

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARYANN GIOIA and DEPARTMENT OF JUSTICE,
U.S. ATTORNEYS OFFICE, Philadelphia, PA

*Docket No. 02-866; Submitted on the Record;
Issued September 4, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly terminated compensation benefits for the accepted condition of cervical strain.

On December 4, 1997 appellant, then a 51-year-old lead legal secretary, filed an occupational disease claim asserting that her severe headaches, loss of concentration and pains in her arm were a result of her federal employment. She indicated that she first became aware of the disease or illness on September 18, 1997. In an attached narrative, appellant explained that in 1997 she began seeing her primary care physician on occasion because she was experiencing severe headaches that she thought might be related to job stress. On or about September 18, 1997 she sought medical attention for progressive pain and limited mobility in her right arm.

The Office accepted appellant's claim for cervical strain and paid compensation for temporary total disability.

A conflict in medical opinion arose between the Office referral physician and appellant's attending physician. Dr. Leonard Klinghoffer, a Board-certified orthopedist and Office referral physician, reported on June 30, 1998 that appellant had degenerative pathology at various levels in her cervical spine. He explained that the nature of her degenerative pathology was consistent with the spontaneous development of episodes of symptoms such as those that she described, but any significant change or increase in her physical activities could precipitate an episode of symptoms or cause a temporary flare-up. Given this, together with the fact that appellant did not suffer a recent trauma or participate in any new type of physical activity, Dr. Klinghoffer concluded that appellant's current complaints had nothing to do with her work. Having reviewed the description of her date-of-injury position and considering her findings on examination, Dr. Klinghoffer reported that appellant was physically capable of performing the duties of that position.

Dr. Mario J. Arena, a Board-certified orthopedist and appellant's attending physician, reported on October 23, 1998 that appellant's diagnosis was cervical spinal stenosis with rotator

cuff tendinitis of the left shoulder. He opined that work activities had exacerbated appellant's preexisting cervical spinal stenosis and that she was unable to perform her regular work duties, as they involved the regular posturing of her neck and the use of both upper extremities.

To resolve this conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Maxwell Stepanuk, Jr., a Board-certified orthopedist.¹ In a report dated January 17, 2000, Dr. Stepanuk related appellant's complaints and history. He reviewed appellant's medical records and described his findings on physical examination. Dr. Stepanuk diagnosed degenerative arthritis, cervical spine; degenerative disc disease, cervical spine; herniated nucleus pulposus, C4-5; and left upper extremity radiculopathy. On the issue of injury-related residuals, he reported as follows:

“[Appellant] has had a chronic problem in the cervical spine with radicular symptoms in the left upper extremity dating back to 1989. This certainly predates the onset of her work[-]related problems in 1997. It is my opinion that her current problems are directly related to her degenerative disc disease with [sic] predated the onset of her work[-]related component in 1997. [Appellant's] physical exam[ination] today was essentially normal. There were no neurologic deficits. Her EMG [electromyogram] was also normal. The findings on her MRI [magnetic resonance imaging scan] were degenerative in nature and predate[d] her work[-]related injuries. It is therefore[,] my opinion that she can return to her regular duties as a legal secretary without restrictions. I have completed a OWCP-5 form as per your request.”

On April 19, 2000 the Office issued a notice of proposed termination finding that the weight of the medical evidence, as represented by the opinion of Dr. Stepanuk, established that appellant no longer suffered from residuals of the September 18, 1997 work injury.

Appellant's attorney argued that termination was improper because Dr. Stepanuk's opinion was not rationalized and because appellant's work-related symptoms dated as far back as 1989.

In a decision dated May 22, 2000, the Office terminated appellant's compensation benefits effective May 29, 2000 on the grounds that she had recovered from her work injury.

In a decision dated October 2, 2000, a hearing representative affirmed the termination. The hearing representative found that Dr. Stepanuk gave reasons for his opinion, which represented the weight of the medical opinion evidence.

¹ The Office had referred appellant to Dr. Martin A. Blaker, a Board-certified orthopedist, but in a decision dated November 8, 1999, an Office hearing representative reported as follows: “[b]ecause of the troubling nature of the Court findings concerning the impartial specialist in this case, Dr. Blaker, I referred the matter to the Branch of Regulations and Procedures. In a November 3, 1999 memorandum, the Acting Director for Federal Employees' Compensation stated that ‘Dr. Blaker's reports must be found to have diminished probative value, given the several and substantial allegations made against his veracity. Therefore, it would be proper to remand the case for another impartial examination.’”

In the prior appeal of this case,² the Board set aside the hearing representative's October 2, 2000 decision because the record submitted on appeal was incomplete and precluded a full and fair adjudication of the claim. The Board remanded the case to the Office for proper assemblage and reconstruction of the case record and for an appropriate decision.

In a decision dated December 3, 2001, the Office denied entitlement to any compensation benefits after May 29, 2000.

The Board finds that the Office has met its burden of proof to justify the termination of compensation benefits for the accepted condition of cervical strain.

Once the Office accepts a claim, it has the burden of proof to justify 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

The Office accepted that appellant suffered a cervical strain as a result of the duties she performed as a lead legal secretary. The Office, therefore, bears the burden of proof to justify the termination of compensation benefits for this medical condition.

A conflict arose in this case on whether appellant's work activities had exacerbated her preexisting cervical degenerative or spinal stenosis condition. For purposes of adjudicating the termination of compensation, however, the issue is whether appellant continues to suffer residuals of the accepted cervical strain and if so, whether residuals of this cervical strain continue to disable her for work.

The medical record shows no obvious disagreement on the issue. On October 23, 1998, Dr. Arena, appellant's orthopedist, diagnosed cervical spinal stenosis with rotator cuff tendinitis of the left shoulder.⁵ He made no diagnosis of cervical strain. Dr. Arena reported that appellant was unable to perform her regular work duties because work activities had exacerbated her preexisting cervical spinal stenosis, not because she continued to suffer from a cervical strain. Dr. Stepanuk, the orthopedist selected to resolve a conflict on appellant's degenerative or spinal stenosis condition, reported an essentially normal physical examination on January 17, 2000. His diagnoses also included no reference to cervical strain. Rather, Dr. Stepanuk diagnosed degenerative arthritis, cervical spine; degenerative disc disease, cervical spine; herniated nucleus pulposus, C4-5; and left upper extremity radiculopathy. Based on the essentially normal physical examination, among other things, Dr. Stepanuk reported that appellant could return to

² Docket No. 01-320 (issued July 31, 2001) (Order Remanding Case).

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 He also diagnosed trochanteric bursitis of the left hip and degenerative disc disease of the lumbar spine, neither of which he believed to be related to appellant's work activities in 1997.

her regular duties as a legal secretary without restriction. Her current problems, he stated, were directly related to the degenerative disc disease that predated the onset of her work-related complaints in 1997.⁶

Because the medical evidence shows that appellant no longer suffers from a diagnosed cervical strain and because her physical examination on January 17, 2000 was essentially normal, the Office was justified in terminating compensation benefits for cervical strain effective May 29, 2000. The Board will affirm the Office's December 3, 2001 decision on the issue of termination.

The December 3, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ Although appellant's attorney has argued that work-related symptoms dated as far back as 1989, appellant made clear on her claim form and in her supporting narrative statement that her work-related difficulties began in 1997. She began seeing her primary care physician on occasion that year because she was experiencing severe headaches that she thought might be related to job stress. Later, on or about September 18, 1997, she sought medical attention for progressive pain and limited mobility in her right arm.