a possible coccygeal fracture and post-traumatic sacroiliac joint pathology. He did not address appellant's left foot injury nor did Dr. Kornfeld distinguish appellant's possible osteoarthritis. He did not provide any opinion supported by medical rationale relating appellant's condition to her accepted employment injury.<sup>10</sup>

In his January 9, 1997 report, Dr. Goldstein provided an opinion that appellant either had muscle strain or a traumatic ventral hernia. He opined that he could not make a more definitive diagnosis without a CAT scan. Dr. Goldstein's opinion was uncertain because he stated it could be a strain or a hernia but he was not certain without a CAT scan. The Board has held that speculative medical opinions have only limited probative value in determining the issue of causal relationship.<sup>11</sup>

In his February 19, 1997 report, Dr. Feldman indicated that appellant's past medical history was noncontributory, however, he did not explain why her 1991 motor vehicle accident would not contribute to her condition or her subsequent fall, nor did Dr. Feldman relate that he was aware of these previous incidents. Dr. Feldman further opined that his clinical impression was cervical or lumbar discopathy and stated that appellant's physical injuries were causally related to her employment incident of October 24, 1996, however, he did not provide any

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<sup>8</sup> See *John Watkins*, 47 ECAB 597, 602 (1996); *William C. Thomas*, 45 ECAB 591, 594 (1994).

<sup>9</sup> See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

<sup>10</sup> See *supra* note 7.

<sup>11</sup> The Board has often held that an opinion, which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur Vilet*, 31 ECAB 366 (1979).

opinion supported by medical rationale relating appellant's condition to her accepted employment injury.<sup>12</sup>

In his report, Dr. Opam noted appellant's history of injury and also stated that appellant's past medical history was noncontributory. He did not provide any explanation to show why her previous injuries were not contributing to her present condition, nor did Dr. Opam indicate that he was even aware of them. Dr. Opam diagnosed post-concussion syndrome, post-traumatic headaches, cervicgia, cervical radiculopathy, lumbosacral sprain and lumbosacral radiculopathy. He indicated that appellant was disabled but did not provide any rationalized opinion indicating that appellant's injuries were causally related to her employment.<sup>13</sup>

The Board finds that the Office properly terminated appellant's benefits based upon the well-rationalized report of Dr. Katz who found that appellant no longer had any residual disability due to her accepted October 24, 1996 employment injury.

Subsequent to the Office's March 16, 1999 termination decision, the burden of proof in this case shifted to appellant, who thereafter submitted the May 17, 1999 report of Dr. Goldman, several diagnostic reports and a March 14, 2000 report from Dr. Becker.

The diagnostic reports were of limited probative value as they did not contain any opinion supported by medical rationale relating appellant's condition to her accepted employment injury.<sup>14</sup>

In his May 17, 1999 report, Dr. Goldman, again indicated that appellant has a permanent disability to the sacral coccyx and lumbar area and that she was disabled. He explained that the sacral coccyx fracture resulted in residual pain and that, despite having healed, it resulted in nerve pain and lower back pain due to the severity of the injury. Dr. Goldman's report did not mention or explain appellant's previous injuries to show how or why it was not related to those or partially caused by those injuries. The Board has held that medical reports based on an incomplete or inaccurate history are also entitled to little probative value.<sup>15</sup>

In his March 14, 2000 report, Dr. Becker presented an accurate history of injury and treatment and stated that appellant's disability and impairment were permanent. However, he did not provide a rationalized medical opinion explaining why appellant's injury had not healed nor why her previous injuries were not contributing to her condition. Thus none of these reports are sufficient to establish that appellant had any continuing disability causally related to her accepted employment injury.

As appellant has not submitted evidence sufficient to counter Dr. Katz's February 4, 1999 report that appellant is no longer disabled due to the October 24, 1996 employment injury,

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<sup>12</sup> See *supra* note 7.

<sup>13</sup> See *supra* note 7.

<sup>14</sup> See *supra* note 7.

<sup>15</sup> See *supra* note 8.

Dr. Katz's opinion constitutes the weight of the evidence and justifies the Office's termination of appellant's compensation benefits.

The June 13, 2000 and July 1, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
January 3, 2002

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member