

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERTA F. BEAUCHAINE and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, MN

*Docket No. 01-573; Submitted on the Record;
Issued January 18, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective January 26, 2000.

On September 5, 1991 appellant, then a 53-year-old carrier, filed a claim alleging that her repetitive bending and lifting duties caused her to develop a back condition. She became aware of this condition on June 7, 1991 but did not stop work. The Office accepted the claim for aggravation of degenerative disc disease of the low back. Appellant was paid appropriate compensation.

Subsequently appellant submitted treatment notes from Dr. Thomas Jetzer, Board-certified in preventative medicine, dated September 3, 1991; Dr. Charles Colwell, a family practitioner, dated April 28, 1992; and Dr. Stuart Kaufman, a Board-certified family practitioner, dated August 26 to November 10, 1992. Dr. Jetzer diagnosed appellant with scoliosis; nonwork-related thoracal lumbar spine with concomitant back pain. He noted that appellant denied any specific activities outside her clerk duties which would have caused her problems. Dr. Jetzer noted appellant probably had scoliosis for a period of time. Dr. Colwell, in his report dated April 28, 1992 indicated that appellant's severe scoliotic deformity was not work related. He indicated that appellant's symptoms of chronic and recurrent back pain were work related and a result of appellant's physical job duties. Dr. Colwell set forth work restrictions for appellant to follow. Dr. Kaufman's reports note a history of appellant's condition and opined that appellant's low back pain was secondary to significant facet degenerative disease. He diagnosed appellant with thoracolumbar scoliosis. Dr. Kaufman indicated that appellant's employment was not the cause of the scoliosis, however, it contributed to the degenerative joint disease and disc disease.

Appellant continued submitting treatment notes from Drs. Kaufman and Jetzer, indicating that she remained disabled and under treatment for aggravation of degenerative disc disease of the low back.

Appellant was referred to a second opinion physician, Dr. Robert H. Fielden, a Board-certified orthopedic surgeon. In a medical report dated August 19, 1996, he indicated that he reviewed the records provided him and performed a physical examination of appellant. Dr. Fielden noted a history of appellant's work-related injury. Upon physical examination he noted demonstrable thoracolumbar scoliosis to the right; normal flexion and extension of the cervical spine; and normal extension of the lumbar spine. He noted that appellant experienced an acceleration of her underlying condition before appellant was placed on limited duty. Dr. Fieldman noted that the aggravation of appellant's condition occurred over a period of time while appellant was performing her regular duties. In a supplemental report dated December 5, 1996, Dr. Fielden stated that appellant had progressive and deteriorating scoliosis which progressed regardless of her work activities. Dr. Fielden noted that since appellant had not been working the condition had progressed more rapidly. Based on this evidence, he concluded that appellant's aggravation of her condition was temporary.

Subsequently, appellant submitted a report from Dr. Kaufman dated July 17, 1996. He diagnosed appellant with degenerative facet disease, which he believed, was a complication of scoliosis which occurred while appellant was at work. Dr. Kaufman noted that her condition had not changed and that she was still totally disabled.

The Office determined that a conflict of medical opinion had been established between Dr. Kaufman, appellant's treating physician, who indicated that appellant was disabled and experiencing residuals of her work-related injury and Dr. Fielden, an Office referral physician, who determined that the aggravation of degenerative disc disease appellant sustained was temporary and, therefore, she did not suffer residuals from her work-related injury.

Appellant was referred to Dr. Edward W. Szalapski, Jr., and a Board-certified orthopedic surgeon, for an independent medical evaluation. In a medical report dated June 10, 1999, Dr. Szalapski 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 Dr. Szalapski noted appellant's prominent scoliotic curve; hyperextension was normal; lateral bending was two-thirds of normal; no detectable motor deficits in her lower extremities; deep tendon reflexes were symmetric; hip range of motion was normal; with tenderness over the posterosuperior iliac spines bilaterally. He reviewed the diagnostic studies and noted x-rays of the cervical spine showed two significant scoliotic curves, a right lumbar curve and a left thoracic curve with no clear-cut pattern of progression of the curves. Dr. Szalapski diagnosed appellant with idiopathic scoliosis; and degenerative disc disease and degenerative facet arthropathy as a result of her scoliosis. He indicated that the scoliotic curves were created during appellant's early adolescent growth years and he based his conclusion on the fact that the x-rays revealed structural accommodation which can only occur in growing years. Dr. Szalapski indicated that appellant's degenerative disc disease and degenerative facet arthropathy occurred in adult individuals with a high degree of spinal curvature which causes a higher degree of back pain than that which the general population experiences. He stated that there was no evidence that appellant's work caused any structural alteration in her spine. Dr. Szalapski further stated that appellant's work duties caused an increase in appellant's symptoms, but this would cause only a temporary aggravation of her symptoms, not a permanent change in the condition of her spine. He noted appellant's disability was not medically connected to any structural or permanent injury that occurred on the job, but was related to the

underlying scoliosis and the degenerative disc and facet joint disease caused by the degenerative scoliosis. Dr. Szalapski indicated that appellant could not return to her date-of-injury job as her degenerative spine would not be able to accommodate the stresses of lifting and bending that the job would require. He noted that appellant's work limitations were related to her preexisting scoliosis.

In a letter dated December 3, 1999, the Office requested clarification from Dr. Szalapski with regard to whether appellant's work-related aggravation of her degenerative facet disease had resolved. In a report dated December 8, 1999, Dr. Szalapski indicated that the work-related aggravation of appellant's symptoms had resolved. He noted that he expected appellant's symptoms to worsen over time due to the natural history of her scoliotic curve and the scoliosis-related degenerative changes.

On December 23, 1999 the Office issued a notice of proposed termination of compensation and medical benefits on the grounds that Dr. Szalapski's reports dated June 10 and December 8, 1999 established no continuing disability as a result of the June 7, 1991 employment injury.

Subsequently, appellant submitted a letter indicating that she disagreed with the conclusions of Dr. Szalapski and indicated that the changes in her back occurred in the late 1980's to 1990's. She indicated that she was seeing a spine specialist and would submit a report from him.

By decision dated January 26, 2000, the Office terminated appellant's benefits effective the same date, on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her June 7, 1991 employment injury.

By letter dated February 18, 2000, appellant requested an oral hearing before a hearing representative. The hearing was held on August 3, 2000. Appellant testified that when she was hired by the employing establishment she did not have a back condition. Appellant stated that the degeneration she experienced in her back occurred while she was employed with the employing establishment. She denied any previous back injuries. Appellant submitted a March 10, 2000 report from Dr. John Lonstein, a Board-certified orthopedic surgeon. Dr. Lonstein indicated that there were two causes of curvature of the spine in adults appellant's age; idiopathic scoliosis that continues from adolescence; and degenerative scoliosis, which is caused by degeneration of the disc between the vertebra. He noted that it was impossible to know if appellant had a curve as a teenager which had been superimposed on the degenerative changes or if appellant's curve was purely of the degenerative nature. Appellant also submitted a report dated July 26, 2000 from Dr. Kaufman, which noted a history of her treatment for her back condition indicating that her condition progressed while she was working. He noted that appellant was unable to perform duties involving sitting, walking, lifting, carrying, bending or reaching.

In a decision dated October 18, 2000, the hearing representative affirmed the decision of the Office dated January 26, 2000 on the grounds the weight of the medical evidence established that appellant had no continuing disability resulting from her work-related condition.

The Board finds that the Office has met its burden of proof to terminate benefits effective January 26, 2000.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ 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.²

In this case, the Office accepted appellant's claim for aggravation of degenerative disc disease of the low back 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. Kaufman, who disagreed with Dr. Fielden concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Szalapski 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.³

The Board finds that, under the circumstances of this case, the opinion of Dr. Szalapski 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. Szalapski reviewed appellant's history, reported findings and diagnosed appellant with idiopathic scoliosis; and degenerative disc disease and degenerative facet arthropathy as a result of her scoliosis. He stated that there was no evidence that appellant's work caused any structural alteration in her spine. Dr. Szalapski further stated that appellant's work duties "would cause an increase in her symptoms. However, this would cause only a temporary aggravation of her symptoms, not a permanent change in the condition of her spine." Dr. Szalapski noted that appellant's "disability is not medically connected to any structural or permanent injury that occurred on the job, but is related to the underlying scoliosis and the degenerative disc and facet joint disease caused by the degenerative scoliosis." He noted that appellant's work limitations were related to her preexisting scoliosis. Dr. Szalapski indicated that the work-related aggravation of appellant's symptoms had resolved. He noted that he expected appellant's symptoms to worsen over time due to the natural history of appellant's scoliotic curve and the scoliosis-related degenerative changes.

After issuance of the pretermination notice, appellant submitted a narrative statement indicating that she disagreed with the conclusions of Dr. Szalapski and indicated that the degeneration she experienced in her back occurred while appellant was employed with the

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Aubrey Belnavis*, 37 ECAB 206 (1985).

employing establishment. However, a second opinion physician, Dr. Fielden and an impartial medical examiner, Dr. Szalapski, all indicated that appellant had no residuals from her accepted employment injury and noted the aggravation of degenerative disc disease of the low back had resolved.

The Board finds that, under the circumstances of this case, the opinion of Dr. Szalapski 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. Szalapski indicated that appellant did not suffer residuals from the condition of aggravation of degenerative disc disease of the low back. He noted that the condition was resolved.

After the Office properly terminated appellant's benefits the burden of proof shifted to her.⁴ She submitted a report from Dr. Lonstein dated March 10, 2000 and a report from Dr. Kaufman dated July 26, 2000. Dr. Lonstein noted that it is impossible to know if appellant had a curve as a teenager that was superimposed on the degenerative changes or if appellant's curve was purely of the degenerative nature. The Board notes that Dr. Lonstein's report did not provide a history of appellant's condition.⁵ The Board further notes that Dr. Lonstein couched his opinion in speculative terms and did not provide a definitive opinion as to when appellant's condition originated nor did he reference any particular employment factors as having caused or aggravated appellant's condition.⁶ Without any further explanation or rationale, such report is insufficient to establish appellant had a continuing disability causally related to her employment.⁷ Dr. Kaufman's July 26, 2000 report is similar to his prior reports and is insufficient to overcome that of Dr. Szalapski or to create a new medical conflict as Dr. Kaufman was on one side of the conflict that Dr. Szalapski was the referee physician.⁸ Therefore, these reports are insufficient to overcome that of Dr. Szalapski or to create a new medical conflict.

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. Szalapski 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. Dr. Szalapski's opinion is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

⁴ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation; *see Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

⁵ *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

⁶ *See Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character has little probative value.)

⁷ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁸ *See Howard Y. Miyashiro*, *supra* note 4; *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Kaufman's report does not contain new findings or rationale upon which a new conflict might be based.

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated October 18 and January 26, 2000 are hereby affirmed.

Dated, Washington, DC
January 18, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member