

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTYE SLAUGHTER and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 02-369; Submitted on the Record;
Issued June 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to justify termination of all of appellant's compensation benefits effective October 8, 2000.

On October 21, 1982 appellant then a 47-year-old mail clerk, filed a claim alleging that she experienced a shooting pain in her arm while performing her duties. She worked intermittently until March 6, 1983 when she stopped. The Office accepted the claim for aggravation of cervical degenerative disease; cervical disc syndrome and adjustment disorder. Appellant was paid appropriate compensation.

Appellant submitted several reports from Dr. Dewey Jones, a Board-certified orthopedic surgeon, dated December 9, 1982 through February 18, 1985. He indicated that appellant was being treated for right shoulder pain and had an underlying arthritic condition. Dr. Jones diagnosed her with degenerative disc disease of the cervical spine. He noted that the work incident on October 5, 1982 caused the aggravation of appellant's underlying arthritic condition.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians.¹

Appellant continued submitting treatment notes from Dr. Jones indicating that she remained disabled and was under treatment for aggravation of cervical degenerative disease and cervical disc syndrome. He noted that appellant was treated with epidural blocks to control the pain which produced favorable results. Dr. Jones noted that appellant had chronic pain syndrome and had not worked in 12 years and he was not sure appellant would ever return to work. His report of September 23, 1998 noted that appellant had degenerative disc disease and she required chronic pain management with epidural blocks. Dr. Jones noted that appellant had continuing total disability due to her work-related injury.

¹ This included referring appellant to two second opinion physicians in 1985 and the district medical adviser.

Appellant was referred to a second opinion physician, Dr. John D. Crompton, a Board-certified orthopedic surgeon. In a medical report dated November 8, 1999, he indicated that he reviewed the records provided to him and performed a physical examination of appellant. Dr. Crompton noted a history of appellant's work-related injury. Upon physical examination he noted a marked lack of cooperation on the part of appellant during the range of motion tests but indicated that the only objective finding was severe degenerative disc disease on x-ray. Dr. Crompton noted many subjective complaints which did not correspond to objective findings. He indicated within a reasonable degree of medical certainty that appellant had cervical degenerative disc disease that would have been present whether she performed her employment duties or not and indicated that appellant's job did not cause her cervical degenerative disc disease. Dr. Crompton noted that appellant sustained a temporary aggravation of her cervical degenerative disc disease which would have lasted only a short time and that her current condition was the result of the natural progression of degenerative disc disease. He indicated that appellant had no residuals of her work-related injury. Dr. Crompton also noted that appellant would not be capable of returning to her employment position due to her underlying degenerative disc condition, unrelated to her work injury, however, he did note that she could return to a sedentary position.

In a report dated December 2, 1999, Dr. Jones responded to the report of Dr. Crompton indicating that he disagreed with his conclusions. Dr. Jones indicated that appellant did have residuals of her work-related injury and believed appellant was totally disabled and could not do any type of sedentary work.

The Office determined that a conflict of medical opinion had been established between Dr. Jones, appellant's treating physician, who indicated that appellant was disabled and experiencing residuals of his work-related injury and Dr. Crompton, an Office referral physician, who determined that there were no objective findings to support that appellant continued to suffer residuals from the work-related injury of October 5, 1982.

To resolve the conflict, appellant was referred to an impartial physician, Dr. Joe L. Gerald, a Board-certified orthopedic surgeon who indicated, in a report dated June 13, 2000, 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. Gerald noted it was difficult to test motor function due to appellant's lack of cooperation; he noted resistance to gentle passive motion in all directions of both shoulders; the neck was slightly restricted in all ranges of motion; there was diffuse tenderness in the posterolateral neck; the right and left shoulder movements were restricted in motion in all directions; appellant's posture was normal; and her gait was satisfactory. He diagnosed appellant with cervical disc disease and chronic neck and right shoulder pain by history. Dr. Gerald noted that he was unable to contribute appellant's degenerative arthritis of the cervical spine to anything but nonwork-related degenerative arthritis. He noted in a work capacity evaluation that appellant could return to work four hours per day with restrictions on reaching, operating a car and repetitive movements of the wrist and elbow.

In a letter dated June 29, 2000, the Office requested clarification of Dr. Gerald's opinion with regard to the causal relationship of appellant's cervical condition and her work injury.

In a report dated July 18, 2000, Dr. Gerald diagnosed appellant with severe cervical degenerative disc disease. He concluded that appellant's work activity did not cause her cervical degenerative disc disease nor did it cause her current cervical condition.

On August 15, 2000 the Office issued a notice of proposed termination of all compensation benefits on the grounds that Dr. Gerald's reports dated June 13 and July 18, 2000 established no continuing disability as a result of the October 5, 1982 employment injury.

Subsequently, appellant submitted reports from Dr. E. Carter Morris, a family practitioner, dated June 30 and August 9, 2000; a magnetic resonance imaging (MRI) scan dated July 18, 2000 and several letters to her congressman. In a report dated June 30, 2000, Dr. Morris noted findings upon physical examination of upper and lower extremity strength of 5/5; the range of motion of the cervical spine was normal in flexion, extension and rotation; there was no tenderness of the cervical paraspinous; and no spasms of the cervical paraspinous. He diagnosed appellant with mild cervical spondylosis and possible spinal cord contusion during an epidural block. Dr. Morris' August 9, 2000 note revealed that the findings of the MRI scan of cervical spondylosis; however, Dr. Morris noted appellant's symptoms did not correlate with this finding. An MRI scan revealed moderately severe left neural foraminal stenosis at C3-4 and moderately severe central canal stenosis at C4-5.

By decision dated September 21, 2000, the Office terminated appellant's benefits effective October 8, 2000 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her October 5, 1982 employment injury.

By letter dated August 13, 2001, appellant requested reconsideration and submitted additional medical evidence. He submitted several reports from Dr. Jones dated August 28, 2000 to May 10, 2001; a report from Dr. Robert L. Pearlman, a Board-certified orthopedic surgeon, dated August 15, 2000; and report from Dr. Hewitt F. Ryan, a Board-certified psychiatrist and neurologist, dated December 15, 2000. Dr. Jones' reports note appellant's continued complaints of neck and right shoulder pain. His note of September 6, 2000 reiterated his conclusion that appellant's current condition was a direct result of her employment injury. Dr. Jones' report of May 10, 2001 noted that "appellant's current symptomology is a direct result of her work[-]related injury." The report from Dr. Pearlman dated August 15, 2000 noted that appellant had chronic pain for the past seven years. He diagnosed appellant with cervical spondylosis with neural foraminal compression and cervical stenosis. Dr. Pearlman noted that the bulk of appellant's symptomology was from this condition as well as from her diabetes. He indicated that appellant would benefit from treatment for her arthritic problem which he believed was causing multiple painful areas in her shoulders, hips and knees and was significantly contributing to her whole constellation of chronic pain. The report from Dr. Ryan dated December 15, 2000 noted a history of appellant's work-related injury. He diagnosed appellant with chronic pain in multiple areas of the body.

In a decision dated October 5, 2001, the Office denied modification of its prior decision on the grounds that the evidence submitted was insufficient to justify modification of the previous decision.

The Board finds that the Office has met its burden of proof to terminate benefits effective October 8, 2000.

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 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 aggravation of cervical degenerative disease; cervical disc syndrome and adjustment disorder 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. Jones, who disagreed with Dr. Crompton concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Gerald 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 a 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. Gerald 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. Gerald reviewed appellant's history, reported findings and diagnosed appellant with cervical disc disease and chronic neck and right shoulder pain by history. He noted that he was unable to contribute appellant's degenerative arthritis of the cervical spine to anything but degenerative arthritis which was not work related. In a supplemental report, Dr. Gerald determined that appellant's work activity did not cause her cervical degenerative disc disease nor did it cause her current cervical condition. He noted in a work capacity evaluation that appellant could return to work four hours per day with restrictions on reaching, operating a car and repetitive movements of the wrist and elbow. The restrictions were the result of appellant's cervical degenerative disc disease.

Appellant submitted a report from Dr. Morris dated June 30, 2000 diagnosing appellant with mild cervical spondylosis and possible spinal cord contusion during an epidural block. His August 9, 2000 report described the findings of the MRI scan revealing cervical spondylosis; however, he noted appellant's symptoms did not correlate with this finding. Dr. Morris ruled out the possibility of a spinal cord contusion or bruising as the MRI scan did not reveal evidence of this. However, his reports failed to mention appellant's 1982 work-related injury and did not

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

³ *Vivian 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).

attribute appellant's present condition to her employment injuries. The Board has found that a medical opinion based on an incomplete history is insufficient to establish causal relationship.⁵

The Board finds that, under the circumstances of this case, the opinion of Dr. Gerald 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. Gerald indicated that appellant's work activity did not cause her cervical degenerative disc disease nor did it cause her current cervical condition.

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.⁶ However, medical evidence submitted by appellant after termination of benefits either did not specifically address how any continuing condition was due to the October 5, 1982 work injury or other incidents or was duplicated evidence previously considered by the Office. Appellant submitted several reports from Drs. Jones, Pearlman and Ryan. Dr. Jones' reports note that appellant's continued complaints of neck and right shoulder pain. His reports of September 6, 2000 and May 10, 2001 noted that "appellant's current symptomology is a direct result of her work[-]related injury." Although Dr. Jones' opinion somewhat supports causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support his opinion.⁷ Additionally, these reports are similar to Dr. Jones' previous reports and provide no new medical reasoning or rationale in support of his position. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.⁸ Additionally, a second opinion physician, Dr. Crompton and an impartial medical examiner, Dr. Gerald, all indicated that appellant had no residuals from her accepted employment injury.

The report from Dr. Pearlman dated August 15, 2000 noted appellant's chronic pain for the past seven years. He diagnosed appellant with cervical spondylosis with multiple neural foraminal compression and cervical stenosis. However, Dr. Pearlman's report failed to mention appellant's 1982 work-related injury and did not attribute appellant's current condition to her employment injuries. The Board has found that a medical opinion based on an incomplete history is insufficient to establish causal relationship.⁹ Rather, Dr. Pearlman related the "bulk" of appellant's symptomology to her diabetes and arthritis which he believed was causing multiple painful areas in her shoulders, hips and knees and was significantly contributing to her whole constellation of chronic pain.

⁵ See *Cowan Mullins*, 8 ECAB 155, 158 (1955).

⁶ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits 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 benefits; see *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

⁷ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board has found that vague and unrationalized medical opinions on causal relationship have little probative value).

⁸ See *Daniel Deparini*, 44 ECAB 657 (1993).

⁹ *Supra* note 5.

The report from Dr. Ryan dated December 15, 2000 noted a history of appellant's work-related injury. He diagnosed appellant with chronic pain in multiple areas of the body. However, Dr. Ryan's report did not include a rationalized opinion regarding the causal relationship between appellant's current condition and her accepted work-related injury of October 5, 1982.¹⁰ The Board found that a vague and unrationalized medical opinion on causal relationship has little probative value. Therefore, the reports from Drs. Jones, Pearlman and Ryan are insufficient to overcome that of Dr. Gerald or to create a new medical conflict as Dr. Jones was on one side of the conflict that Dr. Gerald was the impartial physician.¹¹

Other medical records submitted by appellant did not specifically address how any continuing condition was causally related to the October 5, 1982 employment injury.

Dr. Gerald 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. Gerald's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

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

¹⁰ See *Theron J. Barham*, *supra* note 7.

¹¹ See *Howard Y. Miyashiro*, *supra* note 6; *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Jones' report does not contain new findings or rationale upon which a new conflict might be based.

The decision of the Office of Workers' Compensation Programs dated October 5, 2001 is hereby affirmed.

Dated, Washington, DC
June 6, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member