

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEAH L. TYLER and U.S. POSTAL SERVICE,
KANSAS CITY MAIL FACILITY, Kansas City, MO

*Docket No. 01-2236; Submitted on the Record;
Issued June 21, 2002*

DECISION and ORDER

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

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 14, 2000; and (2) whether appellant was totally disabled after March 26, 2000 due to her employment injuries.

On January 20, 1998 appellant, then a 29-year-old mailhandler, was pushing hampers of mail when she developed back pain. She stopped working on January 22, 1998, returned to limited duty on March 3, 1998 and was released to full duty on May 23, 1998. The Office accepted her claim for lumbar strain. Appellant received continuation of pay and compensation for the periods she did not work. On August 5, 1998 appellant was holding a bag into which a coworker dropped a heavy package, jerking appellant forward and causing back pain. Appellant stopped working that day. The Office accepted appellant's claim for lumbar strain and paid compensation for the period appellant did not work. Appellant returned to work, 4 hours a day, 16 hours a week, on August 10, 1999. Appellant stopped working on March 10, 2000.

In an October 16, 2000 decision, the Office terminated appellant's compensation effective November 4, 2000 on the grounds that the weight of the medical evidence established that she was not disabled from the job she held at the time of the employment injury. The Office also found that appellant was not totally disabled after March 26, 2000 on the grounds that the evidence of record did not support total disability from work. Appellant requested a hearing before an Office hearing representative, which was conducted on April 25, 2001. In a July 16, 2001 decision, the Office hearing representative affirmed the Office's October 14, 2000 decision.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim for compensation, it has the burden of justifying termination or modification of compensation benefits.¹

¹ *Alfred Arts*, 45 ECAB 530 (1994).

In a July 28, 1999 report, Dr. K. Dean Reeves, a Board-certified physiatrist, diagnosed lumbosacral and sacroiliac ligament sprains and fibromyalgia. Dr. Reeves related appellant's condition to the employment injuries of January 20 and August 5, 1998. He limited appellant to working four hours a day, four days a week, with standing one hour a day. In subsequent reports, Dr. Reeves continued to specify appellant's work restrictions. After April 4, 2000, he indicated that appellant was not able to work due to back pain.

In a November 1, 1999 report, Dr. William O. Reed, a Board-certified orthopedic surgeon, stated that appellant's range of motion of the back did not reveal any impairment. Dr. Reed indicated that appellant did not have any paraspinous muscle spasm or deep tenderness. He noted that a detailed motor and sensory examination was normal. Dr. Reed reported that a magnetic resonance imaging (MRI) scan showed mild degenerative changes without intervertebral disc height loss at L4-5 and L5-S1. He diagnosed lumbosacral spine pain in the absence of any significant physical examination abnormalities and no explanation for appellant's chronic fatigue. Dr. Reed referred appellant for a functional capacity evaluation. In a December 28, 1999 note, he stated that the functional capacity evaluation of appellant was replete with evidence of self-limitation and findings of self-limiting behavior and possible symptom magnification. Dr. Reed commented that the evaluation was unreliable for use in setting specific work limitations.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Herbert B. Lindsley, a Board-certified rheumatologist, for an examination and second opinion. In a May 15, 2000 report, Dr. Lindsley stated that appellant had convincing findings for fibromyalgia syndrome. He commented tests excluded other systemic rheumatic diseases. Dr. Lindsley noted that the etiology of fibromyalgia syndrome was unknown. He commented that low back pain due to mechanical causes was one of the most common musculoskeletal disorders. Dr. Lindsley noted that, because patients with fibromyalgia seemed to have a generalized aching, it was difficult to separate low back pain from fibromyalgia other than a defined incident which is plausibly the cause of low back pain. He stated that lifting or bending, which occurred during appellant's employment injuries, certainly could aggravate an underlying condition. Dr. Lindsley added, however, that these episodes were not a known cause or association with fibromyalgia. He stated that, in the absence of reliable science regarding appellant's findings, he would consider the apparent back injuries a temporary aggravation of a preexisting condition of fibromyalgia. Dr. Lindsley commented that, as fibromyalgia rarely, if ever, led to total disability, it was difficult to ascribe all of appellant's current impairments simply to her preexisting, underlying condition. He indicated that appellant could return to work with some restrictions, retiring to full work over a period of 12 months. Dr. Lindsley commented that appellant did not have a permanent aggravation of her underlying condition.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. James Armstrong, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence. In a June 28, 2000 report, Dr. Armstrong stated that his physical examination of appellant did not demonstrate a current condition that was caused, aggravated or accelerated by the employment injuries of January 20 or August 5, 1998. He indicated that lumbar spine x-rays did not show any degenerative changes. Dr. Armstrong commented that there were no clinical signs of back pain. He stated that the neurologic examination was normal. Dr. Armstrong stated that the grip strength examination revealed noncompliance. He reported

that the sensory examination of the legs and the vibratory sensation examination represented a nonanatomic response. Dr. Armstrong indicated that the lumbar range of motion examination results did not meet validity testing. He stated that the employment injuries caused an aggravation of appellant's preexisting back condition. Dr. Armstrong noted that appellant worked light duty full time or with no restrictions for six months prior to seeing Dr. Reeves on July 31, 1998. Dr. Armstrong noted that appellant continued to see Dr. Reeves after the August 5, 1998 employment injury. He pointed out that physical examination results were sparse until Dr. Reed, in a November 1, 1999 examination, reported that appellant's examination was normal. Dr. Armstrong stated that appellant showed positive Waddell's signs and self-limiting activities during her physical therapy evaluations and functional capacity examination. He concluded from the medical records that appellant's low back aggravations of January 20 and August 5, 1998 had resolved. Dr. Armstrong stated that the functional capacity examination of November 29, 1999, exhibited noncompliance and confirmed that the temporary aggravation of the low back condition had ceased. He concluded that the temporary aggravation caused by the August 5, 1998 injury had ceased by November 1, 1999. Dr. Armstrong stated that appellant could work eight hours a day as a mailhandler or a letter carrier.

In an October 3, 2000 report, Dr. S.R. Reddy Katta, a Board-certified physiatrist, gave a history of appellant's employment injuries. Dr. Katta stated that appellant had relative weakness of the lower back muscles and slightly decreased touch and pinprick sensation over the L3 dermatome area. He found no paraspinal muscle spasm. Dr. Katta noted that appellant had clinical evidence of degenerative joint disease involving the lumbosacral vertebrae. He indicated that an electromyogram had been negative for lumbar radiculopathy.

In a February 1, 2001 report, Dr. Reeves indicated that appellant was having an escalation in the number of falls she experienced. He commented that, although appellant had falls that limited her work ability, the frequency of falls had increased. Dr. Reeves reported that she was being treated for fibromyalgia and chronic sprain and strain. He indicated that appellant could sit or stand for a half-hour at a time and could walk one city block. Dr. Reeves gave detailed work restrictions for appellant.

Dr. Armstrong, acting as an impartial medical specialist, presented a detailed and thorough report, in which he found no evidence that supported appellant's complaints of back pain. Dr. Armstrong noted that appellant, in parts of the examination, either was noncompliant or gave results that did not correspond to human anatomy. He concluded that the employment injuries caused temporary aggravations of appellant's preexisting low back condition, which had ceased by November 1, 1999. When a case is referred to an impartial medical specialist for the purpose of resolving a conflict in the medical evidence, the opinion of the impartial specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.² Dr. Armstrong's report, in this case, is well reasoned and based on an accurate factual background. His report is, therefore, entitled to special weight and, in the context of this case, constitutes the weight of the medical evidence. The subsequent reports of Drs. Reeves and Katta refer to appellant's back condition and describe her physical limitations. However, neither physician gave a reasoned opinion on whether appellant remained disabled due to the effects of

² *Sherry A. Hunt*, 49 ECAB 467 (1998).

her employment injuries. Their reports, therefore, have reduced value and, as a result, are insufficient to overcome the weight of Dr. Armstrong's report.

The Board further finds that appellant did not establish that she was totally disabled after March 26, 2000 due to her employment injuries.

Appellant returned to work, four hours a day, four days a week, on August 10, 1999. She stopped working effective March 10, 2000 and claimed that she was totally disabled after that time. She, therefore, had the burden of showing that her total disability had recurred. When an employee who is disabled from the job held when injured, on account of employment-related residuals, returns to a light-duty position, the employee has the burden to establish by the weight of reliable and probative evidence that she had a recurrence of total disability and cannot perform the light-duty position. As part of that burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirement.³

Dr. Reed referred appellant for a work hardening program. In a March 8, 2000 letter, a union official stated that appellant had excruciating pain due to the physical therapy. In an April 10, 2000 report, Dr. Reed indicated that a discogram showed appellant had severe pain at the L3-4, L4-5 and L5-S1 levels. He stated that appellant had a 10 percent whole body permanent impairment. However, Dr. Reed did not give any opinion on appellant's ability to work. His report, therefore, does not show that appellant was disabled for work after March 26, 2000.

In a March 2, 2000 report, Dr. Reeves stated that appellant was hampered by inhibition of muscles of the legs and of protective reflexes, which could cause her to fall without warning. He stated that due to periodic falls and occasional blurry vision, he was unable to say that appellant would be able to perform all her duties at the employing establishment. Dr. Reeves indicated that appellant had objective findings and classic physical findings which made any challenge to the diagnoses of fibromyalgia and myofascial pain to be unfounded. He stated that work hardening did not improve fibromyalgia and would instead increase appellant's symptoms. In an April 14, 2000 note, Dr. Reeves stated that appellant should not return to work. In a fuller April 14, 2000 report, he indicated that the functional capacity evaluation showed appellant did not meet her job requirements for static lifts, dynamic lifts, stooping and squatting, lifting and carrying and standing work tolerance. Dr. Reeves noted that appellant's examination showed diffuse twitch contractions, 18 out of 18 trigger points for fibromyalgia and one 1 out of 6 painful control points. He noted that appellant had a potentially positive discogram. In subsequent reports, Dr. Reeves described appellant's work limitations and mentioned the buckling of her legs, causing falls. In a December 28, 2000 report, he stated that appellant was unable to return to work due to the magnitude and variability of her limitations with potential falls and visual changes as examples of functionally critical areas.

Dr. Reeves stated that appellant could not perform her duties because she was at risk of frequent falls and had blurred vision. However, Dr. Reeves did not give a rationalized opinion on how these conditions were related to appellant's employment injuries. His reports, therefore,

³ *Doris J. Wright*, 49 ECAB 230 (1997).

have reduced probative value and are not sufficient to show that she was totally disabled for work. Both Drs. Lindsley and Armstrong stated that appellant's symptoms were due to a preexisting, underlying condition. Both physicians stated that appellant was able to work. Appellant, therefore, has not submitted sufficient probative, reliable medical evidence to show that there was a change in her condition to the extent that she was unable to perform her part-time, limited-duty position. She has not met her burden of proof in establishing that she was totally disabled after March 26, 2000.

The decisions of the Office of Workers' Compensation Programs, dated July 16, 2001 and October 16, 2000, are hereby affirmed.

Dated, Washington, DC
June 21, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member