

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH A. VINING and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, North Reading, MA

*Docket No. 03-2028; Submitted on the Record;
Issued April 29, 2004*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant no longer had any continuing residuals causally related to her December 1, 1999 employment injury.

This case has previously been on appeal before the Board. In a November 15, 2002 decision, the Board reversed the Office's June 28, 2001 decision terminating appellant's compensation and April 10, 2002 decision denying modification of the June 28, 2001 decision.¹ The Board found a conflict in the medical opinion evidence between Dr. Mordechai Kamel, an Office referral physician, who opined in his April 18, 2001 report that appellant's employment-related back condition had ceased and Dr. Joel A. Saperstein, appellant's treating physician, who opined in his June 18, 2001 report that appellant had an employment-related back condition that rendered her partially disabled. The Board stated that the Office should have referred the case record and a statement of accepted facts to a Board-certified specialist for resolution of the issue of whether appellant had any continuing disability due to her December 1, 1999 employment injury. The facts of the case are set forth in this decision.²

On December 29, 2002 the Director of the Office filed a petition for reconsideration on the grounds that the Board's November 15, 2002 decision contained a mixed error of fact and law. The Director argued that by finding a conflict in the medical opinion evidence, the Board erroneously determined that Dr. Saperstein's June 18, 2001 report, upon which the Board found sufficient to create the conflict, was in the record at the time of the Office's June 28, 2001 decision terminating appellant's compensation benefits. The Director contended that the well rationalized medical evidence of record at the time of the termination decision found that appellant did not suffer from any residuals of her employment-related injury and that the Office

¹ The Board notes that the November 15, 2002 decision is not in the record.

² Docket No. 02-1747 (issued November 15, 2002).

met its burden of proof in terminating her compensation. The Director further contended that the subsequent submission of Dr. Saperstein's report did not require a reinstatement of benefits for the period following June 28, 2001 unless an impartial medical examination, which was not challenged on reconsideration, determined that appellant had continuing disability after that date causally related to her accepted employment injury.

In a December 16, 2002 answer, appellant's attorney contended that the record contained multiple reports of Dr. Saperstein prior to the Office's receipt of Dr. Kamel's April 18, 2001 report, that the Office never requested an opinion from Dr. Saperstein in accordance with its procedures and the Office failed to acknowledge or grant appellant's request for an extension to submit an additional report from Dr. Saperstein.

By order dated February 12, 2003, the Board granted the Director's petition and affirmed the Office's June 28, 2001 and April 10, 2002 decisions in part as it found that the Office properly terminated appellant's compensation effective June 28, 2001. The Board, however, set aside the Office's April 10, 2002 decision and remanded the case to the Office for resolution of the conflict of medical opinion created by Dr. Saperstein's June 18, 2001 report to be followed by an appropriate decision. The Board stated that since Dr. Saperstein's report was submitted after the Office properly terminated appellant's compensation, the Office was not required to reinstate compensation pending resolution of the conflict in the medical opinion evidence between Drs. Kamel and Saperstein.³

On remand, the Office referred appellant to Dr. William C. Walsh, a Board-certified orthopedic surgeon, for an impartial medical examination by letter dated May 16, 2003. The Office requested that Dr. Walsh provide, among other things, a reasoned medical opinion as to whether appellant's current condition/disability was causally related to the December 1, 1999 employment injury.

Dr. Walsh submitted a June 3, 2003 report indicating that he reviewed appellant's medical records and the Office's statement of accepted facts. He noted appellant's medical treatment and complaints of right low back, buttock, thigh and right shin pain, and discomfort about the hip and some numbness into the right foot. He provided his findings on physical examination and diagnosed status post lumbar strain and aggravation of preexisting lumbar degenerative disc disease that had resolved and was at a medical end point. Dr. Walsh opined that there was no objective evidence of continuing impairment as a result of appellant's accepted injury. He also opined that, based on the physical examination and natural history of appellant's condition, she was capable of returning to her current duties as a manual clerk 8 hours a day, 40 hours a week. He stated that there were no work limitations due to appellant's work-related condition, however, in view of her underlying preexisting degenerative disease of the lumbar spine, she should refrain from repeated periods of bending and heavy lifting greater than 25 pounds. Dr. Walsh concluded that appellant was at a medical end point and that further active treatment related to her accepted work injury was not in order although she may need follow-up for possible evolving degenerative disc disease of the right hip and her preexisting degenerative

³ *Order Granting Petition for Recon.*, Docket No. 02-1747 (issued February 12, 2003).

disease of the lumbar spine. In an accompanying work capacity evaluation of the same date, Dr. Walsh reiterated that appellant could work with physical restrictions.

In a July 23, 2003 decision, the Office found that appellant was not entitled to continuing compensation benefits.

The Board finds that this case is not in posture for decision.

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that he has a disability causally related to his accepted employment injury.⁴ To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such causal relationship.⁵ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

In this case, the Office relied on the impartial medical opinion of Dr. Walsh in finding that appellant no longer had any residuals of her December 1, 1999 employment injury. In his June 3, 2003 report, Dr. Walsh diagnosed status post lumbar strain and aggravation of preexisting lumbar degenerative disc disease that had resolved and was at a medical end point. He opined that there was no objective evidence of continuing impairment as a result of appellant's accepted injury and that she was capable of returning to her current duties as a manual clerk on a full-time basis with certain restrictions based on his physical examination and the natural history of her condition. Dr. Walsh stated that appellant was at a medical end point and that further active treatment related to her accepted work injury was not in order although she may need follow-up for possible evolving degenerative disc disease of the right hip and her preexisting degenerative disease of the lumbar spine.

However, Dr. Walsh did not specifically address the issue of whether appellant had any residuals or disability due to her employment injury subsequent to June 28, 2001, the date the

⁴ *George Servetas*, 43 ECAB 424, 430 (1992).

⁵ *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

⁶ *See Carolyn F. Allen*, 47 ECAB 240, 245 (1995); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

Office terminated her compensation. Further, he did not express his disagreement with Dr. Saperstein's opinion that appellant had an employment-related back condition that rendered her partially disabled. Moreover, the Office did not request that Dr. Walsh specifically address whether appellant had any employment-related residuals or disability subsequent to June 28, 2001. The Office should have sought clarification from Dr. Walsh on this issue.

In a situation where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report. Unless the above-mentioned procedure is carried out by the Office, the intent of section 8123(a)⁸ of the Federal Employees' Compensation Act will be circumvented when the impartial specialist's medical report is not sufficient to resolve the conflict of medical evidence.⁹

This case will be remanded to the Office. On remand, the Office should request that Dr. Walsh submit a supplemental report indicating whether appellant had any continuing residuals or disability due to her December 1, 1999 employment injury after June 28, 2001. Following such further development as the Office deems appropriate, it should then issue a *de novo* decision.

The July 23, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, D.C.
April 29, 2004

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ 5 U.S.C. § 8123(a).

⁹ *Lon C. Dunn*, 32 ECAB 323 (1980).