U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STACEY L. ROWAN and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

Docket No. 03-564; Submitted on the Record;
Issued July 11, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective January 23, 2001 on the grounds that she had no further disability due to her July 15, 1998 employment injury; and (2) whether the Office properly terminated authorization for medical treatment.

The Office accepted that appellant, then a 23-year-old letter carrier, sustained acute cervical, thoracic and lumbosacral sprain as a result of a motor vehicle accident on July 15, 1998. Dr. Edward N. Feldman, an orthopedic surgeon and appellant's attending physician, released her to return to limited-duty employment for six hours per day on November 10, 1999. Appellant returned to limited duty for six hours per day.

On December 20, 2000 the Office informed appellant that it proposed to terminate her compensation benefits on the grounds that her employment-related disability had ceased. In a decision dated January 23, 2001, the Office finalized its termination of appellant's compensation. Appellant requested a hearing, which was held on June 19, 2002. By decision dated September 23, 2002, the hearing representative affirmed the Office's January 23, 2001 decision.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits on the grounds that she had no further disability due to her July 15, 1998 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the

employment.[1] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[2]

In a report dated January 28, 1999, Dr. Robert Martinez, a Board-certified neurologist and appellant's attending physician, discussed her history of a July 15, 1998 motor vehicle accident. He diagnosed "[c]hronic severe cervical, thoracic, and lumbosacral strain with palpable fibromyositis." Dr. Martinez stated:

> "In my opinion, [appellant] has suffered a permanent injury from the accident [of] July 15, 1998. She will have symptoms indefinitely. She has to learn to live with her symptoms, adjust her lifestyle accordingly, [and] periodically will require palliative physical therapy, medications and exercises.
>
> "She is permanently restricted from doing any heavy lifting, bending, straining, lifting greater than 20 pounds from a bent position, 10 pounds repetitively, keeping the neck or back bent in a fixed position for greater than 30 minutes without being able to move it or working in a cold, confined environment.
>
> "My opinion that this is a permanent injury is based on her prolonged clinical complaints and positive findings of muscle spasm."

In a progress note dated March 9, 1999, Dr. Feldman discussed appellant's subjective complaints of pain and diagnosed chronic cervical, thoracic and lumbosacral sprain, cervical and lumbar radiculopathy and the "straightening of the normal cervical lordotic curve." Dr. Feldman opined that appellant's "objective findings and subjective complaints are causally related to the accident of July 15, 1998 and are permanent." He opined that appellant would have "permanent restrictions." In form reports dated November 2, 1999 through August 8, 2000, Dr. Feldman found that appellant could work for six hours per day with restrictions. In a form report dated October 23, 2000, Dr. Feldman found that appellant could resume full-time employment on May 11, 2000 with permanent restrictions on sitting, walking, climbing and standing for no more than 2 hours per day, no twisting, pushing, pulling, squatting, kneeing and no lifting more than 5 to 10 pounds.

By letter dated November 22, 2000, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Michael D. Slomka, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated December 11, 2000, Dr. Slomka discussed appellant's history of a July 15, 1998 motor vehicle accident and listed findings on examination. Dr. Slomka stated:

> "At this time I feel that [appellant] has sustained a musculoligamentous strain which has since resolved. Objectively she has a slight reversal of the cervical curve and it is impossible to state whether that was present prior to her accident of 1998.

[1] *David W. Green*, 43 ECAB 883 (1992).

[2] *See Del K. Rykert*, 40 ECAB 284 (1988).

> "At this stage I believe that the only objective findings is the reversal of the cervical curve and that this, in and of itself, is not sufficient from preventing her from returning to her normal work activities.
>
> "At this point I feel that she has no findings which would prevent her from returning to full, unrestricted activities as a letter carrier, and that she could be returned to her regular duty as of the time of this examination."

The Board finds that there is a conflict in the medical evidence between appellant's treating physicians, Drs. Martinez and Feldman, and the Office referral physician, Dr. Slomka, on the issue of whether appellant had continuing disability from employment after January 23, 2001 due to her July 15, 1998 employment injury.[3] As an unresolved conflict in the evidence exists, the Board finds that the Office did not meet its burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated September 23, 2002 is reversed.

Dated, Washington, DC
July 11, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[3] Section 8123(a) provides that, when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict; *see also Robert W. Blaine*, 42 ECAB 474 (1991).