

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN L. CASALE and DEPARTMENT OF AGRICULTURE,
BLACK HILLS NATIONAL FOREST, Custer, SD

*Docket No. 02-501; Submitted on the Record;
Issued October 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant had any continuing disability or injury residuals after September 9, 2001, causally related to her April 7, 1986 accepted low-back strain and lumbar neuritis injuries.

This is appellant's second appeal before the Board on this issue. In the prior appeal the Board reversed the August 25, 1999 decision of the Office of Workers' Compensation Programs finding that there was an unresolved conflict in medical opinion evidence between Dr. Steven C. Stocks, a Board-certified internist, who opined that appellant continued to be disabled due to her 1986 injuries and Dr. John A. Dowdle, a second opinion Board-certified orthopedic surgeon, who opined that appellant had no further disability or injury residuals. The facts and circumstances of the case are set forth in the prior decision and are hereby incorporated by reference.¹

Following the Board's reversal, the Office updated a statement of accepted facts, composed questions to be addressed² and referred appellant, together with the statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Dale R. Anderson, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

By report dated May 15, 2001, Dr. Anderson reviewed appellant's factual and medical history, noted her continued treatment for muscle strain, arthritis and chronic pain, reiterated her present complaints of low back pain, worse on the right, with shooting pains into her right leg and groin region and reported the results of his physical examination. He noted from the record that appellant's symptoms were progressive and seemed to get more severe over time, that each

¹ Docket No. 00-690 (issued March 1, 2001).

² The Office asked the impartial medical examiner to determine which medical report constituted the weight of the medical evidence of record and to opine whether appellant had any disabling residuals, caused or aggravated by the work injuries.

time she was treated for pain behavior with Dr. Stocks, she seemed to exaggerate or magnify her pain symptoms to obtain a larger dose of narcotic or medication and that he “would side with Dr. Dowdle as far as which report represents the weight of medical evidence.” Dr. Anderson opined that an exercise program and general body conditioning would help improve appellant’s symptoms. He further opined:

“It is apparent that [appellant] is a chronic smoker and this contributes to her pain problem. [Appellant] does not have evidence of a specific nerve root compression nor does she have severe disabling arthritis, not even a lumbar compression fracture. Therefore[,] I find it hard to base an impairment rating on objective findings as the clinical exam[ination] shows pain behavior and exaggerated physical responses to that pain. She will not walk in an upright manner and simply crouches and is hunched over walking on tiptoes using the right foot. Therefore[,] in spite of her complaints of severe injury, I believe that [appellant’s] primary problem is chronic pain which has resulted from a lumbar strain sustained in her fall at work.”

Dr. Anderson did not recommend any additional treatment other than the use of analgesics for minimizing her complaints of pain, and he opined: “[a]s far as her fall and injury in April of 1986 there is no objective evidence that she has sustained permanent loss of function. My evaluation of [appellant] today, both by interview and by physical examination, would not add any impairment as a result of the injury in Albertson’s store.”³

By notice of proposed termination dated May 29, 2001, the Office advised appellant that the medical evidence of record established that she had no further disability, causally related to her April 7, 1986 employment injuries. The Office advised that Dr. Anderson sided with Dr. Dowdle in finding that there were no objective medical findings to establish continuing disability. Appellant was given 30 days within which to submit further evidence or argument if she disagreed with this action.

By letter through her Congressional representative dated June 14, 2001, appellant requested “reconsideration” of the May 29, 2001 “termination” decision. She argued that there were minimal discrepancies between the medical reports. However, no further substantive evidence or argument was submitted.

By decision dated August 23, 2001, the Office finalized the May 29, 2001 preliminary determination effective September 9, 2001 finding that Dr. Anderson’s report constituted the weight of the medical evidence in establishing that appellant had no further injury-related disability.

The Board finds that this case must be reversed.

³ Appellant sustained a subsequent injury unrelated to her federal employment on July 31, 1986 while in a grocery store.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ 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.⁵ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁶ 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.⁷ In this case, the Office did not meet its burden of proof to terminate appellant's compensation.

Dr. Anderson's May 15, 2001 report does not establish that appellant had no further disability due to her employment injury or that she had no injury residuals requiring further medical treatment.

In his report, Dr. Anderson stated that he "would side with Dr. Dowdle as far as which report represents the weight of medical evidence." Whether or not medical evidence is "rationalized" or "constitutes the weight of the medical opinion evidence" is a nonmedical judgement about a legal standard. The Board has held that a medical report is of reduced probative value where the physician makes a determination of legal standards regarding medical matters presented by the case, which were outside the scope of his expertise.⁸ As determination of the "weight of the medical evidence" is a legal standard and not a medical analysis or rationale, Dr. Anderson's opinion that Dr. Dowdle's opinion constituted the weight of the medical evidence of record is improper, and the Office's reliance on it is misplaced.⁹

Further, Dr. Anderson did not address whether or not appellant had disability for work, but instead commented on whether or not she had impairment or permanent loss of function which warranted an impairment rating. As used in the Federal Employees' Compensation Act,¹⁰ the term "disability" means incapacity, because of employment injury, to earn the wages that the

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁶ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁷ See *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

⁸ *Josephine L. Bass*, 43 ECAB 929 (1992).

⁹ Unfortunately the Office improperly asked Dr. Anderson to render such a legal judgment.

¹⁰ 5 U.S.C. §§ 8101-8193.

employee was receiving at the time of injury.¹¹ Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹² An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.¹³ When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity. As Dr. Anderson does not discuss whether appellant has any remaining disability for work, his opinion regarding whether she has impairment or objective permanent loss of function meriting an impairment rating is not relevant, as no claim for a schedule award has been made. Moreover, the fact that Dr. Anderson simply agreed with Dr. Dowdle does not constitute a rationalized opinion finding that appellant had no further disability, causally related to her April 7, 1986 injuries.¹⁴

Additionally, Dr. Anderson opined that appellant's "primary problem is chronic pain which has resulted from a lumbar strain sustained in her fall at work." As he identified the presence of an ongoing current medical condition which he causally related to appellant's accepted employment injury, his opinion is not complete or rationalized and does not establish that appellant has no remaining disability due to her accepted injuries nor does it establish that injury-related residuals or sequelae which require further medical treatment do not exist.¹⁵

¹¹ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948).

¹² See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages and not upon physical impairment as such).

¹³ See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

¹⁴ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue in question. 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, must be supported by affirmative medical findings and must contain medical analysis and rationale explaining how he reached his conclusions. See *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler* 28 ECAB 125 (1976). The weight of medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the opinion. *Anna C. Leanza*, 48 ECAB 115 (1996). The opinion of a physician must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background. *Connie Johns*, 44 ECAB 560 (1993).

¹⁵ Dr. Anderson's affirmative evidence and medical rationale in this case appears to consist only of a determination of the absence upon examination of several nonaccepted conditions such as nerve root compression, arthritis or lumbar compression fractures and the presence of exaggerated pain behaviors, but he nevertheless diagnosed the existence of an injury-related chronic pain condition.

Consequently, the Office's interpretation of Dr. Anderson's report that he found no remaining disability causally related to appellant's 1986 injuries, is inaccurate and the Office's rationale that Dr. Anderson sided with Dr. Dowdle, who found no ongoing injury-related disability, is not sufficient to meet its burden of proof to terminate compensation.

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 23, 2001 is hereby reversed.

Dated, Washington, DC
October 15, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member