

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH KISAK and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 01-1135; Submitted on the Record;
Issued September 19, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying authorization for massage therapy, acupuncture and continuing physical therapy in the treatment of his accepted injuries.

On September 23, 1964 appellant, then a 29-year-old letter carrier, was injured when he slipped and fell while climbing into a truck while in the performance of duty. The Office accepted appellant's claim for contusion of the left paravertebral muscles and sacroiliac area. On June 30, 1971 appellant misjudged a step and experienced pain in the left hip, middle of back and right side of neck. The Office accepted appellant's claim for cervical strain, herniated intervertebral disc, failed lumbar laminectomy, post-traumatic stress disorder, right brachial neuralgia, recurrent left shoulder bursitis, myofascitis left shoulder and sciatic neuralgia associated with sacroiliac strain.¹ Appellant stopped work on January 1, 1976.

The record reflects that the Office paid compensation and ongoing medical treatment.

By decision dated November 5, 1996, the Office denied appellant's request for additional physical therapy on the basis that it was not medically necessary as a result of his June 30, 1971 employment injury and limited appellant's entitlement to ongoing acupuncture and massage therapy to one visit a week.

Appellant disagreed with this decision and requested a hearing on November 20, 1996.

In a September 29, 1997 report, Dr. Sue A. Lytle, an osteopath, advised that acupuncture was the only thing that had provided appellant with any type of relief. She requested that appellant receive treatment twice a week.

¹ The record also reflects that the Office accepted his claim for the condition of a temporomandibular joint disorder.

In an October 29, 1997 report, Dr. Michael J. Luzar, Board-certified in internal medicine, with a subspecialty in rheumatology, indicated that appellant had cervical strain, herniated lumbar disc, failed lumbar laminectomy, bursitis of the shoulders, severe myofascial pain, sciatic neuralgia. He opined that appellant needed physical therapy as it would relieve some of his symptoms. Dr. Luzar added that, because of appellant's stomach problems, he was unable to take many arthritis medicines, noting that he was on pain medications, such as ultram and muscle relaxers as needed. Dr. Luzar explained that, in spite of all of this, appellant had significant pain, which was relieved only by physical therapy, especially massotherapy. He added that appellant needed massotherapy two to three times a week because it relieved his pain and it was the best therapeutic approach for his severe musculoskeletal problems and opined that three sessions in a week would be ideal.

In a report dated October 2, 1996, Dr. V.G. Raghaven, an orthopedic surgeon, opined that appellant had reached maximum medical improvement, that additional physical therapy would not be of any benefit and limited acupuncture and massage therapy to once a week.

By decision dated December 12, 1997, the hearing representative remanded the case to the Office finding a conflict between Drs. Lytle, Luzar and Dr. Raghaven, the second opinion physician. The hearing representative directed the Office to refer appellant, the case record and the statement of accepted facts to an appropriate specialist for an impartial medical evaluation on the issue of whether appellant was entitled to additional physical therapy, acupuncture and massage therapy.

The Office referred appellant to Dr. James D. Brodell, a Board-certified orthopedist to resolve the conflict.

In a report dated March 30, 1998, Dr. Brodell noted appellant's history of injury and treatment. He also obtained x-rays of the lumbosacral and cervical spines. Upon review Dr. Brodell noted that the lumbar films demonstrated a solid postero-lateral fusion from L3 to sacrum. The L5-S1 disc space was ankylosed. He noted that overall vertebral alignment and disc space was remarkably well preserved. Dr. Brodell noted that the cervical films showed moderate spur formation, with vertebral body height and alignment well preserved and no sign of fracture or instability. He opined that all of the conditions allowed in his claim had reached a static plateau or maximum medical improvement. Dr. Broden stated:

“The various modalities that [appellant] has been receiving for so many years (massage, manipulation, heat and ultrasound) have not been scrutinized in any scientific fashion, but the general consensus is that they have short term application to promote the beneficial effects of true therapy exercise and stretching. Acupuncture, of course, falls firmly under the category of ‘alternative medicine’. I personally do n[o]t believe that it will ever be shown to reverse the course of true organic illness. Considering the fact that he has had a lumbar fusion, I [a]m skeptical that deep injections are getting anywhere that would favorably influence the local anatomical conditions. Therefore, as it relates to the actual diagnoses which have been allowed in this claim, none of this long-term, repetitive, maintenance, modality-based management is truly necessary.”

Dr. Brodell concluded that appellant: “[S]top the acupuncture; obtain no more invasive treatments; no more shots; do gentle exercise and stretching methods, most could be performed at home; encourage reasonable endurance activities such as walking or swimming; obtain professional psychological support to keep his use of medication to a minimum; teach the family how to do at least some of the massage and heat treatments on their own at home; and allow continued contact and support from his pain management doctors so that they had some flexibility to resume and or increase treatments during times of significantly increased pain and/or stress.”

In a supplemental report dated April 17, 1998, Dr. Brodell indicated:

“In my opinion, anything which is even remotely invasive should be discontinued, no more injections or acupuncture. [Appellant’s] family can be taught how to do the massage sessions. Formal massage therapy should be discontinued. [Appellant] himself can be taught how to do exercises and he should be encouraged to stay as active as possible. Formal physical therapy should be discontinued. Repetitive use of modalities such as heat, ultrasound and electrical stimulation will not favorably influence this situation.”

By decision dated April 23, 1998, the Office proceeded to deny authorization for continuing acupuncture, massage therapy and physical therapy. The Office held that the weight of the medical evidence failed to support the need for these modalities in the treatment of the accepted injuries.

Appellant disagreed with this assessment and requested a hearing, which was held on August 5, 1999.

In a July 16, 1999 report, Dr. Luzar noted that appellant had significant neck pain radiating to the right shoulder area and posterior upper back and chest. He stated that the pain was consistently relieved by chiropractic manipulation in the past and requested additional approval for chiropractic treatment two to three times a month for his chronic neck and right trapezius shoulder pain and opined that this was proven to be effective in the past.

In an August 13, 1999 report, Dr. Luzar indicated that he had a cervical strain, a herniated lumbar disc, a failed lumbar laminectomy, bursitis of the shoulders, myofascial pain and sciatic neuralgia. He opined that appellant required neuromuscular reeducation, which had to be ongoing because of his chronic work-related injuries.

By decision dated September 7, 1999, the hearing representative affirmed the April 23, 1998 decision, finding that appellant was not entitled to receive massage therapy, acupuncture and continuing physical therapy in the treatment of his accepted injuries.

In a January 7, 2000 report, Dr. Luzar indicated that appellant had severe headaches, intercostals neuralgia and severe neck pain. He noted that appellant was in relatively refractory to conservative treatment such as physical therapy, anti-inflammatories, pain medications and muscle relaxers. Dr. Luzar indicated that he felt the pain was related to his diagnosis of cervical strain and myofascial pain.

In a February 18, 2000 report, Dr. Luzar indicated that appellant had work-related injuries. He stated that appellant was approved for cervical strain, herniated lumbar disc, failed lumbar laminectomy, bursitis of the shoulders, myofascial pain and sciatic neuralgia from his work-related injuries. Dr. Luzar opined that appellant had intractable head pain on the right side of the head and the neck and trapezius. He stated that they had tried conservative treatment such as muscle relaxers, nonsteroidal anti-inflammatory medications, pain medication heat, physical therapy and massage. Dr. Luzar opined that the pain and the headaches were related to his diagnosis of cervical strain and myofascial pain and advised a neurological consultation.

By letter dated August 28, 2000, appellant requested reconsideration.

By decision dated December 17, 2000, the Office denied modification of the prior decision on the grounds that the evidence submitted in support of the application for review was insufficient.

The Board finds that the Office did not abuse its discretion in denying authorization for massage therapy, acupuncture and continuing physical therapy in the treatment of his accepted injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² 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.³ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁴ 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.⁵

In the present case, the Office authorized massage therapy, acupuncture and continuing physical therapy in the treatment of his accepted injuries. However, this authorization was denied after an impartial medical examiner determined that such modalities were no longer necessary.

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report.⁶ Where such

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁵ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

⁶ *Harold Travis*, 30 ECAB 1071 (1979).

clarification is required and is forthcoming, the opinion of the impartial specialist, if sufficiently well rationalized and based upon a proper factual background, is also entitled to special weight.⁷

In this case, Dr. Brodell's report and addendum were based upon a proper factual and medical background, were thorough and well rationalized. He noted appellant's history of injury and treatment and obtained x-rays of the lumbosacral and cervical spines and explained that all of the conditions allowed in his claim had reached a static plateau or maximum medical improvement. Dr. Brodell explained that the various modalities appellant had been receiving for so many years such as massage, manipulation, heat and ultrasound were not scrutinized in any scientific fashion and were mainly for short-term application to promote the beneficial effects of true therapy, exercise and stretching. In regard to acupuncture, he opined that it fell under the category of "alternative medicine" and opined that it did not reverse the course of true organic illness. Dr. Brodell explained that since appellant had a lumbar fusion, the deep injections were not going to favorably influence the local anatomical conditions and none of this long-term, repetitive, maintenance, modality-based management was truly necessary. He concluded that appellant stop the acupuncture and obtain no more invasive treatments; no more shots. Dr. Brodell advised gentle exercise and stretching methods, which could be performed at home. He explained further that anything invasive should be discontinued, no more injections or acupuncture or massage therapy and formal physical therapy. Dr. Brodell opined that repetitive use of modalities such as heat, ultrasound and electrical stimulation would not favorably influence appellant's situation. Accordingly, his opinion constitutes the weight of the medical evidence and establishes that appellant was no longer entitled to additional physical therapy, massage therapy or acupuncture.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.⁸

Appellant enclosed the several medical reports from Dr. Luzar. In the July 16, 1999 report, Dr. Luzar requested additional approval for chiropractic treatment two to three times a month for his chronic neck and right trapezius shoulder pain and opined that this was proven to be effective in the past. However, this report is relevant to the issue of massage therapy, acupuncture and continuing physical therapy in the treatment of his accepted injuries. In an August 13, 1999 report, Dr. Luzar opined that appellant required neuromuscular reeducation, which had to be ongoing because of appellant's chronic work-related injuries. This report does not explain appellant's need for massage therapy, acupuncture and continuing physical therapy in the treatment of his accepted injuries. In his January 7, 2000 report, Dr. Luzar indicated that appellant had severe headaches, intercostals neuralgia and severe neck pain. He noted that appellant was in relatively refractory to conservative treatment such as physical therapy, anti-inflammatories, pain medications and muscle relaxers. Dr. Luzar indicated that he felt the pain was related to his diagnosis of cervical strain and myofascial pain. However, he did not indicate that massage therapy, acupuncture and continuing physical therapy were currently needed or

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

⁸ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

provide any rationale as to why he thought they were needed in the treatment of his accepted injuries nor did he indicate whether the same therapeutic benefit could be obtained through other, less expensive, means.⁹ In his February 18, 2000 report, Dr. Luzar opined that appellant had intractable head pain on the right side of the head and the neck and trapezius. He stated that they had tried conservative treatment such as muscle relaxers, nonsteroidal anti-inflammatory medications, pain medications, heat, physical therapy and massage. Dr. Luzar opined that the pain and the headaches were related to his diagnosis of cervical strain and myofascial pain and advised a neurological consultation. He did not offer any opinion on appellant's need for continued massage therapy, acupuncture, or physical therapy in the treatment of his accepted injuries. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁰ Furthermore, Dr. Luzar was part of the original conflict. The Board has held that additional reports from a treating physician who was on one side of a medical conflict may not overcome the probative value of the referee physician's opinion.¹¹ Dr. Luzar's reports are not sufficient to overcome the special weight accorded the impartial medical examiner. Appellant has not met his burden.

As the weight of the medical evidence establishes that appellant no longer has residuals of an employment-related medical condition which require further medical treatment, the Office did not abuse its discretion in terminating further authorization for massage therapy, acupuncture and continuing physical therapy in the treatment of his accepted injuries.

The December 7, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 19, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

⁹ See *Dale E. Jones*, 48 ECAB 648 (1997); *Lenard E. Fritz*, 39 ECAB 170 (1987).

¹⁰ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

¹¹ *Virginia Davis-Banks*, 44 ECAB 389, 392 (1993).