

FACTUAL HISTORY

On January 3, 2003 appellant, then a 38-year-old transportation security screener, filed a notice of traumatic injury alleging she hurt her back on December 14, 2002 while lifting a bag in the performance of duty. Appellant stopped work on December 17, 2002 and was taken by ambulance to a Summerlin hospital, where she was diagnosed with a lumbosacral strain. Appellant came under the care of Dr. Thomas Roben, an osteopath, who prescribed a course of physical therapy and then released her to restricted duty for four hours per day beginning December 21, 2002. The Office accepted the claim for a lumbosacral strain. Appellant received appropriate disability compensation and she returned to light duty on March 30, 2003.

The record shows that appellant received treatment from Dr. Thomas Dunn, a Board-certified orthopedic surgeon, who obtained a magnetic resonance imaging (MRI) scan of the lumbar spine on February 18, 2003 showing that appellant had degenerative disc disease at L3-4 with no significant disc herniation or stenosis. Dr. Dunn maintained that appellant should perform light duty. In a report dated April 9, 2003, Dr. Dunn opined that appellant should only work four hours per day since she was experiencing increased back pain complicated by her work duties. The employing establishment initially reduced appellant's work hours in accordance with Dr. Dunn's recommendation but then terminated her job on May 20, 2003. Appellant was placed on the daily roll and received compensation based on four hours of wage loss beginning May 21, 2003.

On April 18, 2003 the Office referred appellant, along with a statement of accepted facts and a copy of the medical record, to Dr. Jerold M. Sherman, a Board-certified orthopedic surgeon, who examined appellant on May 15, 2003. In a report dated May 16, 2003, Dr. Sherman noted that appellant's chief complaint was low back pain. He discussed appellant's work injury and reported physical findings. Dr. Sherman specifically noted that appellant had normal range of motion of the lumbar spine with up to 90 degrees of flexion when she was distracted and that there was no evidence of muscle spasm. He opined that appellant's work-related lumbar sprain had resolved and that she could return to work without restrictions. Dr. Sherman further stated that, while appellant's MRI scan findings showed degenerative disc disease at L3-4, he considered that condition to have preexisted her work injury. He also opined that the lumbar strain did not cause any aggravation of the underlying degenerative back condition.

On June 16, 2003 the Office authorized a request from appellant to change her treating physician from Dr. Dunn to Dr. Mark O. Reed, a Board-certified physiatrist.² In a report dated August 14, 2003, Dr. Reed indicated that appellant was last seen on July 28, 2003. He described that appellant's complaints of back pain appeared to be exaggerated given the objective test results, namely the MRI scan report of February 18, 2003 which showed no evidence of disc herniations and only minimal degenerative changes. Dr. Reed noted that appellant's work injury had been only a minor lifting back strain. He opined that, after the 20 sessions of physical therapy, appellant's work injury should have resolved. He stated that he saw no reason why appellant should not be considered medically stable, and opined that she could return to full duty.

² On May 28, 2003 Dr. Dunn advised that appellant should transfer her care to a physiatrist.

He recommended only that she follow a home exercise program to strengthen her back and use nonprescription pain medication as necessary to relieve any back symptoms. Dr. Reed commented at the end of his report that appellant was argumentative with him and did not appear to want to return to work.

On September 24, 2003 the Office issued a notice of proposed termination of compensation, finding that the medical evidence established that appellant was no longer disabled and that she had no continuing residuals due to her December 14, 2002 work injury. Appellant was given 30 days to submit additional evidence or argument if she disagreed with the proposed action.

In an October 6, 2003 letter, appellant challenged the proposed termination of her compensation, arguing that both Drs. Reed and Dunn had told her she had a herniated disc and needed continued medical treatment. She argued Dr. Sherman had performed only a cursory examination and was unable to offer a “correct or professional diagnosis” of her condition. Appellant also submitted a copy of a September 22, 2003 progress note from Dr. Ascar Egtegar, a Board-certified orthopedic surgeon, who reported that appellant demonstrated slightly limited range of motion but no evidence of muscle spasm or tenderness in the lumbosacral area. He noted that he had reviewed the MRI scan findings and found no evidence of a disc herniation. Dr. Egtegar related appellant’s description of improvement in her pain symptoms following an epidural injection and opined that she should check with her family physician in order to obtain further injections. He did not discuss whether or not appellant was capable of working.

In a decision dated October 30, 2003, the Office terminated appellant’s compensation and medical benefits effective October 30, 2003. The Office determined that the medical evidence established that appellant was no longer disabled for work, and that she had no further residuals causally related to the December 14, 2002 work injury.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ 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.⁶

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

ANALYSIS

In this case, the Office accepted that appellant sustained a lumbar strain on December 14, 2002; therefore, the Office had the burden to justify termination of appellant's compensation. In order to ascertain the nature and extent of appellant's continuing disability and work-related back condition, the Office had appellant examined by Dr. Sherman on May 15, 2003. The Board has carefully reviewed Dr. Sherman's opinion and finds it to be reasoned and supported a correct factual and medical background. The Board rejects appellant's contention that Dr. Sherman performed only a cursory examination since the physician listed physical findings and discussed the objective evidence of record in rendering his opinion. In his May 16, 2003 report, he stated that appellant's work-related lumbar sprain had completely resolved. Dr. Sherman noted that while appellant had degenerative disc changes at L3-4, that degenerative back condition was not causally related to her work injury and had not been aggravated by the lifting incident. He confirmed that appellant had no residuals or disability due to the work injury. Because Dr. Dunn's opinion is sufficiently rationalized it constitutes the weight of the medical evidence.

More importantly, however, Dr. Sherman's opinion is corroborated by the statements of appellant's treating physician, Dr. Reed, who stated that appellant's minor lifting back strain should have resolved following her 20 sessions of physical therapy. He stated in his August 14, 2003 report that he considered appellant to be medically stable despite her subjective complaints of continuing back pain. Thus, based on the reports of Drs. Sherman and Reed, the Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

Furthermore, the September 22, 2003 progress note from Dr. Egtegar does not alter the Board's conclusion that appellant had no residuals and was not disabled for work when the Office decided to terminate her compensation. Dr. Egtegar stated on September 22, 2003 that appellant continued to complain of pain without any explanation as to the source of that pain. He noted that appellant had a degenerative disc at L3-4 but he did not attribute that condition to her work injury. Dr. Egtegar also did not offer an opinion that appellant had continuing residuals due to her accepted lumbar strain. Consequently, the Board concludes that the weight of the evidence resides with the rationalized opinions of Drs. Sherman and Reed, and establish that appellant was no longer disabled for work and that her work-related lumbar strain had resolved when the Office terminated her compensation.

CONCLUSION

The Board finds that the Office properly terminated appellant's disability compensation and medical benefits on the grounds that she was no longer disabled and had no further residuals due to her December 14, 2002 work injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 30, 2003 is affirmed.

Issued: April 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member