

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL A. JENKINS and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

*Docket No. 02-1137; Submitted on the Record;
Issued October 11, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any disability for work or injury residuals requiring further medical treatment after June 18, 2001, causally related to her June 17, 1997 employment injury.

The Office of Workers' Compensation Programs accepted that on June 17, 1997 appellant, then a 42-year-old rural carrier, sustained a lumbar muscle strain while in the performance of her rural mail delivery duties.¹ Appellant was off work from July 8 through October 29, 1997 and received appropriate compensation benefits.² She returned to work with restrictions on October 30, 1997. Appellant stopped work again from April 24 through August 30, 1998, filed a claim for recurrence of disability and returned to limited duty on August 31, 1998; however, this period of disability was denied by the Office.

On October 29 and again on November 4, 1997 appellant's treating physician, Dr. Mark J. Skalski, a Board-certified internist, noted appellant's symptoms as pain in the bilateral groin and low back and recommended permanent limited to light duty, as he felt returning to her usual rural mailjob would aggravate her symptoms. Dr. Skalski recommended further medical follow-up with a physical medicine specialist and physical therapy. By a report dated July 14, 1998, Dr. Skalski opined that appellant had both psychological and physical conditions which prevented her from returning to work in any capacity. By report dated September 14, 1998, Dr. Skalski noted that the location and character of appellant's ongoing pain represented a recurrence of her previously diagnosed and treated chronic musculoskeletal

¹ Appellant complained of muscle pain in her neck, shoulder and low back with right-sided pain radiating to her right hip and knee and that simple leg movements triggered popping and clicking in her groin and right inguinal area.

² On August 29, 1997 Dr. Bala S. Prasad, a Board-certified orthopedist, opined that an orthopedic evaluation of appellant's lumbosacral spine was negative for any objective clinical findings and indicated that she was not disabled from returning to work as a mail carrier.

low back pain, groin pain and iliotibial band tightness. He opined that her work duties had resulted in a reexacerbation of her previous symptoms which caused a worsening of her condition.

On August 4, 1999 appellant filed a claim for occupational disease claiming that she developed chronic biomechanical abnormalities of her back, inguinal and pelvic area as a result of her June 17, 1997 injury. In an August 16, 1999 report, Dr. A.N. Sinha, a Board-certified orthopedist, noted a normal examination of appellant's back, hips and legs and opined that, from an orthopedic standpoint, she was able to return to full-time duty on her rural route and did not require any further active medical treatment. The Office combined this August 4, 1999 claim with the original injury claim and denied a recurrence of disability.

On August 31, 1999 the Office referred appellant for a second opinion examination to Dr. Norman L. Pollack, a Board-certified orthopedic surgeon, to determine whether or not she had any ongoing disability or residuals, causally related to the accepted lumbar strain injury.

By report dated September 14, 1999, Dr. Pollack reviewed appellant's factual and medical history, described the results of his physical examination which revealed no tenderness in her lower back, no spasms and full range of motion. He found no objective indications that would confirm a complaint for low back pain. He opined that on the basis of the work-related lumbar strain injury, there was no reason for any type of work restriction and that appellant could return to her normal job duties. Dr. Pollack opined that appellant's work restrictions should remain, but opined that they were not due to the accepted employment-related condition, but rather were due to a possible problem with the right pubic bone, which, he recommended, required further work-up.

By report dated November 24, 1999, Dr. Skalski diagnosed chronic biomechanical abnormalities involving bilateral inguinal regions, the pelvis and the upper and lower back, which he opined were as a direct result of her June 17, 1997 injury. Dr. Skalski opined that appellant's lumbar strain was secondary to the inguinal injury and that she required permanent limited duty.

The Office found a conflict in medical opinion between Dr. Skalski and Dr. Pollack on whether appellant remained disabled or required continuing medical treatment. The Office referred appellant, together with a statement of accepted facts, questions to be addressed and the case record, to Dr. Philip Mayer, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

By report dated June 29, 2000, Dr. Mayer reviewed appellant's factual and medical history, described her present complaints, noted his findings upon physical examination and testing and indicated that she had full ranges of trunk motion, no tender spots to palpation, a negative Lasegue's sign and negative straight leg raising and normal sensory and motor examinations. He noted complaints of mild tenderness over the adduction tendon insertions into the pubic symphysis area, right greater than left, particularly with stretching of the adductor tendons, but opined that this did not warrant permanent restrictions and he opined that based upon examination findings and a review of the radiologic evidence, there was no need for permanent restricted activity. Dr. Mayer found no evidence of spinal pathology, radiculopathy

or myelopathy or any significant orthopedic pathology upon examination and he found no specific indication for restrictions, other than to prophylactically avoid repetitive abduction maneuvers of the hips which would tend to aggravate adductor tendinitis. Dr. Mayer also noted, in his review of the medical records, that there was little available in terms of diagnostic studies.

A magnetic resonance imaging (MRI) scan was authorized and was performed on September 29, 2000. It was read as being unremarkable except for minimal disc bulging at L4-5.

On April 4, 2001 the Office requested that Dr. Mayer review the newly obtained radiologic evidence and answer questions regarding whether appellant had any residuals.

Upon receipt of the MRI scan, Dr. Mayer provided a supplemental report dated April 23, 2001 in which he indicated that the MRI scan was unremarkable except for minimal disc bulging at L4-5. He opined that the partially cystic mass in the right side of the pelvis was incidental and was probably related to her ovary, as well as uterine masses. Dr. Mayer opined that the MRI scan findings were not work related and indicated that there was no reason for ongoing permanent restricted activity and no evidence of spinal pathology. He indicated that his findings upon examination of mild tenderness over the insertion of the adductor tendons into the pubic symphysis area was a minor finding and was possibly related to mild tendinitis and he could not relate that finding to her previous workplace activity. Dr. Mayer clarified that the findings of his evaluation relative to appellant's musculoskeletal condition did not support disability, nor prevent her from performing her date-of-injury job. He opined that any injury-related residuals would have resolved by that time.

In a May 15, 2001 notice of proposed termination of compensation, the Office advised appellant that the weight of the medical evidence was represented by Dr. Mayer's reports and established that she had no further disability for work or residuals requiring further medical treatment, causally related to the June 17, 1997 lumbar muscle strain injury. The Office advised appellant that if she disagreed with the proposed action, she had 30 days within which to submit further evidence or argument.

By letter dated May 24, 2001, appellant disagreed with the proposed action and argued that Dr. Mayer did not address her groin and hip discomfort and she claimed that she did not sustain lumbar strain on June 17, 1997. In support of her arguments, appellant submitted a May 29, 2001 prescription from Dr. Skalski which noted: "[s]he remains under limited duty for several reasons. In addition, she is awaiting a reevaluation at University of Michigan physical medicine and rehabilitation."

By decision dated June 18, 2001, the Office finalized the termination of appellant's compensation and medical benefits.

The Board finds that appellant had no disability for work or injury residuals requiring further medical treatment after June 18, 2001, causally related to her June 17, 1997 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ 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.⁴ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that would require further medical treatment.⁶

The Office has met its burden of proof in this case with the well-rationalized reports of Dr. Mayer.

In the present case, appellant's treating physician, Dr. Skalski, opined that her present impairment was due to both psychological and physical problems including chronic musculoskeletal low back pain, bilateral groin pain and iliotibial band tightness conditions which prevented her from returning to employing establishment duties in any capacity, but he also recommended permanent limited to light duty, as he felt returning to her usual rural mailjob would aggravate her symptoms. Dr. Skalski diagnosed chronic biomechanical abnormalities of the back, inguinal and pelvic area as a result of appellant's June 17, 1997 injury indicated that she needed further follow-up with a physical medicine specialist and physical therapy. He also opined that her work duties had resulted in a reexacerbation of her previous symptoms which caused a worsening of her condition.

The Office second opinion examiner, Dr. Pollack, however, opined that he found no objective indications that would confirm a complaint for low back pain, that on the basis of the work-related lumbar strain injury, there was no reason for any type of work restriction and that appellant could return to normal job duties. Dr. Pollack did opine that appellant's work restrictions should remain, but indicated that they were not due to the accepted employment-related condition, but rather were due to a possible problem with the right pubic bone, which he recommended required further work-up.

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."

In this case, the Office properly determined that the opinions of Dr. Skalski were in conflict with the opinion of Dr. Pollack on the issues of whether appellant continued to have

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁶ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

disability due to her accepted lumbar strain condition and whether she required further medical treatment.

In two complete and well-rationalized reports based upon an accurate factual and medical background, Dr. Mayer determined that appellant had no objective deficits or pathology; he noted complaints of mild tenderness over the adduction tendon insertions into the pubic symphysis area, right greater than left, particularly with stretching of the adductor tendons, but opined that this did not warrant permanent restrictions and he opined that based upon examination findings and review of the radiologic evidence, there was no need for permanent restricted activity. Dr. Mayer found no evidence of spinal pathology, radiculopathy or myelopathy or any significant orthopedic pathology upon examination and he found no specific indication for work restrictions, other than to prophylactically avoid repetitive abduction maneuvers of the hips which would tend to aggravate adductor tendinitis. Upon receipt of the subsequently obtained MRI scan, Dr. Mayer provided a supplemental opinion in which he indicated that the MRI scan was unremarkable except for minimal disc bulging at L4-5, opined that the partially cystic mass in the right side of the pelvis was incidental and was probably related to her ovary, as well as uterine masses, opined that the MRI scan findings were not work related, indicated that there was no reason for ongoing permanent restricted activity and no evidence of spinal pathology, indicated that his finding upon examination of mild tenderness over the insertion of the adductor tendons into the pubic symphysis area was a minor finding and was possibly related to a mild tendinitis and he could not relate that finding to her previous workplace activity and clarified that the findings of his evaluation relative to appellant's musculoskeletal condition did not support disability, nor prevent her from performing her date-of-injury job. Dr. Mayer opined that any injury-related residuals had resolved at that time.

The Board has frequently explained that 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. Mayer's reports were sufficiently well rationalized and were based upon a proper factual and medical background, such that they are entitled to that special weight. According them that weight results in them constituting the weight of the medical evidence of record and establishing that appellant has no further disability for work or injury residuals requiring further medical treatment after June 18, 2001, causally related to her June 17, 1997 employment injury.⁸

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

⁸ The Board notes that following appellant's appeal of April 1, 2002 the Office issued a decision on May 8, 2002 denying appellant's request for reconsideration. This decision is null and void. See *Douglas E. Billings*, 41 ECAB 880 (1990).

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 18, 2001 is hereby affirmed.

Dated, Washington, DC
October 11, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member