

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHANIE M. GILLIAM and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-538; Submitted on the Record;
Issued March 27, 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 properly terminated appellant's compensation benefits effective August 17, 2000.

On January 3, 1996 appellant, then a 33-year-old carrier technician, filed a notice of occupational disease and claim for compensation, alleging that she developed a back condition in the performance of duty. The Office accepted the claim for lumbosacral strain, cervical strain with bulging disc and aggravation of a herniated disc at L5-S1.¹ Appellant stopped work on June 12, 1995 when she experienced lower back pain and a tingling sensation in her legs.

The Office referred appellant for a second opinion evaluation with Dr. Mark P. Brigham, a Board-certified orthopedic surgeon, on May 15, 1996. He recommended that he undergo aquatic therapy and opined that she could return to sedentary work only for eight hours a day. Dr. Brigham noted, however, that appellant was pregnant and that her condition would impede improvement of her back.

Appellant's treating physician, Dr. Mark D. Avart, a Board-certified orthopedist, subsequently approved appellant for light-duty work with restrictions for four hours a day effective June 30, 1996. The employing establishment offered appellant a position in compliance with Dr. Avart's restrictions and her returned to work on July 30, 1996. Appellant worked four hours a day light duty until she went on maternity leave in November of 1996.

In a report dated January 10, 1997, Dr. Brigham diagnosed chronic lumbosacral strain with herniation of L4-5 and chronic cervical strain with bulging disc caused by a "work-related

¹ The record contains a magnetic resonance imaging (MRI) dated November 22, 1995 that revealed a bulging disc at L4-5 and right mid-line herniation at L5-S1 with right lateral recess encroachment. Nerve conduction studies and an electromyogram (EMG) performed on November 30, 1995 showed an abnormality consistent with either a right lumbosacral plexopathy or right sciatic neuropathy with "lumbar radiculopathy much less likely." An MRI of the cervical spine dated April 2, 1996 showed disc bulging at C4-5 and C5-6.

accident.” He indicated that appellant’s symptoms were starting to resolve and recommended a work hardening program. Dr. Brigham approved appellant to return to work for eight hours a day two days a week and four hours a day, three days a week.

Appellant remained out on maternity leave until May 13, 1997. She then returned to work in a sedentary, modified position, working only a four-hour shift, seven days a week.

A report from the rehabilitation specialist dated May 15, 1997 indicated that appellant desired to return to her regular carrier duties; therefore, additional information regarding appellant’s work capacity was requested from Dr. Avart.

In a June 2, 1997 report, Dr. Avart opined that appellant could return to her carrier duties so long as she did not walk outdoors for more than two hours a day. He also imposed a 20-pound weight lifting restriction.

The record indicates that appellant began working an eight-hour shift from July 30 to September 15, 1997, casing mail, being driven to her route, then delivering mail from a bag for two hours. Appellant was then reassigned by the employing establishment on or about September 18, 1997 to a limited-duty position, working at a desk for eight hours a day.

In a September 23, 1997 report, Dr. Avart diagnosed that appellant was suffering from a herniated disc with radiculopathy. He noted appellant’s work restrictions, which included that she not lift anything over 25 pounds without the use of a handcart to decrease spinal pressure. Dr. Avart further stated:

“[Appellant] must have a rest bar available to sit and take pressure off her back while casing mail. There is no prolonged standing allowed with this [her]. [She] is allowed to increase now to three hours street work. [Appellant’s] restrictions will last for at least four to six months and some permanent limitations and restrictions could be present because of her disc herniations with radiculopathy in her neck and back.”

In a December 9, 1997 report, Dr. Avart noted that appellant presented with complaints of neck and back pain, that radiated into her legs and worsened after prolonged sitting, driving, walking and lifting. He also noted that appellant presented with spasm, weakness and restriction of motion in the cervical and lumbar spine regions with radiculopathy. Dr. Avart continued appellant’s work restrictions and medication and advised her to wear a back brace. He concluded that appellant’s prognosis for complete recovery was poor due to nerve and disc damage in the lumbar and cervical spine regions.

In a report dated February 18, 1998, Dr. David M. Anapolle, a Board-certified orthopedic surgeon and an Office referral physician, examined appellant because Dr. Brigham was no longer performing second opinion evaluations. He reviewed a statement of accepted facts and noted essentially normal physical findings except for some tenderness to palpation over the midline from L4 to S1 and tightness in appellant’s legs at the hamstring muscles. Dr. Anapolle reviewed appellant’s medical records and discussed her work duties. According to him, appellant sustained cervical and lumbosacral strains, which were resolved at the time of his examination. He opined that appellant could return to her regular duties as a letter carrier but

recommended that she gradually return to that position in order to recondition her muscles to accommodate lifting requirements in her job of up to 50 pounds. Dr. Anapolle further noted that appellant's sedentary job of prolonged sitting was physically appropriate so long as she was allowed to briefly stand and stretch her back. He concluded that "there [was] no specific treatment related to any work injury required at this time."

On March 31, 1998 the Office issued a notice of proposed termination of compensation. The Office determined that the weight of the medical evidence resided with the second opinion Office referral physician and established that appellant no longer had any disability or residuals due to her work-related back condition. She was given 30 days to submit additional evidence or argument if she disagree with the proposed action.

In a decision dated May 14, 1998, the Office terminated appellant's compensation benefits.

Appellant requested an oral hearing and submitted additional evidence

In a September 14, 1998 report, Dr. Avart stated: "[Appellant] continues to have recurrent complaints with spasm in her neck and back and occasional tingling into the shoulder and legs which occurs with prolonged standing and heavy lifting. She has been back at work and is able to tolerate this only because of the use of a push cart." Dr. Avart opined that appellant has "resultant sequela" of the disc herniation in her cervical spine and neck, as well as lumbar spine and radiculopathy" and that these conditions would never heal 100 percent. He indicated that appellant would always have weakness in her neck and back. Dr. Avart recommended that appellant's work restrictions be considered permanent and scheduled appellant for a follow-up in three to four months.

In a decision dated February 8, 1999, an Office hearing representative affirmed the Office's May 14, 1998 decision.

Appellant subsequently filed an appeal with the Board. On March 27, 2000 the Board reversed the May 14 and February 8, 1999 decisions of the Office, finding a conflict in the record between the Office referral physician and appellant's treating physician as to whether appellant had any disability or residuals due to her June 12, 1995 work injury.²

On remand, the Office referred appellant, along with a statement of accepted facts and copy of the medical record to Dr. Menachem Meller, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated August 9, 2000, he noted appellant's medical history and physical findings that included normal range of motion in both the lumbar and cervical spine. He reviewed an MRI dated June 6, 2000, which revealed a L4-5 disc collapse and a large disc extrusion in the midline existing with a disc herniation.³ Dr. Meller opined that appellant's examination of the lumbar spine was completely normal with no evidence of any lumbosacral radiculopathy. He also stated that appellant had no residuals from the cervical strain

² *Stephanie M. Gilliam*, Docket No. 99-1814 (issued March 27, 2000).

³ The MRI report is contained in the record.

as documented by Dr. Avart on September 23, 1997. Dr. Meller indicated that there was “evidence of symptom embellishment and symptom exaggeration” based on her lack of effort on dynamotor testing. Dr. Meller noted that there was a notable lack of treatment, since “[t]wo Advils a day is minimal treatment and for someone approaching middle age carrying out lifting and casing, is not an unusual dose even in the absence of any injury.” With reference to the MRI findings, he opined that appellant could work in her regular job eight hours a day so long as she did not carry the mail over her shoulder and was allowed to use a cart to deliver the mail. Dr. Meller further noted that he saw no reason why appellant could not case mail for eight hours a day if she is allowed to frequently change her position and stand and sit according to her comfort level. He assigned restrictions such that appellant could not lift more than 50 pounds on an occasional basis and no more than 25 pounds per day on a frequent basis. Dr. Meller concluded that appellant needed no further medical treatment except for use of Advil, ice or occasional moist heat from a corset that could be issued by the employing establishment. He further concluded that appellant’s “work-related injuries are lumbar [disc] herniation as well as degenerative [disc] disease with an aggravation by work injury.”

In a decision dated August 17, 2000, the Office terminated appellant’s compensation and medical benefits with respect to the cervical strain, finding that appellant had no disability related to or residuals of that condition. The Office found that appellant was entitled to limited duty for the residual effects of her lumbar disc herniation and aggravation of degenerative disc disease. The Office further determined that while appellant still had residuals related to her lumbar spine, she was no longer entitled to medical benefits except for those items specified by Dr. Meller.

The Board finds that this case is not in posture for a decision.

Once the Office accepts a claim it has the burden of proof of justifying modification or termination of compensation. After it has been determined that an employee has disability casually related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁵

On remand, the Office properly referred appellant for an impartial medical evaluation with a Board-certified specialist. Where there exists a conflict of medical opinion and the case is referred to an impartial medical examiner for the purpose of resolving the conflict, the opinion on such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶

⁴ *Frank J. Mela, Jr.*, 41 ECAB 115 (1989); *Mary E. Jones*, 40 ECAB 1125 (1989).

⁵ *Wiley Richey*, 49 166 (1997); *Betty M. Regan*, 49 ECB 496 (1998).

⁶ *Aubrey Belnavis*, 37 ECAB 206 (1985).

In this case, Dr. Meller stated that appellant had no residuals related to either her cervical of lumbar conditions, citing the normal physical findings with no evidence of radiculopathy. He concluded that the MRI findings, while showing L4-5 disc collapse, did not appear significant from the standpoint that appellant was back at work and controlled any back pain she experienced with Advil and not prescribed medication. Dr. Meller also provided a reasoned opinion finding that appellant could essentially return to work in her regular job as a mail carrier so long as she did not carry mail over her shoulder and was allowed to use a cart to deliver the mail. He indicated that she could work for eight hours a day at a medium work level with lifting restrictions of no more than 50 pounds on an occasional basis and 25 pounds on a regular basis. With regard to continuing medical treatment, Dr. Meller found only that appellant required reimbursement for Advil, moist heat and a back corset as needed.

The Board finds that the opinion of Dr. Meller is entitled to special weight as the impartial medical specialist, as his medical conclusions are well rationalized and based on a proper medical and factual background. Consequently, the Board finds that the Office met its burden of proof in terminating appellant's compensation so far as it relates to the lumbar and cervical strains and the aggravation of the herniated disc.

Notwithstanding, the Board notes that Dr. Meller stated that appellant sustained an aggravation of "degenerative disc disease" due to her work injury, but the physician did not address whether or not that condition had resolved at the time of his examination. The Office in its August 17, 2000 decision accepted the additional diagnosis of aggravation of degenerative disc disease as work-related; therefore, it is necessary that the Office obtain a supplemental opinion from Dr. Meller specifically addressing whether or not that condition is causing any continuing disability or residuals that would entitle appellant to compensation.

The decision of the Office of Workers' Compensation Programs dated August 17, 2000 is hereby affirmed in part and vacated in part and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
March 27, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member