

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL S. MADSEN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Omaha, NE

*Docket No. 02-1667; Submitted on the Record;
Issued January 8, 2003*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant had any disability on or after September 26, 2000, causally related to her June 17, 2000 employment injuries.

On June 22, 2000 appellant, then a 56-year-old nursing assistant, filed a claim alleging that on June 17, 2000 she ruptured a disc as she attempted to catch a falling patient.¹ She stopped work on June 20, 2000 due to her injury.

In support of her claim, appellant submitted several reports from Dr. Michael C.H. Longley, an orthopedic surgeon. Dr. Longley noted that appellant had been treated in January 1994, for complaints of back pain with radiation into the lower left extremity, that she had undergone discography but did not wish to proceed with surgery and that she returned to work following epidural injections without further difficulties until June 12, 2000 when she sustained another injury. He described the history of injury, noted her symptoms upon examination and indicated that a June 20, 2000 magnetic resonance imaging (MRI) scan demonstrated postoperative changes, a right L4 hemilaminectomy and a recurrence herniation at L4-5 with enhanced L5 perineural fibrosis. The remainder of the MRI scan revealed lumbar disc dessication but no herniation or spinal stenosis. No diagnosis relative to the June 12, 2000 incident was given. Appellant continued under treatment with Dr. Longley and received further epidural injections. Due to continuing complaints of lower extremity pain, a two level spinal fusion was recommended.²

Appellant also submitted earlier medical evidence dating from February 1, 1993 through September 25, 1995, which did not address the alleged June 17, 2000 incident.

¹ Appellant originally alleged that the incident occurred on June 10, 2000 but later changed the date to June 17, 2000.

² Appellant underwent a successful revision decompression surgery on September 26, 2000.

By decision dated October 5, 2000, the Office denied appellant's traumatic injury claim finding that she had not established fact of injury due to lack of relevant medical evidence. The Office also noted the discrepancy in the date of the alleged injury.

By letter dated and postmarked November 2, 2000, appellant disagreed with the Office's October 5, 2000 decision and requested an oral hearing before an Office hearing representative. She submitted further reports from Dr. Longley.

The Office received further medical evidence, including a September 25, 2000 report from Dr. John McClellan, an orthopedic surgeon, and Dr. Longley's associate, which stated that appellant presented for a preoperative consultation, that her back and right-sided pain was ongoing and that they were proceeding with an L4-S1 fusion. Surgery was performed without problems on September 26, 2000 and follow-up status reports were provided, but none of the reports discussed causal relation.

Also received was a June 19, 2000 report from Dr. Norman L. Grosbach, a Board-certified family practitioner, who noted that appellant continued to have hip pain and generalized tiredness. Dr. Grosbach opined that appellant's "hip pain" was consistent with pain radiating from the spine, noted that appellant had been diagnosed with Lupus in 1997, discussed his finding upon examination, but did not discuss causal relation of her present condition with her current employment.

An oral hearing was held on July 31, 2001, at which appellant testified, noting that she had two previous spinal surgeries in 1988 and 1990. She described the June 17, 2000 incident during which she and others attempted to restrict a patient and explained that, following work that date, she realized she had injured her back because she could not move due to pain. Appellant claimed that the following morning she contacted Dr. Grosbach who advised bed rest. Thereafter, she called in sick, completed an injury claim form and sought orthopedic treatment. Appellant indicated that her condition improved after Dr. Longley performed a two-level spinal fusion.

Appellant submitted two affidavits from coworkers discussing the incident where appellant was involved in subduing a patient on June 17, 2000. Also submitted was a July 16, 2001 report from Dr. Longley, who stated that appellant was injured on June 17, 2000, discussed his finding upon examination, summarized her treatment and opined that her low back and lower extremity pain was caused by the work-related injury of June 17, 2000.³ He further noted that appellant had preexisting L4-5 and L5-S1 disc degeneration, which was aggravated by this work injury. Treatment notes from Dr. Longley were submitted dating from 1993 to 1995 and a June 26, 2000 note discussed his findings upon examination, the results of the June 20, 2000 MRI scan and the June 12, 2000⁴ incident when appellant was noted to have back pain radiating into her left lower extremity after trying to help a combative patient from falling off a bed.

³ Dr. Longley actually stated June 17, 2001 but clearly meant June 17, 2000.

⁴ This date was also incorrect.

By decision dated September 20, 2001, the Office hearing representative set aside the Office's October 5, 2000 decision, finding that the evidence submitted was sufficient to require referral to a second opinion specialist.

By report dated November 1, 2001, Dr. Grosbach opined that "the office visit on June 19, 2000 [wa]s related to a workman's comp[ensation] injury at the [employment establishment] and her subsequent medical problems relating to her hip and her lumbar spine surgery are also related to that injury."

On January 9, 2002 the Office referred appellant together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Lonnie R. Mercier, a Board-certified orthopedic surgeon, for a second opinion examination.

By report dated February 28, 2002, Dr. Mercier reviewed appellant's factual and medical history, indicated that the results of his physical examination and opined that it appeared that the events of June 17, 2000, aggravated her low back condition. He noted that appellant's work-related diagnoses were a lumbar strain with aggravation of preexisting degenerative disc disease of the lumbar spine. He noted that objective findings following the injury consisted of diffuse tenderness in the lumbar spine area. Dr. Mercier found that appellant appeared to have some greater trochanteric bursitis of the left hip. He opined that the surgery performed in September 2000, which was for an anterior and posterior interbody fusion between L4 and S1, was "related to chronic disc degeneration rather than the single event of June of 2000, although that event appeared to have aggravated this preexisting low back condition." Dr. Mercier stated:

"With regards to the specific pathology, there was nothing pathologically noted either on x-ray or by clinical examination or in the way of an operative report that would suggest that the events of June 17, 2000 caused any measurable objective changes in either disc at L4-5 or L5-S1. [Appellant] was diagnosed as having disc degeneration at both of these levels as the primary cause of her pain and there is no suggestion that there was any acute measurable change that occurred as a result of this event. The only change that occurred as a result of this event was that somehow, this disc degeneration, presumably at both spaces, somehow was aggravated by this injury. With regards to the last question ... the underlying condition could eventually result in surgery with or without the work incident although that is speculation."

Dr. Mercier opined that, at that time, appellant had recovered from the affects of her June 17, 2000 work incident, that she was doing quite well at that time, that she was not taking any medication and that she experienced excellent pain relief with regard to her low back.

On March 11, 2002 the Office accepted that appellant sustained lumbar strain and temporary aggravation of degenerative disc disease and was disabled for the period June 17 through September 25, 2000.

By decision dated March 21, 2002, the Office rejected appellant's claim for compensation after September 25, 2000, finding that the weight of the medical evidence of record lay with the report of Dr. Mercier, who opined that appellant's September 26, 2000

surgery was “probably related to chronic disc degeneration rather than the single incident of June 17, 2000.”

The Office found that, since Dr. Mercier had opined that appellant had “recovered from the effects of the June 17, 2000 work event,” she had no entitlement to compensation beyond September 25, 2000.

The Board finds that appellant had no disability for work or injury residuals requiring further medical treatment on or after February 28, 2002, causally related to her June 17, 2000 employment injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁵ 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.⁶ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁷ 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.⁸

The Board finds that Dr. Mercier’s report is sufficiently well rationalized and probative, to constitute the weight of medical opinion.

Dr. Mercier reviewed appellant’s history of injury, performed a thorough physical examination and stated that appellant’s surgery on September 26, 2000 was “related to chronic disc degeneration rather than the single event of June of 2000, although that event appeared to have aggravated this preexisting low back condition.” He went on to say that the change that occurred as a result of this event was disc degeneration, presumably at both spaces, which was aggravated by this injury. This conclusion supports that surgery at these identified disc spaces was due, in part, to the employment-related aggravation of appellant’s degenerative disc condition. The report also establishes that there was a cessation of the temporary aggravation following surgery because she was recovered and doing well as of the February 28, 2002 examination by Dr. Mercier.

The Board has held that, to be highly probative, the opinion of a physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale.⁹ In this case, Dr. Mercier’s medical opinion meets such

⁵ *Harold S. McGough*, 36 ECAB 332 (1984).

⁶ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁷ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁸ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

⁹ *See Gloria J. McPherson*, 51 ECAB 441 (2000); *Bonnie Goodman*, 50 ECAB 139 (1998); *Bobby J. Parker*, 49 ECAB 260 (1997).

requirements and establishes that the aggravation of appellant's spinal condition ceased as of February 28, 2002. Appellant has submitted no further probative medical evidence that supports continuing injury-related disability. Therefore, the weight of the medical evidence of record supports that appellant's employment-related conditions resolved as of February 28, 2002.

Consequently, the weight of the medical opinion evidence of record establishes that appellant had no disability for work or injury residuals requiring further medical treatment on or after February 28, 2002, causally related to her June 17, 2000 employment injuries.

Accordingly, March 21 and 11, 2002 and September 20, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed, as modified.

Dated, Washington, DC
January 8, 2003

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member