

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**ELAINE M. GIBBS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grand Rapids, MI, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 04-1600  
Issued: December 28, 2004**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On June 7, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated May 17, 2004, which terminated compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective May 15, 2003.

**FACTUAL HISTORY**

On February 22, 2000 appellant, then a 46-year-old materials handler, filed a traumatic injury claim, alleging that she injured her back during the performance of her work duties. She stopped work the same day. On several occasions, appellant returned to light-duty work with restrictions, but after working for a short period, Dr. Joseph Cook, an attending family

practitioner, took her off work. The Office accepted that appellant sustained an employment-related lumbar strain and paid appropriate benefits. Appellant is not currently working.

In July 2001 the Office referred appellant to Dr. Bruce D. Abrams, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a July 24, 2001 report, Dr. Abrams noted that appellant had been evaluated by Dr. Cook at the pain clinic at Munson Hospital, and had a consultation with a neurosurgeon, who had determined, after a computerized tomography (CT) myelogram, that surgery would not relieve her complaints. Dr. Abrams advised that appellant's diagnostic studies showed diffuse degenerative disease, lumbar stenosis at L3-4, and diffuse facet degenerative disease, and a possible disc at L2-3 on the left side, with no right-sided lesions. X-rays revealed a preexisting degenerative condition but there were no objective findings on examination to substantiate her subjective low back complaints. Dr. Abrams opined that appellant could return to work in an unrestricted capacity as it related to the work injury of February 22, 2000 and that no further treatment was necessary. Restrictions were recommended as a prophylactic measure for her preexisting degenerative disc disease, stenosis and obesity.

In a letter dated September 20, 2001, the Office requested that Dr. Cook review Dr. Abrams report and provide comments. In an October 11, 2001 report, Dr. Cook stated that appellant reported continued significant pain that was only partially controlled by her current narcotic medication regimen. He noted his examination results and provided an impression of chronic low back pain, secondary to the February 22, 2000 work injury. Dr. Cook advised that he disagreed that appellant was able to work in an "unrestricted capacity," as her current disability would make it unsafe for her to return to her previous occupation. He recommended that she be enrolled in a formal work hardening program and, if such program was successful, for her to gradually increase her hours to full-time employment, as tolerated. Dr. Cook further placed restrictions on her activity.

The Office found that a conflict in medical evidence was created between the opinions of Dr. Abrams and Dr. Cook regarding whether appellant had any residuals which precluded her from returning to gainful employment or her regular position as a materials handler. On July 16, 2002 the Office referred her to Dr. Thomas Rumney, a Board-certified orthopedic surgeon, for an impartial medical evaluation. The Office provided Dr. Rumney with the medical records of file and a statement of accepted facts.

In an August 20, 2002 report, Dr. Rumney reviewed the medical record and performed a physical examination of appellant. He noted that the March 2000 x-rays showed evidence of some posterior lipping of the vertebral bodies in most of the lumbar segments and that L5-S1 was similarly involved. Dr. Rumney noted that there was some evidence of degenerative change in her facet joints, but that her disc spaces were generally well maintained with no evidence of lytic lesions in her spine. A myelogram with CT scan showed evidence of indentation anteriorly of her thecal sac at multiple lumbar segments consistent with bulging of the disc centrally and posteriorly secondary to the degenerative process. There was nothing to suggest a complete block or lateralizing. Dr. Rumney opined that the February 22, 2000 lumbosacral strain had healed without incident and that there was nothing to suggest any residuals from that acute episode. He advised that appellant had significant degenerative disc disease and facet joint disease which had preexisted the February 22, 2000 injury and concluded that there were no sequelae of the injury. While Dr. Rumney opined that appellant could return to work for four

hours each day with restrictions, he recommended that she undergo a Minnesota Multiphasic Personality Inventory (MMPI) and clinical assessment by a psychiatrist to search for the underlying causes of her musculoskeletal complaints.

In an October 9, 2002 letter, the Office requested that Dr. Rumney provide an addendum report which described appellant's work tolerance due to the work injury of February 22, 2000. In an October 15, 2002 report, Dr. Rumney advised that the original injury of February 22, 2000 was no longer an issue and, on that basis alone, appellant could return to full duty without restrictions. He stated that his hesitation in having her return to partial duty with restrictions was based on her other medical conditions of heart disease, some bleeding difficulties with her medications, his belief of a significant psychological overlay to her complaints, and her general condition at the time of his examination.

In a November 20, 2002 letter, the Office referred appellant to Dr. Ronald C. Marshall, Ph.D., a clinical psychologist, for a second opinion evaluation. The Office provided Dr. Marshall with a copy of the case file and a statement of accepted facts. In a December 4, 2002 report, Dr. Marshall noted all relevant history of injury and appellant's background and provided a discussion on the Axis II Personality Patterns and Axis I Clinical Syndrome. He noted that the major complaints expressed by appellant did not take the form of distinct or isolated symptoms but appeared to reflect pervasive difficulties. Dr. Marshall advised that appellant had a personality configuration composed of histrionic personality traits, narcissistic and antisocial personality features which were long-term traits which had persisted for several years prior to the present assessment. He determined that the psychological overlay as a result of her injury were fatigue, irritability and a sense of hopelessness. Dr. Marshall opined that appellant's complaints of fatigue and need to rest frequently were related to her physical complaints and to her obesity. He opined that appellant's irritability could be of longstanding nature per her psychological profile. Dr. Marshall further opined that appellant's mental disorder was enough of an issue to create some limitations on her ability to work in that her irritability could adversely affect her ability to work with the public. Otherwise, Dr. Marshall opined that appellant's mental condition did not preclude her from working eight hours per day or from performing her date-of-injury job.

By letter dated January 29, 2003, the Office asked Dr. Marshall to clarify how her psychological overlay of fatigue, irritability and sense of hopelessness related to the February 22, 2000 work injury in light of the fact that two Board-certified orthopedic specialists determined that she had no physical residuals of the February 22, 2000 lumbar strain injury. In a response of March 29, 2003, Dr. Marshall opined that appellant's fatigue could be the result of her excess weight and that her irritability and sense of hopelessness could be attributed to her psychological profile which suggested hysterical features that she may have been easily influenced by her circumstances resulting in feelings of hopelessness and irritability.

On April 11, 2003 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Rumney's reports established that the injury-related lumbar strain had resolved. The Office further found that Dr. Marshall's reports failed to show that appellant's emotional condition was related to the physical injuries sustained on February 22, 2000.

In response, appellant submitted an August 2, 2001 progress report from Dr. Cook who explained that her back pain was unimproved and advised that she continued to suffer from chronic back pain with probable gastroesophageal reflux disease. In a May 5, 2003 report, Dr. Cook stated that appellant was evaluated on February 17, 2003 and that she continued to be totally disabled and could not return to her normal occupation.

By decision dated May 15, 2003, the Office terminated appellant's benefits effective that day on the grounds that the weight of the medical evidence established that she had no continuing disability resulting from her February 22, 2000 employment injury.

In a May 31, 2003 letter, appellant, through her attorney, requested an oral hearing before an Office hearing representative. The hearing was held on January 27, 2004. Copies of material previously of record were submitted. In an April 18, 2003 report, Dr. Cook noted that appellant's back pain remained unchanged and that she was recovering from knee surgery. In a February 19, 2004 report, Dr. Cook stated that the history, physical findings and clinical course all suggested that the work-related injury aggravated appellant's preexisting condition and that she never recovered from this event. Dr. Cook stated that she continued to have severe disabling pain which was only partially controlled with long-term narcotic analgesia.

In a decision dated May 17, 2004, the Office hearing representative affirmed the May 15, 2003 decision.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> 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.<sup>2</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>3</sup>

### **ANALYSIS**

The Office accepted appellant's claim for an employment-related lumbar strain. The Office determined that a conflict in medical opinion existed between Dr. Cook, appellant's treating physician, and Dr. Abrams, a Board-certified orthopedic surgeon and Office referral physician, concerning whether appellant had any continuing work-related residuals and disability. The Office referred appellant to Dr. Rumney to resolve the conflict.

---

<sup>1</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>2</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>3</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

In situations where there are 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 on a proper factual background, must be given special weight.<sup>4</sup>

In a report of August 20, 2002, Dr. Rumney reviewed appellant's history, reported findings and opined that the muscle injury on February 22, 2000 had healed without residuals. He found that appellant had a degenerative process and other medical conditions that preexisted the work injury, but that his examination revealed no sequelae of the original incident. In an addendum report of October 15, 2002, Dr. Rumney clarified that appellant's physical findings were more consistent with chronic conditions and that she did not have any evidence of residuals from the acute work-related lumbosacral strain. While he mentioned in his original report that appellant had other medical conditions, Dr. Rumney stated that the injury of February 22, 2000 was no longer an issue and that appellant was able to return to full duty without restrictions.

As Dr. Rumney noted that appellant appeared to have a significant psychological overlay to her complaints, the Office referred appellant to Dr. Marshall for a second opinion evaluation of her mental status. In a December 4, 2002 report, Dr. Marshall did not provide any diagnosis formally related to the work injury but opined that appellant's psychological overlay as a result of the injury were fatigue, irritability and sense of hopelessness. In a March 29, 2003 addendum report, Dr. Marshall explained that appellant's fatigue could be the result of her excess weight and that her irritability and the sense of hopelessness could be attributed to her psychological profile. Dr. Marshall opined that appellant was capable of full-time work and could perform her date-of-injury job. He found no basis on which to attribute any particular condition to appellant's employment injury.

The Board finds that the opinion of Dr. Rumney is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition ceased. Additionally, the Board finds that, as Dr. Marshall completed a thorough examination and had access to appellant's medical record along with a statement of accepted facts, his opinion that appellant's psychological overlay was not a result of the work injury constitutes the weight of the medical evidence with regard to the issue of whether appellant's emotional condition is causally related to her work injury.<sup>5</sup> Moreover, Dr. Marshall opined that appellant was capable of full-time work and could perform her date-of-injury job. Accordingly, the Board finds that the opinions of Dr. Rumney establishes that appellant's accepted condition resolved while the report of Dr. Marshall was insufficient to establish any psychological condition causally related to the employment injury.<sup>6</sup>

---

<sup>4</sup> See *Gloria J. Godfrey*, 52 ECAB 486 (2001). See 5 U.S.C. § 8123(a) (if there is a disagreement between the physician making the examination for the Office and the physician of the employee, the Office shall appoint a third physician who shall make an examination).

<sup>5</sup> *Maurissa Mack*, 50 ECAB 498 (1999).

<sup>6</sup> For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation. See *Alice J. Tysinger*, 51 ECAB 638 (2000). As the Office had never accepted a psychological component to appellant's employment injury, the burden of proof for establishing a work-related psychological condition rests with appellant.

After the Office properly terminated appellant's benefits, the burden of proof shifted to appellant.<sup>7</sup> The medical evidence submitted by appellant after termination of benefits, however, either did not specifically address how any continuing condition was due to the February 22, 2000 work injury or was duplicate evidence previously considered by the Office.

The Board notes that, although appellant produced some new reports from Dr. Cook, who continued to opine that appellant was totally disabled as a result of the February 22, 2000 work injury, Dr. Cook did not provide any new findings or rationale. Furthermore, as this doctor was on one side of the conflict that had been resolved, the additional reports, in the absence of any new findings or rationale, from appellant's doctor is insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.<sup>8</sup>

### CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective May 15, 2003.

---

<sup>7</sup> After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; *see Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>8</sup> *Jaja K. Asaramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 17, 2004 is affirmed.

Issued: December 28, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member