

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALLY I. BENNINGHOVEN and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Spokane, WA

*Docket No. 03-473; Submitted on the Record;
Issued April 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant had any disability for work or injury residuals that required further medical treatment on or after June 11, 2002, the date the Office of Workers' Compensation Programs terminated her wage-loss compensation and medical benefits.

The Office accepted that on August 2, 2001 appellant, then a 47-year-old sewing machine operator, sustained lumbar strain when she bent over to put a blanket in a cart. She stopped work following the incident and received continuation of pay until September 20, 2001. Appellant returned to light-duty work on September 24, 2001 for 3 hours per day with restrictions on carrying more than 10 pounds, intermittent sitting and standing, intermittent stooping or twisting, no climbing or kneeling and no pushing or pulling.

Appellant's treating physician, Dr. J. Boyd Vereen, an osteopathic family practitioner, continued to treat appellant's back and right shoulder with osteopathic manipulation treatment and to indicate that she still required limited duty for three hours per day.¹ He completed multiple CA-20, form attending physician's reports, noting her history of a bending injury, indicating appellant's diagnoses as code numbers,² and checking "yes" to the question of whether the condition(s) found were caused or aggravated by an employment activity.

On January 23, 2002 the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Herbert H. Gamber, a Board-certified orthopedic surgeon, for a second opinion examination.

¹ Appellant sustained a right shoulder injury on March 20, 1998; her benefits for that injury were terminated by letter dated November 30, 2001 on the grounds that she had no residuals from the injury.

² Ostensibly for lumbar/thoracic sprain/strain and left leg pain.

On a Form CA-20, attending physician's report dated January 23, 2002, Dr. Vereen noted his findings as "decreased r[ange] o[f] m[otion] [and] spasm," indicated appellant's diagnoses as numbers and checked "yes" to the question on causal relation. On a February 7, 2002 Form CA-20 he noted his objective findings as decreased lumbar range of motion, decreased thoracic range of motion and tenderness to palpation: lumbar; pelvis; sacrum; and bilateral hips.

By report dated February 15, 2002, Dr. Gamber reviewed appellant's factual and medical history, noted her complaints of low back and bilateral lower extremity pain and presented the results of his physical examination. He noted that appellant tended to lean her trunk two centimeter to the left of the midline when standing but had a normal symmetrical gait, normal range of back motion, normal symmetrical development of the lower extremities and no weakness on manual muscle testing. Dr. Gamber found normal active reflexes, no tenderness or muscle spasm, no localizing atrophy or deformity and normal sensation in the lower extremities, with the exception of an area on the posterolateral calf on the left. He noted that appellant localized her pain, right more than left, at the sacroiliac joint areas and noted in response to the Office's questions that, "with reference to the lower back, no current condition is identified other than the pain complaint." Dr. Gamber noted that there were no abnormalities on examination and no restrictions were identified in daily activities. With regard to residuals of the accepted employment injury, he found no abnormal or other findings that would confirm appellant's complaints. Dr. Gamber indicated that there were no recommendations for further medical treatment, that no work-related disability was identified, that there were no restrictions related to appellant's accepted injury or to preexisting conditions and that she could perform her date-of-injury job as a sewing machine operator.

In a March 25, 2002 Form CA-20, attending physician's report, Dr. Vereen noted his findings as pelvic imbalance, lumbar/thoracic spasm, decreased range of motion and multiple areas of tenderness to palpation and checked "yes" to the question of whether his findings were caused or aggravated by an employment activity. He continued to recommend that appellant work only three hours of light duty per day. On April 4, 2002 Dr. Vereen reported the same.

On April 12, 2002 the Office issued appellant a notice of proposed termination of compensation finding that the weight of the medical evidence of record established that she had no further disability for work due to her accepted employment injury or medical residuals requiring further medical treatment. The Office found that Dr. Gamber's report constituted the weight of the medical evidence because he was a Board-certified orthopedist, whereas Dr. Vereen was an osteopathic family practitioner and provided mostly form report without objective findings of continued disability.

Dr. Vereen provided another Form CA-20, attending physician's report, dated April 17, 2002 which noted the same as his previous form reports except that he checked "no" to the question of whether his findings were causally related to appellant's employment. On CA-20 form reports dated May 20 and 29, 2002 Dr. Vereen again checked "no" to the question of whether his findings were causally related to appellant's employment.

In a narrative report dated May 10, 2002, Dr. Vereen disagreed with Dr. Gamber's conclusions, arguing that he did note objective physical findings on appellant's body areas that were treated and that Dr. Gamber had a poor understanding of his notes and the techniques used

such as osteopathic manipulation therapy or diagnoses. He noted that twisting motions, particularly associated with reaching, aggravated appellant's pain and limited her activity. Dr. Vereen noted that prolonged sitting and standing also aggravated appellant's pain and that her pelvis was not level, but that her right hip was quite high. He continued that appellant's gait was not symmetrical due to pelvic imbalance, that her lumbar range of motion was not normal, with flexion decreased, that she had multiple areas of tenderness to palpation in the lumbar spine, pelvis, sacrum, hips, rib cage, abdomen and thoracic spine, and that these counterstrain diagnostic points were documented in his notes and were manifestations of abnormal neuromuscular activity in specific spinal segments. Dr. Vereen referred to appellant's area of decreased sensation in her posterolateral calf on the left, opined that it was bilateral and symptomatic of spinal nerve involvement, and opined that one needed to consider a herniated nucleus pulposus, lumbar spinal stenosis or pathology involving one or more major nerves in the lumbar spine. He opined that appellant continued to need part-time light duty and that her unresolved brachial plexopathy was contributing to thoracic and lumbar somatic dysfunction. Dr. Vereen insisted that his treatment notes and forms were more than just CA-20 forms and identified objective findings to support continued disability and he disagreed with the proposed termination of compensation and medical benefits.

By decision dated June 11, 2002, the Office finalized the proposed termination of compensation and medical benefits finding that Dr. Gamber's report continued to constitute the weight of the medical opinion evidence.

In a letter dated June 27, 2002, appellant requested reconsideration of the June 11, 2002 decision arguing that there was a conflict in medical evidence between Drs. Vereen and Gamber which required resolution. In support she submitted numerous medical treatment forms and notes from Dr. Vereen.

On multiple CA-10 forms, attending physician's reports, dating from June 11 through September 10, 2002 Dr. Vereen reported his objective findings upon examination and checked "no" to the question of whether the findings were caused or aggravated by an employment activity. As he negated any causal relationship between his physical findings and appellant's employment activities, these forms do not indicate any continuing employment-related disability.

Appellant also submitted a series of reports including handwritten progress notes, pain profiles, objective assessment and treatment sheets, typewritten diagnosis sheets and coded treatment forms dating from 2001 to the present. In handwritten progress notes regarding appellant's treatment, many of which are almost illegible, Dr. Vereen described appellant's presenting symptomatology and diagnoses. In these notes, he reported appellant's low back pain status and complaints and also her upper extremity symptomatology on examination. Dr. Vereen further provided appellant's pain profile sheets whereon she marked areas of pain and his physical assessment sheets on which listings of data review, diagnoses and treatment provided were circled. He also provided objective assessment sheets on which general presentation was identified by being circled and musculoskeletal findings were listed, such as "R[ight] hip quite high, r[ight] shoulder high, [and] l[eft] shoulder low." Dr. Vereen additionally noted range of motion increases or decreases by abbreviation without providing specific measurements. He provided typewritten assessment sheets listing appellant's diagnoses and his treatment plans. On these sheets Dr. Vereen noted the diagnosis "lumbar sprain/strain" but as explanation underneath

he wrote “possible stenosis and/or disc pathology [and] pain from right brachial plexopathy and associated neck, shoulder and thoracic pain continues to influence this injury.” Finally, he provided “strain/counterstrain” forms with circled abbreviations.

By decision dated October 4, 2002, the Office denied modification of the June 11, 2002 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office reviewed all of Dr. Vereen’s treatment records and determined that they were insufficient to overcome Dr. Gamber’s well-rationalized report as they only discussed appellant’s current subjective symptomatology and treatment given, mentioned multiple conditions not accepted as being employment related and lacked any assessment of ongoing disability due to her August 2, 2001 lumbar soft tissue muscular strain injury.

The Board finds that appellant has no disability for work or injury residuals that required further medical treatment on or after June 11, 2002, the date the Office terminated her wage-loss compensation and medical benefits.

Once the Office accepts a claim, it has the burden of justifying 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 Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁵ 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.⁶ The Office has met its burden of proof to terminate both compensation and medical benefits in this case based on the well-rationalized medical report of Dr. Gamber.

In this case, appellant’s treating physician, Dr. Vereen, provided multiple CA-20 attending physician’s form reports noting objective findings as pelvic imbalance, decreased lumbar range of motion, decreased thoracic range of motion, lumbar/thoracic spasm and tenderness to palpation: lumbar; pelvis; sacrum; and bilateral hips, but he did not explain how these findings were caused or related to appellant’s accepted lumbar soft tissue muscular strain injury. As these reports lacked any medical rationale discussing disability or explaining causal relation of these findings upon examination with appellant’s employment injury or factors of her employment, they are of reduced probative value and are insufficient to substantively support continued injury-related disability. In fact, on three recent CA-20 form reports Dr. Vereen indicated that the findings on examination were not causally related to employment activities. These reports, therefore, not only do not support continued injury-related disability, they

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

⁶ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

contradict his earlier CA-20 forms, attending physician's reports, and document the lack of any continued employment relation. In his narrative report, Dr. Vereen merely criticizes Dr. Gamber and his report rather than identifying continued employment-related disability due to lumbar soft tissue muscular strain or supporting the need for injury-related medical treatment. He discusses several nonaccepted, noninjury-related conditions and discourses on why they require further treatment, however, as these conditions have not been accepted by the Office as being injury related, their treatment is not compensable under the Federal Employees' Compensation Act. Therefore, Dr. Vereen's CA-20 forms, attending physician's reports, are inconsistent, which reduces their probative value, and his narrative report contradicts this recent CA-20 form reports and is insufficient in content to support continued injury-related disability or the need for continuing injury-related medical treatment.

However, Dr. Gamber discussed appellant's factual and medical history, performed a thorough and detailed physical examination and determined that appellant's low back and leg pain complaints had no objective basis. He noted that appellant tended to lean her trunk two cm to the left of the midline when standing but had a normal symmetrical gait, normal range of back motion, normal symmetrical development of the lower extremities, no weakness on manual muscle testing, normal active reflexes, no tenderness or muscle spasm, no localizing atrophy or deformity, and normal sensation in the lower extremities, with the exception of an area on the posterolateral calf on the left. Dr. Gamber noted that appellant localized her pain, right more than left, at the sacroiliac joint areas, and noted in response to the Office's questions that, "with reference to the lower back, no current condition is identified other than the pain complaint." He noted that there were no abnormalities on examination, that no restrictions were identified in daily activities, that there were no injury-related residuals and no abnormal or other findings that would confirm appellant's pain complaints. Dr. Gamber made no recommendations for further medical treatment, identified no work-related disability, found no work activity restrictions necessary related to appellant's accepted injury or to preexisting conditions and found that she could perform her date-of-injury job as a sewing machine operator. As his report was based upon a proper factual and medical background, was complete and well rationalized, based upon his negative physical examination results and was thorough in answering the Office's questions, the Board finds that it is entitled to great probative weight, and in the absence of other equally probative medical evidence supporting appellant's continued employment injury-related disability, it becomes the weight of the medical opinion evidence of record and established that appellant has no further disability for work or injury residuals requiring further medical treatment, causally related to her accepted lumbar soft tissue muscular sprain injury.

Dr. Vereen contradicts himself as to whether there is an employment relationship with his findings upon physical examination or not, and does not provide any rationalized medical opinion identifying objective evidence of continued injury-related disability⁷ or the need for continued medical treatment for objective residuals of the accepted condition of a lumbar soft tissue muscle strain injury.

⁷ Pelvic imbalance, a decreased thoracic range of motion, lumbar/thoracic spasm and tenderness to palpation of the lumbar, pelvis, sacrum and bilateral hips are not accepted employment-related conditions and have not been established as being causally related to the accepted lumbar soft tissue muscle strain injury.

As Dr. Gamber's report is based upon a proper factual and medical background and is sufficiently well rationalized, it constituted the weight of the medical opinion evidence of record and established that appellant had no further injury-related disability or the need for additional medical treatment. Therefore, the Office properly terminated appellant entitlement of wage-loss compensation and medical benefits.

With her request for reconsideration appellant argued that a conflict in the medical evidence existed between Drs. Vereen and Gamble, however, as discussed above, Dr. Vereen's reports were of diminished probative value such that they were not sufficiently probative to cause a conflict with the well-rationalized report of Dr. Gamber. Appellant further submitted Dr. Vereen's entire treatment record containing all of his interoffice form reports regarding her subjective symptomologic presentation and his treatment given. However, nowhere in this collection of reports does Dr. Vereen provide objective evidence of appellant's continued disability due to lumbar soft tissue muscle strain, nor does he provide any rationale or justification for continued medical treatment for lumbar strain. His reports diagnose multiple non-accepted conditions and reveal that his therapy was directed at treatment of those complaints, such that this treatment of appellant for those complaints is not compensable under the Act.⁸ As this medical evidence does not support continued disability for work due to lumbar muscle strain, or the need for medical treatment due to lumbar muscle strain, it does not support appellant's claim for continued benefits.

Further, Dr. Vereen submitted five CA-10 forms, attending physician's reports, dating from June 11 through September 10, 2002 on which he reported his objective findings upon examination and checked "no" to the question of whether the findings were caused or aggravated by an employment activity. As he negated any causal relationship between his physical findings and appellant's employment activities the five Office forms he submitted, these forms disprove any continuing employment-related disability.

⁸ 5 U.S.C. § 8101 *et seq.*

Accordingly, the decisions of the Office of Workers' Compensation Programs dated October 4 and June 11, 2002 are hereby affirmed.

Dated, Washington, DC
April 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member