

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ALICE L. GARCIA and U.S. POSTAL SERVICE,  
POST OFFICE, Tuscon, AZ

*Docket No. 03-837; Submitted on the Record;  
Issued July 7, 2003*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

On October 7, 1998 appellant, then a 43-year-old rural carrier associate, filed a traumatic injury claim alleging that on August 21, 1985 she injured her back while reaching for mail.<sup>1</sup> The Office accepted chronic lumbar strain with sciatica. Appellant was disabled August 24, 1992 to May 30, 1993. She filed a recurrence claim on October 13, 1994 which was accepted for chronic lumbar strain with sciatica.

On October 13, 1994 appellant filed an occupational disease claim alleging that she injured her back due to her employment duties of reaching, delivering and lifting mail.<sup>2</sup> The Office accepted the claim for chronic lumbar strain with sciatica. Appellant stopped work on June 27, 1994, continued off work until April 1, 1995 when she returned to a light-duty position working six hours per day. Appellant, however, on July 12, 1995 reduced her hours to working four hours per day. On April 24, 1997 appellant retired from the employing establishment.

In a January 28, 2000 report, Dr. Boris Stojic, a second opinion Board-certified orthopedic surgeon, concluded that appellant was capable of working eight hours per day with restrictions. The restrictions included no frequent stooping or bending, lifting up to 25 pounds and no frequent lifting of more than 10 pounds.

On March 15, 2000 the employing establishment offered appellant a limited-duty position of general clerk (modified) based upon the restrictions noted by Dr. Stojic.

---

<sup>1</sup> This was assigned claim number 13-778866.

<sup>2</sup> This was assigned claim number 13-1050878.

On May 9, 2000 the Office medical adviser reviewed Dr. Stojic's report and the limited-duty job offer. He determined that the job offer complied with the restrictions noted by Dr. Stojic, but recommended easing appellant into working eight hours by gradually increasing her hours from four to eight.

The Office advised appellant by a May 11, 2000 letter that the offered position was determined to be suitable work. Appellant was given 30 days either to accept the offered position, or offer reasons as to why the offered position was not suitable for her. The Office advised appellant of the penalty provision for refusing suitable work under section 8106(c)(2) of the Federal Employees' Compensation Act.

In a May 21, 2000 report, Dr. Gerald B. Roth, appellant's attending osteopathic physician, reviewed the limited-duty job offer and concluded that appellant could not perform the duties noted.

In a May 24, 2000 functional capacity evaluation, Dr. Scott Krasner, a Board-certified occupational medicine physician, diagnosed degenerative osteoarthritis and sciatica/chronic sacroiliitis due to a 1985 employment injury by history. He concluded that appellant was capable of working with restrictions on lifting, no use of her hands or upper extremities above shoulder level, no fine manipulation, no standing for more than 30 minutes at one time, no walking over two blocks and occasional bending, kneeling and crouching.

On August 17, 2000 the Office referred appellant to Dr. Culley K. Christensen, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Roth, appellant's attending physician and Dr. Stojic, a second opinion physician, on the issue of whether appellant is capable of performing light-duty work eight hours per day.

In a September 7, 2000 report, Dr. Christensen, based upon a review of the medical records, statement of accepted facts and physical examination, diagnosed depression, somatization, lumbar strain due to a 1985 employment injury by history, erosive degenerative arthritis involving the interphalangeal joints, obesity and mild degenerative arthritis of the lumbar spine.<sup>3</sup> Dr. Christensen, in response to questions posed by the Office, opined that appellant did not have any residuals due to her accepted 1985 employment injury. In support of this opinion, he noted that the accepted conditions of lumbar strain with sciatica would have resolved within a period of months. He also noted "there is no documentation of any underlying pathologic process, nor has there been any objective documentation of radiculopathy or ongoing organic pathology, which accounts for or can corroborate [appellant's] subjective complaints. [Appellant] has had an adequate workup to disclose any underlying pathological processes; however, none have been found." Lastly, he stated that appellant is capable of working eight hours per day with restrictions.

On October 15, 2001 the Office issued a notice of proposed termination of compensation on the basis that appellant no longer had any residuals from her accepted low back strain.

---

<sup>3</sup> The physician noted that appellant had retired in 1997 although the statement of accepted facts indicated that she was working four hours per day.

By decision dated November 15, 2001, the Office finalized the termination of appellant's benefits, which was effective that same date.

Appellant's counsel requested reconsideration on October 11, 2002 and submitted evidence and argument in support of her request.

In a January 28, 2002 report, Dr. Roth reiterated his opinion that appellant continued to have residuals from her accepted employment injury. He also opined that her employment duties and injuries had aggravated her arthritis.

In a September 5, 2002 report, Dr. Jeri B. Hassman, a Board-certified physiatrist, diagnosed "Status post acute traumatic lumbodorsal musculotendinous strain, resolved. Chronic right sacroiliac joint inflammation and dysfunction. Chronic right myofascial pain syndrome involving right piriformis muscles, right gluteus muscles and inflammation of tissues surrounding right sacroiliac joint." Dr. Hassman opined:

"The acute condition [traumatic lumbodorsal musculotendinous strain] eventually resolved, but because of the continued and persistent irritation of the sciatic nerve and its surrounding muscles, because she continued to work, she developed secondary problems, which have because (sic) chronic and permanent. The permanent sequellae of her original injury are: Chronic right sacroiliac joint inflammation and dysfunction, chronic right sciatic nerve inflammation and chronic myofascial pain syndrome involving right piriformis muscles, right gluteus muscles and inflammation of tissues surround right sacroiliac joint."

In concluding, Dr. Hassman opined that appellant was totally disabled from her date-of-injury job as she could not handle the physical demands thereof. He stated that appellant could do sedentary work given the above conditions, but due to the nonemployment-related osteoarthritis in her hands, appellant is unable to perform sedentary work.

By merit decision dated January 10, 2003, the Office denied appellant's request for reconsideration. The Office accorded determinative weight to the opinion of the impartial medical specialist, Dr. Christensen. It also found that Dr. Hassman's opinion was insufficient to establish a conflict with Dr. Christensen, as given the type of injury, he did not have the same qualifications as Dr. Christensen.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits by establishing that the accepted disability has ceased or that it is no longer related to the employment.<sup>4</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and

---

<sup>4</sup> *Daniel F. O'Donnell, Jr.*, 54 ECAB \_\_\_\_ (Docket No. 02-1468, issued February 28, 2003); *Betty M. Regan*, 49 ECAB 496 (1998).

medical background.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>6</sup>

In this case, the Office based its decision to terminate appellant's compensation on the September 7, 2000 report of Dr. Christensen the independent medical examiner. He stated that, although appellant did not have any residuals due to her accepted 1985 employment injury, that her lumbar strain with sciatica would have resolved within a period of months and "there is no documentation of any underlying pathologic process" or objective evidence of ongoing organic pathology or radiculopathy to "which accounts for or can corroborate [appellant's] subjective complaints." In concluding, he opined appellant was capable of working eight hours per day with restrictions. The Office relied on his opinion in its November 15, 2001 termination decision, finding that all residual disability stemming from her accepted lumbar strain with sciatica had ceased and that appellant currently suffered from no condition or disability causally related to her accepted 1985 employment injury.

The Board finds that the Office met its burden of proof in terminating appellant's compensation based on the opinion of the impartial medical specialist, Dr. Christensen, who found that appellant had no continuing disability or medical condition causally related to her accepted employment injuries. The physician concluded, based upon a review of the medical evidence, a physical examination, a copy of the limited-duty position and statement of accepted facts, that she no longer had any residuals due to her accepted 1985 employment injury. He also opined that appellant's subjective complaints were not supported by the objective evidence of record. Dr. Christensen provided a thorough and well-rationalized report based upon an accurate and complete factual background and the Office met its burden of proof based on this report.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.<sup>2</sup>

After the Office's November 15, 2001 decision terminating appellant's compensation, appellant submitted additional medical evidence. Given that the Board has found that the Office properly relied on the opinion of Dr. Christensen in terminating appellant's compensation effective November 15, 2001, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that appellant had residuals of her August 21, 1985 employment injury after November 15, 2001.

Following the termination of compensation benefits, appellant submitted an additional report from Dr. Roth and a September 5, 2002 report by Dr. Hassman. Dr. Roth's report

---

<sup>5</sup> *Raymond C. Beyer*, 50 ECAB 164 (1998).

<sup>6</sup> *Bernadine P. Taylor*, 54 ECAB \_\_\_\_ (Docket No. 02-263, issued January 15, 2003).

reiterated his belief that appellant continued to have residuals from her employment injury and was totally disabled from her accepted employment injury. An additional report from appellant's physician that essentially repeats his earlier findings and conclusions is insufficient to overcome the special weight accorded to the impartial medical examiner's report, where appellant's physician has been on one side of the conflict in the medical opinion that the impartial medical examiner resolved.<sup>7</sup> The additional report from Dr. Roth was repetitive of his earlier reports and unrationalized and was, therefore, insufficient not only to overcome the special weight accorded to Dr. Christensen's report, but also to create a new conflict.

In her September 5, 2002 report, Dr. Hassman concluded that appellant had recovered from her accepted injury. Dr. Hassman, however, opined that appellant's working aggravated her sciatic nerve which resulted in permanent and chronic problems including chronic myofascial syndrome, chronic right sacroiliac joint inflammation and dysfunction, and chronic right sciatic nerve inflammation. In concluding, Dr. Hassman opined that appellant was totally disabled due to her osteoarthritis in her hands, which the physician noted was unrelated to her accepted employment injury. Dr. Hassman does not offer any explanation or objective evidence in support of her conclusion that, while appellant recovered from her original injury, her working aggravated her sciatic nerve which resulted in a permanent and chronic injury. Her opinion is unrationalized and is also insufficient to overcome the weight accorded to Dr. Christensen.<sup>8</sup> The medical evidence therefore establishes that appellant's disability causally related to her accepted lumbar strain with sciatica had ceased and that the Office properly terminated her compensation effective November 15, 2001.

The January 10, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 7, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>7</sup> *Thomas Bauer*, 46 ECAB 257 (1994); *Virginia Davis-Banks*, 44 ECAB 389 (1993).

<sup>8</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Mary J. Briggs*, 37 ECAB 578 (1986).