U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBA A. HILL and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, PA

Docket No. 02-1676; Submitted on the Record;
Issued October 23, 2002

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on July 9, 2001.

The Office accepted that on September 9, 2000 appellant, then a 40-year-old mailhandler, sustained a lumbosacral strain and sciatica when she moved a large skid with a hand jack and felt low back and leg pain. She received appropriate compensation benefits.

A physician to whom she was referred by her treating physician, Dr. Donald M. McCarren, a Board-certified neurologist, noted in a November 1, 2000 report, that appellant had L5-S1 radiculopathy due to her September 9, 2000 work injury, that traction in physical therapy increased her pain, that she was having difficulties with ambulation, walked with a forward flexed posture and was slow and meticulous in her gait. Appellant had difficulties getting on and off the examining table, Waddell's tests were negative and, on manual motor testing, she had weakness of both extensor hallicus longus muscles and the right foot evertors. Diminished pinprick sensation along the right lateral calf and dorsolateral aspect of the right foot was also present. Dr. McCarren noted that appellant walked with an antaglic gait in favor of the right lower extremity. He diagnosed lumbosacral radiculopathy and recommended that she undergo epidural blocks.

A second physician to whom she was referred by her treating physician, Dr. Steven S. Song, a Board-certified anesthesiologist, for the administration of epidural spinal blocks, noted on December 14, 2000 that appellant had low back and leg pain which was aggravated by physical therapy. He noted that electromyographic (EMG) testing showed L5-S1 radiculopathy.

Appellant's treating physician, Dr. Bruce J. Menkowitz, a Board-certified orthopedic surgeon, noted on January 15, 2001 that appellant remained disabled at that time due to her employment injury and he diagnosed "acute lumbosacral strain/sciatic nerve root." He completed an Office Form OWCP-5 on February 7, 2001 indicating that appellant could perform light duty four hours per day with a five-pound lifting limit. She returned to light duty four

hours per day on February 12, 2001, ceased work on February 16, 2001, and filed a claim for recurrence of disability. Appellant claimed that when she returned to work her back and right leg pain became worse with sitting and standing. On February 22, 2001 Dr. Menkowitz indicated that appellant remained totally disabled due to her September 9, 2000 injury and diagnosed "acute lumbosacral strain/sciatic nerve root." He reiterated this opinion in reports dated February 14, March 12 and April 19, 2001.

Appellant submitted progress notes from Dr. Menkowitz from October, November and December 2000, and from January 8, 2001 which noted that she continued to have low back pain with decreased range of motion, pain into both legs with distinct L5-S1 radiculopathy as demonstrated on a positive EMG, and that treatment options were discussed including epidural steroid injections. A progress note following two epidural injections reported that appellant still had some leg pain.

On April 11, 2001 the Office referred appellant, together with a statement of accepted facts, questions to be addressed, and the relevant case record, for a second opinion evaluation to Dr. Steven J. Valentino, a Board-certified osteopathic orthopedic surgeon.

By report dated May 3, 2001, Dr. Valentino reviewed appellant's factual and medical history, discussed the results of his physical examination, and noted that her orthopedic and neurologic examinations were normal with full ranges of motion, normal reflexes, no weakness, atrophy, or myelopathy, and negative sitting and supine straight leg raising tests, augmentative neuromengeal tension signs, femoral stretch tests, classic and modified Spurling's maneuvers, and instability, impingement and sulcus testing. Dr. Valentino diagnosed resolved low back injury and opined that appellant was not disabled from work due to her September 9, 2000 injuries. He opined that she could return to work full time for eight hours per day, that she had reached maximum medical improvement, that she had no work limitations related to the September 9, 2000 injury, and that she had no injury-related residuals based on the normal x-ray, normal magnetic resonance imaging findings, and normal orthopedic and neurologic examinations.

On May 31, 2001 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical evidence of record, as constituted by the well-rationalized report of Dr. Valentino, established that she had no further disability for work or injury-related residuals that required further medical treatment. Appellant was advised that she had 30 days within which to submit further evidence or argument if she disagreed with the proposed action.

Nothing further was received from appellant.

By decision dated July 9, 2001, the Office finalized the proposed termination of compensation on the grounds that the weight of the medical evidence of record established that appellant had no further disability for work or injury-related residuals that required further medical treatment.

Appellant, through her representative, disagreed with the July 9, 2001 decision and requested an oral hearing before an Office hearing representative.

Appellant also returned to work on July 1, 2001 at full duty but ceased work again on July 5, 2001 and filed a claim for another recurrence of disability commencing that date.

A hearing was held on January 3, 2002 at which appellant appeared.

At the hearing appellant submitted a December 18, 2001 narrative report from Dr. Menkowitz which noted her history of injury and treatment, noted pain in the low back and weakness in the right leg when she attempted to walk on her toes, and diagnosed acute lumbosacral strain, sciatica nerve root irritation, L5-S1 radiculopthy, and right carpal tunnel syndrome. He opined that she sustained these conditions as a result of her September 9, 2000 work injury, that she continued to have low back discomfort after receiving epidural injections, that she continued to have low back pain and limitation of motion, that her current complaints were due to her September 9, 2000 injury, and that she still had residuals of that injury. He opined that she was not a surgical candidate, he listed her activity restrictions, he indicated that she continued to need physical therapy, and that she continued under his care for these conditions.

She also submitted medical progress notes dated January 23 and March 5, 2002 from Dr. Menkowitz which noted that appellant continued to have low back pain despite the epidural injections she had been receiving. Tenderness in the paraspinal muscles was noted upon examination.

By decision dated March 26, 2002, the hearing representative affirmed the July 9, 2001 Office decision finding that the report of Dr. Valentino continued to constitute the weight of the medical opinion evidence and support that appellant had no further disability for work or injury residuals which required further medical treatment on or after July 9, 2001, causally related to her September 9, 2000 lumbosacral strain and sciatica injuries. The hearing representative discounted Dr. Menkowitz's reports finding that he did not indicate that appellant had any objective findings related to the injury.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation.

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

[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).

treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[4]

Appellant's treating physician's, Drs. Menkowitz, Song and McCarren each indicated that appellant had ongoing low back pain and leg pain, and objective evidence of positive EMG findings of L5-S1 radiculopathy, causally related to her September 9, 2000 employment injury. Dr. Menkowitz continued to provide form reports, which supplemented his narrative reports, on which he indicated that appellant remained disabled at that time due to her employment injury and he diagnosed "acute lumbosacral strain/sciatic nerve root [irritation]."

Dr. Valentino, however, found that appellant had full ranges of motion, and no positive neurologic or orthopedic findings of continuing injury-related residuals, opined that she was not disabled for work, and opined that she could return to full-time work without activity restrictions. He also opined that she needed no further medical treatment or care.[5] He did not comment on the positive EMG findings.

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."

As there is a conflict between appellant's treating physicians and Dr. Valentino as to whether she remains disabled due to her accepted employment-related conditions and requires further medical treatment, referral to an impartial medical specialist was necessary. As the Office did not seek a resolution of this conflict, it has not met its burden of proof to termination compensation or medical benefits.

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

[5] Dr. Valentino did not comment on the positive EMG findings of L5-S1 radiculopathy.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated July 9, 2001 and March 26, 2002 are hereby reversed.

Dated, Washington, DC
October 23, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member