

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA A. SPINDA and U.S. POSTAL SERVICE,
POST OFFICE, Flatwoods, KY

*Docket No. 02-1466; Submitted on the Record;
Issued April 4, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective January 28, 2002.

On June 12, 2000 appellant, then a 39-year-old rural carrier, filed a claim alleging that on June 10, 2000, while in the performance of duty, she was bitten by a dog and suffered a back injury in her attempt to escape. She stopped work on June 12, 2000. On July 11, 2000 the Office accepted appellant's claim for lumbar sprain and dog bite to the left buttock, as diagnosed by her treating physicians. Magnetic resonance imaging (MRI) and both regular and needle electromyography (EMG) revealed normal results.

On December 12, 2000 Dr. T. Robert Love performed a fitness-for-duty examination on behalf of the employing establishment. He opined that appellant did not have a herniated disc, but that her employment injury had aggravated a preexisting degenerative osteoarthritis of the cervical and lumbar spine. Dr. Love released appellant to light duty with lifting restrictions.

On January 4, 2001 the Office requested a detailed narrative update from appellant's treating physician. In response, appellant submitted treatment notes and attending physician's reports (Form CA-20) from Dr. Bal K. Bansal, her attending neurologist, who diagnosed lumbar sprain, indicated by checkmark that appellant had no history of concurrent or preexisting disease or injury and concluded that appellant remained totally disabled for work. Following a second request from the Office, in a narrative report dated April 5, 2001, he noted that appellant complained of severe left leg pain and that, while examination revealed some tenderness in the left gluteal area, the rest of her physical examination was unremarkable. Dr. Bansal prescribed continued medication, recommended that appellant attend a pain clinic and stated that he was releasing her back to light duty, four hours a day, with certain physical restrictions. He subsequently submitted a Form CA-20 report, indicating that appellant remained totally disabled until an estimated return to work date of May 10, 2001.

By letter dated April 12, 2001, the Office referred appellant together with a statement of accepted facts and a list of questions to be addressed, to Dr. Robert W. Lowe, a Board-certified orthopedic surgeon, for a second opinion. In a report dated May 14, 2001, he reviewed appellant's history and the prior medical evidence and recorded his findings on physical examination. Dr. Lowe stated that the lumbar strain and dog bite injuries had resolved and that there was no objective evidence of these accepted injuries. He noted that, while appellant complained of pain, there were no objective findings to support her complaints. Dr. Lowe noted that, from an objective standpoint, appellant could perform her job as a rural carrier, with its requirement for heavy lifting up to 70 pounds, but that it was in her best interest to restrict her to moderate to light duty. He explained that this was the same restriction he would place on anyone who has had a back injury. In an accompanying work capacity evaluation form, OWCP-5, Dr. Lowe indicated that appellant could work eight hours a day, with restrictions on lifting, pushing or pulling more than 25 pounds, no squatting and regular breaks.

On June 1, 2001 appellant accepted a part-time, light-duty job offer, which she performed until July 11, 2001, when she again stopped work.

By letter dated June 5, 2001, the Office forwarded Dr. Lowe's report to Dr. Bansal and asked him to comment. In treatment notes and form reports dated May 23, 29 and June 19 and 29, 2001, Dr. Bansal diagnosed low back syndrome, noted that appellant had lumbar spasm on physical examination and indicated that he planned to return appellant to light duty.

The Office issued a notice of proposed termination of compensation on July 10, 2001, finding that appellant's accepted lumbar sprain and dog bite had resolved. In response, appellant submitted additional medical reports from Dr. Jimmy Adams, an osteopath. In reports dated March 29, May 14 and June 14, 2001, Dr. Adams reviewed appellant's history and the available medical reports and test results of record. He noted that he found multiple trigger points on physical examination contrary to Dr. Lowe's finding that appellant had no trigger points. Dr. Adams further found with decreased mobility of the sacroiliac joint and evidence of pelvic obliquity, demonstrated by a short right leg. He diagnosed pelvic obliquity, cluneal neuralgia, left, myofascial pain syndrome involving the upper back and the left posterior paracervical region as well as the left suboccipital region and left buttock, piriformis syndrome, left and possible left sacroiliac joint involvement with decreased mobility.

The Office found that there was a conflict in the medical evidence between Dr. Lowe, the Office referral physician and Dr. Adams, a treating physician, regarding whether appellant continued to have residuals from her accepted conditions. An impartial medical examination was scheduled with Dr. William G. Wheeler, a Board-certified orthopedic surgeon.

In an October 3, 2001 report, Dr. Wheeler reviewed the medical records and noted that a cervical MRI report indicated a diffuse degenerative bulging of the C6-7 disc without impingement and no other abnormalities. A lumbar MRI and computerized tomography scan were normal. After physical examination, Dr. Wheeler noted his findings, stating:

"On my evaluation today, I found no evidence of significant residual problems related to the dog attack of June 10, 2000. I think [appellant] is physically capable of work at this time. I am not sure i[f] she is mentally. I think she has a

probable dependence on Hydrocodone and Ultram. My recommendation would be to attempt to get her back at light-duty work limiting her bending and limiting her lifting to 20 [pounds], have her on lumbar flexion exercises, intermittent cervical traction in treatment of her neck and try to remove the narcotics from her treatment program.”

In an accompanying OWCP-5 work capacity evaluation form, Dr. Wheeler further specified the restrictions within which appellant could work.

By letter dated October 30, 2001, the Office requested that Dr. Wheeler clarify his opinion and explain the objective basis for the physical restrictions recommended.

In a supplemental report dated November 20, 2001, Dr. Wheeler replied:

“If my evaluation was read, one would understand that she had no objective findings of significance in regards to her alleged injury and it was my impression that she was capable of doing full work. In my opinion because of her dependence upon pain medication, my recommendation in an effort to get her back to work was this needed to be done in a light fashion, gradually increasing her work activities and gradually decreasing her pain medication. This is not treating her injury, it is treating her physical dependence upon her medication.”

On December 20, 2001 the Office issued a notice of proposed termination of wage-loss compensation and medical benefits to appellant. The Office found that the weight of the medical evidence, as represented by Dr. Wheeler’s referee opinion, established that she had no residuals of her employment-related injuries and was physically capable of returning to full-time work without restrictions and that the recommendation to initially return appellant to modified duty was not based on her employment injury. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

In a response dated January 21, 2002, appellant, thorough her counsel, objected to the proposed termination and submitted additional medical reports and treatment notes from Drs. Bansal and Adams, who reiterated their prior opinions.

By decision dated January 28, 2001, the Office terminated appellant’s compensation, effective that date.

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits effective January 28, 2002.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that the disability

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.⁴

In this case, appellant's treating physicians continued to support her disability and need for medical treatment due to her accepted conditions. In a report dated May 14, 2001, Dr. Lowe, a Board-certified orthopedic surgeon and Office referral physician, opined that appellant's accepted lumbar sprain and dog bite had resolved and that she was physically capable of performing her full-time job as a rural letter carrier. While he suggested that restricted moderate duty might be more appropriate, he clarified his opinion saying that this restriction was prophylactic and was the same recommendation he would make to anyone who has had a back injury.⁵

Section 8123(a) of the Federal Employees' Compensation Act⁶ provides, "if there is 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, in accordance with the Act, the Office referred appellant for an impartial medical evaluation by Dr. Wheeler, a Board-certified orthopedic surgeon. In his October 3, 2001 report and supplemental November 20, 2001 report, Dr. Wheeler advised that there were no objective findings of any significant residuals from appellant's accepted injuries and that she was physically capable of performing full duty. The Office relied on Dr. Wheeler's opinion in its January 28, 2002 termination decision, finding that appellant's employment-related disability had ceased and that she could return to full-time work without restrictions.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁷ The Board finds that as Dr. Wheeler's opinion was based on a proper factual background and based on objective physical findings in support of his conclusion that appellant had no residuals of her accepted employment injury and no objective evidence that would prevent her from returning to her regular work duties, his report is entitled to the weight of the medical evidence. Although Dr. Wheeler recommended that an attempt be made to return appellant to light-duty work, in his supplemental report he clarified his remarks by reiterating that he believed appellant was capable of performing full work and explaining that stating his recommendation for a gradual return to full duty initial light duty was

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

⁵ Restrictions, which are prophylactic in nature and based on fear of future injury are not compensable under the Act. *See Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980).

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

⁷ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

based on her dependence on pain medication, not on the injury. The Board finds that Dr. Wheeler's recommendation that appellant begin performing light duty and gradually increase her work activities is prophylactic in nature. The Board held that fear of future injury or fear of a recurrence of disability if the employee returns to work, is not compensable; there must be medical evidence showing that a claimant is currently disabled for work due to an employment-related condition.⁸ Such is not the case here, where Dr. Wheeler clearly stated that appellant's employment-related conditions had resolved and opined that she was physically capable of performing full work. Therefore, the Office properly relied on this report in determining that appellant was no longer entitled to compensation, effective January 28, 2002. The additional reports submitted from Dr. Bansal and Dr. Adams are insufficient to either overcome the weight accorded Dr. Wheeler's medical opinion as an impartial medical specialist or to form a new conflict with it, as their opinions formed one side of the conflict that Dr. Wheeler resolved.⁹

The Board, therefore, finds that Dr. Wheeler's report established that appellant ceased to have any residuals of her accepted conditions or any disability causally related to her employment, thereby justifying the Office's January 28, 2002 termination of benefits.¹⁰

The decision of the Office of Workers' Compensation Programs dated January 28, 2002 is affirmed.¹¹

Dated, Washington, DC
April 4, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ See *Mary Geary; Pat Lazzara*, *supra* note 5.

⁹ See *Dorothy Sidewell*, 41 ECAB 857, 874 (1990).

¹⁰ See *Joe Bowers*, 44 ECAB 423 (1993).

¹¹ This record contains additional evidence, which was not before the Office at the time it issued its January 28, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c).