

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY B. STOLZ and U.S. COURT OF APPEALS,
11TH CIRCUIT, Atlanta, GA

*Docket No. 03-1482; Submitted on the Record;
Issued August 25, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated compensation benefits for the accepted condition of lumbar strain with a radicular component; and (2) whether appellant developed a chronic pain syndrome as a consequence of her accepted employment injury.

On June 1, 1984 appellant, then a 46-year-old assistant circuit executive, sustained an injury at work while performing a furniture inventory involving bending, stooping, twisting and moving furniture. The Office accepted her claim for the condition of lumbar strain with a radicular component and paid compensation for temporary total disability on the periodic rolls.

On March 2, 1999 Dr. William H. Stuart, a Board-certified neurologist and appellant's attending physician, completed an attending physician's form report. He related the following history: "Injury at work: low back pain, chronic headaches began suddenly in 1984, pain unrelented despite treatment." Findings included bulging discs at L4-5 and L5-S1, significant disc disease at L1-2 and C5-6, and S1 denervation changes. He diagnosed chronic low back pain, intractable headaches and rheumatoid arthritis. With an affirmative mark, Dr. Stuart indicated that the conditions found were caused or aggravated by employment activity. He added: "Unable to work with above symptoms secondary to increased pain." Dr. Stuart indicated that appellant was permanently totally disabled.

The Office originally referred appellant to Dr. Dennis Michael Lacey, a Board-certified neurologist, for an opinion on whether appellant continued to have residuals of her work-related injury. Although he submitted a July 1, 1999 report, the Office subsequently determined further clarification was necessary; however, no request for a supplemental medical opinion was made.

On December 14, 1999 the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Harold H. Alexander, a Board-certified orthopedic surgeon, for an opinion on whether appellant continued to have residuals of the accepted condition, identified as lumbar strain.

In a report dated February 11, 2000, Dr. Alexander related appellant's history and medical treatment. Her present complaints included mostly low back pain with rare radiation into her left [sic] thigh and difficulty doing any bending, standing, squatting and lifting. He described findings on physical examination as follows:

“Physical examination reveals a well-developed, well-nourished, pleasant white female in no acute distress. She is an excellent historian, and very cooperative in the exam[ination]. She is able to walk on her heels and toes. SLR [straight leg raise] sitting is to 90 degrees without pain and she does have very slight atrophy of her left calf, compared to the right calf, which may be a result of her left ankle injury 33 years ago for which she had to wear a brace for a year. She has no sensory loss in the lower extremities, but does have limited motion in the ankle. Up to 90 degrees of dorsiflexion on the left compared to the right which can go up 10 [to] 20 degrees further. No obvious weakness. She has extreme low back tenderness on compression of the lumbosacral region, which seems to be partially alleviated when she tightens her muscles in the prone position with extension. Knee jerks are symmetrical and equal. Ankle jerks were not obtained. SLR in the supine position is to about 70 degrees with tight hamstrings and some back discomfort. Mobility is excellent. Mobility of her spine is limited by about 30 percent in flexion, extension and side-bending, with mild discomfort in the extreme ranges of motion. There is no difficulty getting on or off the table, lying down and getting up.”

Dr. Alexander offered the following opinion:

“I would agree that her condition was related to her injury in 1984 with the extensive bending, lifting, etc.... And this would be a lumbosacral strain. There was no clear cut evidence of radiculopathy and any of the studies that were done at that time are related according to my study of the chart. It is very difficult for me to explain how a lumbar strain that occurred 15 years ago could continue to give her difficulty at this time.

“The established diagnosis of the work-related injury is acute and chronic lumbosacral strain.”

* * *

“Her exam[ination] reveals significant pain on compression of the lumbosacral spine, which is alleviated by stretching the muscles voluntarily. This is compatible with degenerative disc disease, though x-rays show the discs to be well preserved with some facet changes. The entire picture is not incompatible with degenerative disc disease of the lumbosacral spine.

“This is a very common diagnosis in people in her age group. In fact it is almost universal. Whether these findings are residuals of a work-related injury, which would be highly unlikely, or simple changes related to age, it is difficult to establish, though more likely it is the latter.

“This is an extremely unusual case, in that everything we have done here in the office points to some degenerative disc disease, but no evidence of radiculopathy and studies have not substantiated this. It is very difficult to explain why she cannot perform her duties as an assistant circuit court executive. I would certainly think that physically she could do sedentary light duty without doing herself any harm. However, if she continues to maintain that she has pain, which of course [is] subjective. [sic] She seems extremely honest, and extremely sincere in her recounting of her history and her present problems. Functional capacity evaluation, which she has had in the past in the summer of 1999, and at that time she was thought to be capable of medium duty. I do not think this would be necessary to repeat. The patient has reached maximum medical improvement from her back injury. The exact date is difficult to say, since I have only seen her today and I have not been caring for her over the years.”

Dr. Alexander offered his recommendations and reported:

“In summary, I would feel that this patient sustained acute and chronic lumbosacral strain from her injury. It stretches the point to say that the back injury she had from her activities such as lifting, bending and twisting lasts this long. She has been well studied with evaluations in Atlanta and the Mayo Clinic and none of these have shown an operative lesion. Her x-rays show excellent preservation of the lower segments of her back and she has mild facets changes, which are quite consistent with her age.

“I would think that she would be capable of sedentary duty. However, in the presence of chronic pain such as she has had, I wonder whether she will be able to return to work since it has been so many years since she has worked and she has developed a feeling that she is unable to do much of anything. She appears to be a very intelligent, well motivated, honest individual.”

On February 28, 2000 the Office issued a notice of proposed termination of compensation on the grounds that her lumbar strain had ceased. In a decision dated March 30, 2000, the Office terminated appellant’s compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Alexander, established that her injury-related disability ceased no later than March 30, 2000.

Appellant requested a hearing before an Office hearing representative. She submitted an October 15, 1987 report from Dr. Stuart, who explained that appellant had made an accommodative adjustment to her pain and that there was no indication that her sciatic injury and pain were improved. He stated there was no change in her medical condition aside from her adjustment. Appellant also submitted a statement from her daughter.

After the hearing, which was held on September 25, 2000, appellant submitted a statement from her husband. She also submitted additional medical evidence. In an August 24, 2000 report, Dr. Stuart stated as follows:

“[Appellant] is here today to review her back problem, which I first evaluated in 1984 following a work-related injury. At that time, she had low back pain and right-sided sciatica with right S-1 distribution numbness, diminished ankle reflex and diminished pin sensation in the right S-1 distribution. Her work-up at that time disclosed a [computerized tomography] scan demonstrating bulging at the L4-5, L5-S1 level which has since resolved on follow-up MRI scans with only L1-2 level bulging present.

“Through the years that I have seen her for her headache, she has continued to describe symptomatic cervical pain as well as low back pain in her right leg and today, this is no different. She has chronic low back pain with stiffness, right-sided sciatic distribution discomfort and tingling and on examination, she demonstrates some of the stiffness in her back on bending at the waist and torsional movements of the low back, but there is no focal sensory or motor deficit, area of atrophy or weakness. The patient is basically as she has been throughout the years that I have seen her with symptomatic lumbar radiculopathy on the right side, in the S1 root distribution that is post work-related injury and without focal deficits. There is no reason for any surgery or additional diagnostic evaluation. Continued conservative symptomatic and low back exercise therapies are indicated. I will see her again on an as needed basis.”

In a decision dated January 23, 2001, but finalized on January 30, 2001, the hearing representative affirmed the termination of appellant’s compensation benefits, finding that Dr. Alexander’s opinion was sufficient to carry the weight of the medical evidence. The hearing representative discounted Dr. Stuart’s August 2000 report because he provided no new evidence, argument or findings that were not previously considered.

On January 28, 2002 appellant requested reconsideration. She argued, through her attorney, that the Office provided Dr. Alexander a statement of accepted facts that was deficient and that Dr. Alexander ignored appellant’s radiculopathy. Appellant submitted a July 10, 2001 report from Dr. Joseph N. Saba, a Board-certified neurologist. Dr. Saba related appellant’s history and medical treatment. He noted that her 1984 injury was her only significant injury: “There have been pulled muscles and sprains ‘like normal people,’ otherwise normal. Therefore her current condition is solely as a result of this injury in 1984.” After relating his findings on physical examination, Dr. Saba diagnosed chronic soft tissue injury to the low back, with a chronic lumbar syndrome; history of disc herniation at L1-2; doubt radiculopathy; and mild dorsal lumbar rotary idiopathic scoliosis. He also diagnosed chronic persistent pain secondary to the above. Dr. Saba noted that appellant had an observable pain behavior, which was appropriate and tended to confirm her other clinical findings. He described the concept of chronic pain and explained that pain can exist without tissue damage and can become a disease unto itself. It is not a symptom of an underlying injury but actually a destructive illness in its own right. Dr. Saba concluded that appellant was able to perform only a very light physical demand level of

work and activity. She was not a malingerer, he stated. He concluded that appellant was essentially disabled for work and would be permanently disabled.

In a January 24, 2002 report, Dr. Saba stated that he had reviewed Dr. Alexander's February 11, 2000 report. He stated that it was his opinion that appellant suffered from more than simply a lumbosacral strain: "Therefore, I disagree with Dr. Alexander that this is the correct diagnosis." He stated that appellant's problems had evolved into chronic pain syndrome, which was a natural progression of long-term struggles with a painful condition. Dr. Saba again stated that appellant was essentially disabled for work and would be permanently disabled:

"Although the patient is now 62 years of age, her disability is related to her injury as opposed to her age. Except for the problems noted above, [she] appears to be in excellent health and would be able to resume full work activities but for the residuals of the work-related injury which she suffered in 1984. If this indeed was a lumbar sacral strain which occurred 15 years ago, without any other components, it certainly would have resolved by this time. However, the objective testing performed which is supported and correlated by the physician's examination, confirms that [appellant's] condition cannot be accurately described as a strain or a sprain. I believe that the patient was and is well motivated to return to work and she is not a malingerer. In my examination, I did perform testing to determine if her pain complaints were exaggerated. In that regard, her Waddell signs were 1/5 confirming that she is not engaging in symptom magnification and is being honest with her complaints."

In a decision dated May 30, 2002, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office noted that appellant's attorney did not specify what information was lacking from the statement of accepted facts to render it deficient. The Office found that Dr. Saba's opinion was of diminished probative value because it was based on an incomplete medical record in that he reported that MRI scans, x-rays and other studies were not available. Dr. Saba also failed to explain how appellant's disability was related to the 1984 injury in light of his finding of idiopathic scoliosis. For these reasons, the Office found that Dr. Saba's opinion was insufficient to create a conflict with the opinion given by Dr. Alexander.

The Board finds that the Office met its burden of proof to justify the termination of appellant's compensation benefits for the accepted condition of lumbar strain with a radicular component.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

without establishing that the disability has ceased or that it is no longer related to the employment.²

In this case, the Office accepted appellant's claim for the condition of lumbosacral strain with a radicular component. It therefore bears the burden of proof to establish that she no longer suffers from this condition.

The Office based its decision to terminate benefits on the opinion provided by Dr. Alexander, a Board-certified orthopedic surgeon and second opinion physician, who reported on February 11, 2001 that appellant sustained a lumbosacral strain in 1984, but it was very difficult to explain how a lumbar strain that occurred 15 years earlier could continue to give her difficulty. He noted that it stretched the point to say that a back injury from lifting, bending and twisting lasted so long. Dr. Alexander stated that, although everything done in his office pointed to some degenerative disc disease, there was no evidence of radiculopathy and studies did not substantiate it. He indicated that none of appellant's studies showed an operative lesion, her x-rays showed excellent preservation of the lower segments of her back and she had mild facets changes that were consistent with her age. Dr. Alexander concluded that physically appellant could perform sedentary light duty, but she continued to maintain that she had pain, and he judged that she was extremely honest and sincere. In the presence of chronic pain, Dr. Alexander wondered whether appellant would be able to return to work since it had been so many years and she had developed a feeling that she was unable to do much of anything.

The Board finds that Dr. Alexander's opinion represents the weight of the medical evidence at the time the Office terminated benefits on March 30, 2000. The Office provided him the medical record and a statement of accepted facts so that he could base his opinion on an accurate history. He reported that appellant no longer suffered from the lumbar strain that occurred in 1984, and he reported no evidence of radiculopathy. Neither Dr. Stuart, appellant's attending neurologist, nor Dr. Lacey, the referral neurologist, diagnosed a lumbosacral strain in their 1999 reports. Both reported radiculopathy, but seven months later appellant showed no evidence of it when examined by Dr. Alexander.³ Under the circumstances, the Board finds that the weight of the medical opinion evidence on March 30, 2000 justified the termination of benefits for the accepted condition. The Board will affirm the Office's May 30, 2002 decision denying modification of that termination.

The Board also finds that further development of the medical evidence is warranted to determine whether appellant developed a chronic pain syndrome as a consequence of her accepted employment injury.

When the Office meets its burden of proof to justify the termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ Dr. Stuart examined appellant on August 24, 2000 and found stiffness but no focal sensory or motor deficit, area of atrophy or weakness.

related to an accepted employment injury.⁴ The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁵

In his March 2, 1999 and August 24, 2000 reports, Dr. Stuart diagnosed chronic low back pain and related that condition to appellant's employment. On July 1 and 28, 1999 Dr. Lacey diagnosed chronic back pain and related appellant's disability to her employment. Dr. Alexander reported on February 11, 2001 that appellant had developed chronic pain over the years and doubted whether she would be able to return to work. In his July 10, 2001 and February 11, 2002 reports, Dr. Saba, appellant's neurologist, described the nature of chronic pain and indicated that it was not a symptom of an underlying injury but actually a destructive illness in its own right and a natural progression of long-term struggles with a painful condition. He related appellant's disabling condition to the 1984 employment injury.

While the weight of the medical evidence supports that a lumbar strain in 1984 resolved before May 30, 2002, the record shows agreement between appellant's physicians and the Office referral physicians that appellant developed a disabling chronic pain syndrome as a consequence of her accepted employment injury. The Board finds that this evidence is sufficiently supportive of a causal relationship that further development of the issue is warranted.⁶ On remand the Office shall obtain a well-reasoned medical opinion, based on a proper factual and medical background, on whether appellant developed a disabling chronic pain syndrome as a result of her accepted employment injury. After such further development as may be necessary, the Office shall issue an appropriate final decision on this issue.

⁴ *Wallace McIntyre, Jr.*, Docket No. 93-781 (issued July 27, 1994); *Andrew Toth*, Docket No. 92-2054 (March 10, 1994).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ *See John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

The May 30, 2002 decision of the Office of Workers' Compensation Programs is affirmed. The case is remanded for further action consistent with this opinion.

Dated, Washington, DC
August 25, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member