U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY A. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, South Suburban, IL

Docket No. 02-1029; Submitted on the Record;
Issued October 25, 2002

DECISION and ORDER

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

The issue is whether appellant had any disability causally related to her March 6, 1999 lumbosacral strain employment injury.

On March 6, 1999 appellant, then a 38-year-old mail processor, filed a claim alleging that she slipped and fell on water outside the men's restroom and hurt her back. She stopped work the same day. Since appellant's return to work on or about April 1, 1999, appellant worked light duty and was off work intermittently per her physician. Appropriate benefits for wage loss and medical expenses were paid.

The Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral strain and authorized physical therapy for a maximum of 120 days.

On April 3, 2000 an employing establishment physician advised there was no muscle atrophy between the right and left lower extremity, and that the sensory test of the lower extremities was normal. The physician stated that the magnetic resonance imaging (MRI) films revealed some degree of degenerative changes in the L4-5 space, but were otherwise unremarkable. A diagnosis of low back strain was provided with the opinion that appellant was capable of performing light duty with restrictions and, dependent upon the results of the conservative treatment, a full return to regular work was anticipated.

Appellant's treating physician, Dr. Lolita Smith, an internist, continued to opine that appellant had a work-related lumbosacral strain with evidence of degenerative disc disease and was only capable of performing light duty with restrictions.

On September 17, 2000 appellant filed CA-7 forms claiming wage loss from August 17 to 19, 2000 and August 30 to September 1, 2000. Also on September 17, 2000, she filed a notice of recurrence on or about August 17, 2000. Appellant advised that she experienced extensive pain in the lower back after she caught a cold from sitting under blowers at work. In separate

letters, the Office informed appellant of the need to submit a supplemental medical report from her treating physician to support that she was totally disabled from work on the dates claimed and that her physician needed to submit a detailed narrative report providing a discussion as to how appellant's condition and disability on or about August 17, 2000 was related to her original injury.

By letter dated October 4, 2000, the Office sought a second opinion specialist's examination and referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Julie M. Wehner, a Board-certified orthopedic surgeon. The appointment for Dr. Wehner's examination was rescheduled three times. Although appellant had advised the Office in her letter of October 21, 2000 that she wished to exercise her right to have her physician present on the second opinion examination, in an October 25, 2000 report of a telephone call, the Office advised appellant that the rescheduling of the second appointment to see the Office referral physician would be the first available time after November 14, 2000, when appellant's physician was available. Appellant was advised that both she and her physician would have to adjust their schedule around the second opinion examination in order for appellant's physician to be present as this was the third appointment given. She was noted to have agreed. By letter dated October 25, 2000, the Office rescheduled appellant's appointment with Dr. Wehner for November 22, 2000.

By evaluation dated November 22, 2000, Dr. Wehner reviewed appellant's factual and medical history, reported her present complaints and provided physical examination results. She noted that appellant had pain to light palpation of her back, mild pain with axial rotation of her back, no pain with axial compression of her head. Gait pattern was normal. Appellant could walk on her heels, but stated she could not walk on her toes. Straight leg raising produced some back pain at 90 degrees bilaterally. Hip range of motion did not produce pain. Knee and ankle reflexes were 2+. Motor examination was intact. No atrophy or edema was present. Dr. Wehner stated that she reviewed the May 1, 2000 MRI which showed moderate amounts of edema in the vertebral body of L4 and L5. It did not show any significant disc space narrowing, but showed osteophytic ridging. Dr. Wehner stated that appellant sustained a lumbar sprain when she slipped and fell on the floor. She noted that this injury had been treated with mostly medication and that the physical therapy had been limited. Further noted was the fact that appellant has had some self-limiting behaviors, such as going back to work at only light duty and having other people do other things for her. Dr. Wehner advised that the L4-5 disc degeneration was obviously a preexisting condition that could have been temporarily exacerbated by a slip and fall. She opined that appellant has not had the maximum amount of conservative treatment, that being further physical therapy. Dr. Wehner recommended two to three weeks of physical therapy, two to three times a week. Over-the-counter anti-inflammatory agents could be continued on an as-needed-basis. Dr. Wehner opined that, based on a lumbar sprain, appellant could return to her job as a mail processor. She reviewed the job description of a mail processor and opined that the lifting requirement of 25 to 30 pounds was reasonable based on the radiographic findings, the examination findings and the diagnosis of a lumbar sprain. Dr. Wehner further opined that appellant should reach maximum medical benefit after three weeks of physical therapy. She opined that a functional capacity evaluation was not necessary based on the radiographic evidence. Dr. Wehner further opined that there was no need for epidural injections as there were no significant compressive lesions in her back.

In a letter dated December 4, 2000, Dr. Lolita Smith stated that appellant has been diagnosed with chronic low back pain with lumbar spine radiculopathy. On examination, appellant describes tenderness in her lumbar paraspinous muscle with intermittent muscle spasm on examination. She intermittently has positive straight leg raising sign. The MRI scan of January 5, 2000 showed marked degenerative type end plate changes at L4-5, small concentric bulging disc at L4-5 and L5-S1 without spinal stenosis and hypertrophic change of the posterior elements. With regard to appellant's injury at work, Dr. Smith opined that because there were no diagnostic tests done prior to the injury, one might attribute her current symptom and finding to that injury, but it was impossible to state with certainty. She advised that appellant should continue to undergo physical therapy and muscle relaxant nonsteriod use. A work performance evaluation to outline current restrictions was recommended.

By decision dated February 28, 2001, the Office disallowed appellant's claim for continued partial disability on and after November 22, 2000 based on the weight of the medical evidence of the second opinion physician which established that appellant was no longer partially disabled from work and was capable of returning to full duty.

The Board finds that the Office has not met its burden of proof to terminate compensation benefits on or after November 22, 2000 due to an unresolved conflict in medical opinion evidence.

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 referred appellant for a second opinion examination with Dr. Wehner, who opined that appellant could perform her regular duties as a mail processor, that she no longer had a work-related condition and that the work-related aggravation of her underlying degenerative condition had only been temporary. Based on this report, the Office found that appellant had no work-related disability on or after November 22, 2000.

However, the Board notes that appellant's doctor, Dr. Smith, submitted numerous CA-17 reports indicating that appellant continued to experience an employment-related condition and

[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).

could only work light duty with restrictions. In her report of December 4, 2000, Dr. Smith continued to recommend medical treatment in the form of physical therapy and muscle relaxant use for appellant's condition and opined that a work performance evaluation was needed to outline appellant's current work capacity.

Consequently, the Board finds there is a conflict in the medical evidence with regard to whether appellant has any residuals from her accepted condition and whether she is capable of returning to her full-time duties.[5] Dr. Wehner opined that appellant could return to regular work without restrictions and Dr. Smith opined a work performance evaluation was needed to adequately address appellant's work capacity. Accordingly, the Board reverses the Office's termination decision of February 28, 2001.

The Board additionally finds that the Office failed to address appellant's recurrence of disability claim and CA-7 claims during the period August 17 to September 1, 2000 and the case must be remanded for that purpose.

In this case, appellant filed a recurrence claim and the Office terminated appellant's compensation benefits on and after November 22, 2000 based on the weight of the medical evidence of the second opinion physician which established that appellant was no longer partially disabled from work and was capable of returning to full duty.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this 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 job requirements.[6]

The Board further notes that appellant's recurrence of disability claim and CA-7 claims covered the period August 17 to September 1, 2000, where it appears leave without pay was taken. The Office failed to address these periods in its decision. Instead, it purported to find appellant fit to return to her normal duties as of November 22, 2000, the date appellant was examined by Dr. Wehner. Thus, it is unclear whether the Office has accepted periods of claimed disability prior to November 22, 2000 or whether it has not yet reached a decision on such period or periods. Upon remand, the Office should make specific findings on all claimed periods of disability and or medical benefits.[7] Following this and such other development as deemed necessary, the Office shall issue a *de novo* decision.

[5] 5 U.S.C. § 8123(a) states in pertinent part: "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."

[6] *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[7] To the extent that the Office's decision purports to terminate medical benefits, the Board finds that, due to the conflict in the medical evidence, the Office did not meet its burden of proof. *See Patricia A. Keller*, 45 ECAB

The decision of the Office of Workers' Compensation Programs dated February 28, 2001 is hereby reversed and the case remanded for further consideration consistent with this opinion.

Dated, Washington, DC
October 25, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

278 (1993).