

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CORNELIA K. WALKER and U.S. POSTAL SERVICE,  
POST OFFICE, Indianapolis, IN

*Docket No. 00-2669; Submitted on the Record;  
Issued April 14, 2003*

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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 wage-loss compensation and medical benefits effective August 21, 1998 on the basis that she no longer suffered from residuals of her September 9, 1997 employment injury.

On September 9, 1997 appellant, then a 39-year-old mail distribution clerk, sustained a traumatic injury while in the performance of duty. The Office initially accepted the claim for a lumbar strain and later expanded the claim to include upper back strain, shoulder and scapular strain, sacroiliac strain and temporary aggravation of degenerative disc disease of the spine. Appellant returned to work in a limited-duty capacity on November 4, 1997.

By decision dated August 21, 1998, the Office terminated appellant's compensation and medical benefits on the basis that she no longer suffered from residuals of her employment injury.<sup>1</sup> The Office relied on the July 13, 1998 opinion of Dr. Alosi E. Gibson, a Board-certified orthopedic surgeon and impartial medical specialist, who found that appellant sustained a soft tissue injury to her dorsal and lumbar spine superimposed on degenerative changes.<sup>2</sup> He characterized appellant's condition as a temporary aggravation of a preexisting condition, which would have resolved in early December 1997. Dr. Gibson further stated that appellant's ongoing complaints regarding her lower back were related to her preexisting degenerative condition.

Appellant subsequently requested a hearing, which was held March 24, 1999. In a decision dated May 3, 1999 and finalized May 4, 1999, the Office hearing representative affirmed the August 21, 1998 decision terminating compensation and medical benefits. In

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<sup>1</sup> On July 21, 1998 the Office issued a notice of proposed termination of compensation.

<sup>2</sup> The Office determined that a conflict existed based upon the differing opinions of appellant's treating physician, Dr. Stanley D. Reed and the Office referral physician, Dr. R.A. Hutson, who found that appellant's current physical restrictions were due to her degenerative disc disease.

affirming the August 21, 1998 decision, the Office hearing representative similarly relied on Dr. Gibson's July 13, 1998 findings.<sup>3</sup>

On May 2, 2000 appellant requested reconsideration. The Office reviewed the claim on the merits and, in a decision dated June 21, 2000, the Office denied modification. The Office considered a May 2, 2000 report from Dr. Duerden, who addressed the causal relationship between appellant's September 9, 1997 employment injury and her chronic myofacial neck pain. The Office again concluded that the weight of the medical evidence, as represented by the impartial medical specialist's July 13, 1998 opinion, established that all injury-related aggravation and residuals had ceased.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective August 21, 1998.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>6</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>7</sup>

In the instant case, the Office accepted appellant's claim for upper back strain, shoulder and scapular strain, sacroiliac strain, lumbar strain and temporary aggravation of degenerative disc disease of the spine, which arose as a result of her September 9, 1997 employment injury. The Office terminated compensation and medical benefits based on the impartial medical specialist's July 13, 1998 opinion.

The Office properly determined that a conflict of medical opinion existed based on the opinions of Drs. Reed and Hutson.<sup>8</sup> Therefore, the Office referred appellant to Dr. Gibson, selected as the impartial medical specialist. He found that appellant sustained a soft tissue injury to her dorsal and lumbar spine superimposed on degenerative changes. He characterized her

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<sup>3</sup> The hearing representative also considered additional medical evidence from Dr. Marc E. Duerden, a Board-certified physiatrist, who initially examined appellant on August 18, 1998. Dr. Duerden diagnosed chronic myofacial neck pain and sacroiliac joint dysfunction and indicated that appellant still had residual impairment in her lumbar region. The hearing representative concluded that Dr. Duerden's opinion lacked sufficient probative value to either equal or outweigh the findings of the impartial medical specialist.

<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>7</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>8</sup> *Supra* note 2.

condition as a temporary aggravation of a preexisting condition, which would have resolved in early December 1997.

On physical examination of appellant's back, Dr. Gibson stated that he did not note any deformity or unusual appearance. Additionally, on palpation he did not find any muscle spasm in the dorsal or lumbar area. Dr. Gibson also stated that there was no true sciatic pathway tenderness. With regard to appellant's range of motion, he characterized the reported measurements as "marginal" and explained that it did not represent significant restriction. Neurological examination of appellant's lower extremities was normal. Recent x-rays of appellant's lumbar spine revealed a normal segmentation pattern and Dr. Gibson noted that there appeared to be a slight degree of scoliosis involving the lumbar spine. He also stated that disc spaces were well maintained with the exception that there was some relative thinning of the lumbosacral disc spaces. There was also evidence of thinning of the facet joints in the lowermost lumbar facets bilaterally.

In summary, Dr. Gibson stated that appellant sustained a soft tissue or muscle-type injury to the low back superimposed on degenerative changes. He explained that, under ordinary circumstances, soft tissue injuries resolve in six to eight weeks, as it appeared to have occurred with appellant. Dr. Gibson further stated that appellant's ongoing complaints regarding her lower back were related to her preexisting degenerative condition. Although Dr. Gibson advised that appellant should be limited to performing medium-type work and should avoid very heavy lifting and frequent bending, the permanent restrictions imposed by the doctor were related to appellant's preexisting degenerative condition.

The Board finds that the Office properly relied on the impartial medical specialist's July 13, 1998 opinion as a basis for terminating benefits. Dr. Gibson's opinion is sufficiently well rationalized and based upon a proper factual background. He examined appellant and reviewed appellant's medical records. Dr. Gibson also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical specialist's July 13, 1998 findings.<sup>9</sup>

Appellant submitted additional medical evidence following Dr. Gibson's July 13, 1998 report. Dr. Duerden, who initially examined appellant on August 18, 1998, diagnosed chronic myofascial neck pain and sacroiliac joint dysfunction and indicated that appellant still had residual impairment in her lumbar region. In his most recent report dated May 5, 2000, Dr. Duerden stated that it was his opinion that the September 9, 1997 employment injury precipitated and caused myofascial neck pain for which appellant is currently suffering. Dr. Duerden examined appellant approximately one year following her September 9, 1997 employment injury and his various reports fail to adequately explain the delayed onset of appellant's neck pain. Moreover, Dr. Duerden's reports lack objective evidence to support his finding of a causal relationship between the September 9, 1997 injury and appellant's current neck complaints.

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<sup>9</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>10</sup> The fact that the etiology of a disease or condition is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to the Office to disprove an employment relationship.<sup>11</sup> In the instant case, Dr. Duerden's opinion is insufficient to establish a causal relationship between appellant's current myofascial neck pain and her September 9, 1997 employment injury. Additionally, Dr. Duerden's opinion is insufficient to overcome the weight of the medical evidence as represented by the July 13, 1998 opinion of Dr. Gibson, the impartial medical specialist.

The June 21, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 14, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

<sup>11</sup> *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).