

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY L. GOBLE and DEPARTMENT OF VETERANS AFFAIRS,
GRAND JUNCTION VETERANS HOSPITAL, Grand Junction, CO

*Docket No. 02-870; Submitted on the Record;
Issued November 6, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant had any disability for work or injury residuals requiring further medical treatment on or after February 27, 1999, causally related to her September 14, 1985 lumbosacral strain injury.

The Office of Workers' Compensation Programs accepted that on September 14, 1985 appellant, then a 54-year-old nurse, sustained a lumbosacral muscular strain while lifting a patient. She returned to work in a part-time capacity in February 1986 but ceased work the following month when limited duty was no longer available. Appellant was referred for vocational rehabilitation and in February 1991 returned to work half days in a full-time limited-duty position as a nursing assistant. A formal loss of wage-earning capacity determination was made on August 21, 1991 finding that the position of nursing assistant fairly and reasonably represented her wage-earning capacity. Thereafter, appellant ceased all work.

Appellant's treating physicians, Dr. David Mayer, an orthopedic surgeon and Dr. Gregory C. Reicks, an osteopathic physician, continued to provide reports supporting that appellant remained totally disabled as of 1993. However, no more recent evidence supporting continuing disability appears in the case record.

On March 31, 1998 the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Peter Larcom, a Board-certified orthopedic surgeon, for a second opinion examination. By report dated April 9, 1998, he reviewed appellant's factual and medical history, noted her present complaints and opined that she was essentially normal and provided a diagnosis of "chronic low back pain secondary to unclear etiology." In a June 26, 1998 follow-up report, Dr. Larcom stated that there was very little objective evidence upon which to base a diagnosis or support any disability. He indicated that the "pain generator" in appellant was unknown but, could be due to facet joint arthritis, foraminal stenosis, degenerative disc disease and/or degenerative spondylosis.

The Office then determined that Dr. Larcom's reports were insufficient and that he had been nonresponsive to the specific questions posed. It, therefore, referred appellant for another second opinion examination by Dr. Jeffrey M. Hrutkay, a Board-certified orthopedic surgeon, on July 27, 1998.

By reports dated August 13 and September 29, 1998, Dr. Hrutkay indicated that, on examination, he discovered very few objective findings, either orthopedically or neurologically. He noted that x-rays and other studies in the record supported that appellant suffered from a degenerative condition of her spine which was unrelated to her employment injury. Dr. Hrutkay, in a September 29, 1998 follow-up report, stated that there were no objective findings of lumbosacral strain/sprain and noted that the degenerative changes in the lumbar spine were not the result of the 1985 work injury. He opined that appellant's disability was due to nonwork-related factors. Dr. Hrutkay found no objective residuals of appellant's 1985 injury, but found that the objective conditions present were commensurate with appellant's age group and were present in a fairly high percentage of individuals like her. He opined that it was possible that appellant's continuing low back symptoms were due to those changes, but indicated that he could not say this with any degree of medical probability.

Due to the absence of current conflicting medical evidence, the Office then determined that the weight of the medical evidence of record established that appellant was no longer disabled due to her 1985 injury or had residuals of that injury that required further medical treatment.

On January 11, 1999 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical evidence of record established that she was no longer disabled due to her 1985 injury or had residuals of that injury that required further medical treatment. The Office advised that, if appellant disagreed with this proposed action, she had 30 days within which to submit further evidence or argument supporting continuing disability. No further evidence was received within the allotted time period.

This proposed termination was made final by decision dated February 12, 1999 and was made effective February 27, 1999.

Appellant disagreed with the action and requested an oral hearing before an Office hearing representative.

The hearing was held on August 12, 1999 at which appellant testified. Following the hearing she submitted a September 9, 1999 report from Dr. Christopher Ryan, a Board-certified pain management specialist and physiatrist, who stated, on examination, appellant exhibited increased lumbar lordosis without spasms and decreased flexion/extension in the lower back. He noted that straight leg raising was negative, as was the neurologic examination and he diagnosed lumbar facet syndrome, which he found sufficient to disable appellant for work.

In an October 21, 1999 follow-up report, Dr. Ryan stated that appellant dated the onset of her symptoms to her 1985 work injury and this was substantiated by the medical record. He therefore, concluded that she suffered, at the very least, a substantial and permanent aggravation of her underlying osteoarthritis as a result of the injury. Dr. Ryan further stated that it was

logical to assume that, but for her work injury, appellant would not otherwise have become disabled as she was at that time. He, therefore, attributed her current disability entirely to her 1985 work injury.

The hearing representative determined that a conflict in medical opinion now arose between Drs. Hrutkay and Ryan as to whether or not appellant continued to suffer from the affects of her 1985 work injury. By decision dated November 5, 1999, the hearing representative remanded the case for further development including an impartial medical examination to resolve the conflict.

On February 29, 2000 appellant was referred, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Rhett K. Rainey, a Board-certified osteopathic orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical evidence.

By report dated March 24, 2000, Dr. Rainey noted the mechanics of appellant's 1985 injury, discussed the results of various tests and listed her current complaints as including persistent pain in the lumbar spine, as well as constant radicular symptoms in both lower extremities, increased with Valsalva maneuver. Appellant claimed that she had difficulty riding in a car for long periods and that she was unable to lift more than 20 pounds or bend repetitively. Dr. Rainey noted that appellant had difficulty walking on her heels and toes, but that this appeared to be the result of an unsteady gait as opposed to muscle weakness, that she was able to bend, but lacked touching her toes by 24 inches and that she had generalized pain on palpation of the lumbar spine along the paravertebral muscles between L2 and S1, but there was no appreciable muscle spasm. Neurological examination was noted to be negative, as was straight leg raising, although straight leg raising did cause pain in the lumbar region at 90 degrees, bilaterally. Appellant was noted to be able to side bend to the right and left to 30 degrees and that extension of the lumbar spine was to 10 degrees with this clearly causing discomfort. Dr. Rainey noted that x-rays revealed well-maintained disc spaces and patent neural foramina, but that facet joints in appellant's lumbar spine were somewhat narrowed bilaterally without spurring or hypertrophy. He opined that appellant's current back pain was a "current aggravation" from her 1985 injury, which was substantiated by objective findings of loss of range of motion of the lumbar spine. Dr. Rainey opined that appellant had underlying preexisting osteoarthritis, based on previous x-ray reports, but noted that it was not symptomatic prior to her work injury. He opined that, given this, a causal relationship between the 1985 injury and her current back pain had been established. Dr. Rainey stated that appellant's previous normal computerized axial tomography (CAT) scan and electromyograms (EMGs) did not explain her current radiculopathy and opined that there was aggravation to her preexisting low back osteoarthritis which was a significant change caused by the 1985 work injury. He noted, however, that the only objective finding supporting this was loss of motion of the lumbar spine and remarked that it was unusual for an individual to persist with low back pain for 15 years without significant objective findings, with the exception of loss of spinal motion. Dr. Rainey opined that appellant was not totally disabled for all employment and indicated that she could perform some type of sedentary work with restrictions on lifting and bending.

By letter dated January 8, 2001, the Office requested clarification from Dr. Rainey as to some of his answers and comments. He was asked to review appellant's medical record and to

provide rationale for his opinion that her current back pain was an aggravation of her 1985 injury. The Office noted that extensive testing performed after the original injury all fell within normal limits and that appellant's weight and poor posture and the normal degenerative processes were cited as causative factors for her ongoing pain by other physicians.

By response dated February 8, 2001, Dr. Rainey indicated that, at the time of appellant's original injury, she had been diagnosed with a lumbar strain yet all testing did fall within normal limits. Following a review of appellant's records, his rationale that her back pain was an aggravation of the 1985 injury remained only that she had lack of extension of the lumbar spine. Dr. Rainey stated that appellant had no back pain prior to the injury but had pain following the injury. He stated that there were no significant objective findings to support that the injury in 1985 was what was causing appellant's current problems. Dr. Rainey responded that there were no specific residuals of the 1985 injury and that appellant suffered a lumbar strain which was a strain of the soft tissues and muscles that would not persist for a long period of time and would likely resolve within three months.

Dr. Rainey stated that the natural progression of appellant's current condition was different from a lumbar strain, which should have resolved with conservative care within three months and indicated that appellant had chronic low back pain since the injury. He opined that the lumbar strain that occurred in 1985 was causing appellant's subjective perception of her pain, and he diagnosed chronic low back pain of unknown etiology. Dr. Rainey opined that appellant's x-rays were within normal limits and noted that he did not feel it was possible to determine her radicular symptoms down her legs without repeat magnetic resonance imaging (MRI) scans. He stated, therefore, that, in reviewing his first report, his comment on causal relation was predicated on the fact that appellant had no back pain prior to the injury and following the injury she continued to complain of pain, lack of mobility and inability to work. Dr. Rainey opined that the lumbar strain that occurred in 1985 was not related to her current problems.

By decision dated March 2, 2001, the Office found that appellant's compensation entitlement was properly terminated effective February 27, 1999 on the grounds that the weight of the medical evidence of record established that appellant had no further disability for work or injury residuals requiring further medical treatment, causally related to her 1985 employment lumbosacral muscle strain injury. The Office found that Dr. Rainey's reports constituted that weight of the medical evidence of record and established that appellant had no further 1985-injury-related disability or ongoing injury-related residuals which required further medical treatment.

Appellant requested an oral hearing before an Office hearing representative.

A hearing was held on August 14, 2001 at which appellant's representative argued that the Office was doctor-shopping. Appellant's representative argued that a supplemental report should not have been sought from Dr. Rainey.

By decision dated November 30, 2001, the hearing representative affirmed the March 2, 2001 decision finding that the weight of the medical evidence of record established that appellant had no further disability for work or injury residuals requiring further medical treatment, causally

related to her 1985 employment lumbosacral muscle strain injury. The hearing representative opined that Dr. Rainey's report, including his clarification of his original report, constituted the weight of the medical opinion evidence of record and established that appellant had no disability for work or injury residuals requiring further medical treatment on or after February 27, 1999, causally related to her September 14, 1985 lumbosacral strain injury.

The Board finds that appellant has no disability for work or injury residuals requiring further medical treatment on or after February 27, 1999, causally related to her September 14, 1985 lumbosacral strain injury.

Once the Office accepts a claim, it has the burden of justifying 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 Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴

In this case, the Office met its initial burden of proof to terminate compensation based upon the well-rationalized reports of Dr. Hrutkay.

In this case, the most recent medical reports of record supporting that appellant continued to be disabled causally related to her 1985 injury were dated 1993. Accordingly, in 1998 the Office appropriately referred appellant for a second medical opinion to provide an updated evaluation of appellant's ongoing injury-related disability and the need for further treatment.

The Office initially referred appellant, together with a statement of accepted facts, specific questions to be addressed and the relevant case record to Dr. Larcom. However, after receipt of his initial report the Office found that further clarification of his findings and opinion was required and it sought such clarification. Dr. Larcom was unable to sufficiently address the Office's concerns in his follow-up report, such that referral of appellant to another second

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

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

³ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁴ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

opinion specialist became necessary. Dr. Hrutkay, the subsequently selected second opinion specialist, provided a thorough and well-rationalized medical report⁵ and, when asked, he provided appropriate clarification which answered the Office's considerations adequately. As there was no current conflicting medical evidence of record supporting continued disability, the reports of Dr. Hrutkay were properly determined to represent the weight of the medical evidence of record, establishing that appellant had no further injury-related disability for work or injury residuals requiring further medical treatment and appellant's compensation was properly terminated on that basis.

Thereafter, following a requested hearing, appellant submitted several reports from Dr. Ryan which the hearing representative properly determined created a conflict with the reports of Dr. Hrutkay, such that resolution of the conflict in medical evidence was required.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The Office then appropriately selected Dr. Rainey as an impartial medical specialist to resolve that conflict. Dr. Rainey provided a thorough and well-rationalized medical report, based upon a complete and accurate statement of accepted facts and the relevant case record, which addressed most of the Office's questions but which required further elaboration and clarification in certain respects.

The Board has frequently explained that where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion and the opinion requires further clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.⁶ The Office then appropriately requested that Dr. Rainey provide a supplemental opinion addressing the specific concerns of the Office.

Dr. Rainey provided a supplemental report which addressed the Office's concerns and which answered all of the unresolved questions regarding appellant's case. Therefore, considering his initial report and its supplementation, Dr. Rainey was able to resolve the conflict in medical opinion evidence and to establish that appellant has no further disability for work or injury-related residuals requiring further medical treatment, causally related to her 1985 employment soft tissue lumbosacral strain injury.

⁵ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's currently diagnosed condition and the originally implicated employment factors or injuries. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the currently diagnosed condition and the specific employment factors or injuries accepted by the Office. See *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler* 28 ECAB 125 (1976).

⁶ *Margaret M. Gilmore*, 47 ECAB 718 (1996); *Talmdage Miller*, 47 ECAB 673 (1996).

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.⁷ In this case, Dr. Rainey's reports are sufficiently well rationalized and are based upon a proper factual and medical background, such that they are entitled to that special weight. According to them that special weight results in these reports constituting the weight of the medical evidence of record and establishing that appellant has no further disability for work or injury-related residuals requiring further medical treatment, causally related to her 1985 employment soft tissue lumbosacral strain injury.

Appellant submitted no further probative medical evidence supporting that she remained disabled due to her September 14, 1985 lumbosacral strain injury.

Therefore, the decisions of the Office of Workers' Compensation Programs dated November 30 and March 2, 2001 are hereby affirmed.

Dated, Washington, DC
November 6, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).