

In a report dated December 29, 2000, Dr. Fred R. Pruitt, appellant's attending internist, indicated that she was totally disabled.¹

In a report dated September 26, 2002, Dr. Oscar F. Sterle, a Board-certified orthopedic surgeon and an Office referral physician, reviewed a history of appellant's condition and provided findings on examination. He opined that appellant had no residuals from her August 27, 2000 employment-related lumbosacral strain.

The Office determined that there was a conflict in the medical opinion evidence between Dr. Pruitt and Dr. Sterle as to whether appellant had any residual disability or medical condition causally related to her August 27, 2000 lumbosacral strain. The Office referred appellant, together with a statement of accepted facts and the case file, to Dr. James D. Brodell, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict.

In a March 5, 2003 report, Dr. Brodell provided a history of appellant's condition, the results of tests and findings on examination and opined that she had no continuing disability or medical condition causally related to her August 27, 2000 employment injury. He stated:

“[Appellant's] lower back area is normal appearing with no focal bruising, swelling or atrophy. Minimal palpation causes withdrawal and plenty of grunting and groaning. Attempted active and passive lumbosacral range of motion was met with resistance, cogwheeling and more groaning. The hips move through an even and symmetrical range of motion without pain. Straight leg raising is negative in the sitting position.

“Neurological exam[ination] of the legs shows 2+ and symmetrical reflexes at the knees and ankles; sensation is full and all motor groups are working at 5/5 muscle power. [Appellant] tried to damp down my reflex testing. Pulses are palpable in the feet. She walks briskly and well with no limp.”

* * *

“What we are dealing with now is a purely subjective situation (patient complaints and perception as to their cause) in which there are no abnormal objective findings (physical examination and/or imaging) of post-traumatic pathology. In other words, there is nothing to verify or substantiate [appellant's] ideas that work caused her lower back difficulty. She does have x-ray and magnetic resonance imaging [MRI] [scan] evidence of spinal arthritis, but many patients have no symptoms with these types of findings.

¹ Appellant was also treated by the medical partners Dr. Chander M. Kohli, a Board-certified neurosurgeon and Dr. Joel D. Siegal, a neurosurgeon. In a report dated March 28, 2001, Dr. Siegal stated that a magnetic resonance imaging (MRI) scan study performed on that day showed disc bulging at L4-5 and L5-S1, with bilateral neural foraminal stenosis. He stated that he did not see an obvious surgical lesion. Dr. Siegal recommended epidural nerve blocks. This report did not offer an opinion regarding the cause of appellant's condition or whether appellant was disabled.

“[T]he theatrics I visualized today, including cogwheel rigidity, resisting reflex testing and the grunting and groaning with minimal palpation and attempted movement, is not consistent with true organic pathology. These types of behaviors are seen in patients who are actively promoting their illness for compensation purposes.

“Therefore, in my opinion, [appellant] long ago resolved the [lumbosacral sprain/strain] and there are no residuals from August 27, 2000. As it relates to the spinal soft tissue injury sustained on August 27, 2000 she may immediately return to her normal job as a flat sorter with no restrictions. There is no reasonable medical indication for any additional diagnostic studies and/or treatment as it relates to August 27, 2000. Additionally, the spondylosis (degenerative disc and joint disease) visualized on the x-ray and MRI [scan] studies of [appellant’s] lower back is the product of the aging process and is unrelated to the August 27, 2000 soft tissue injury.”

By letter dated March 19, 2003, the Office advised appellant that it proposed to terminate her compensation and medical benefits on the grounds that the weight of the medical evidence established that she had no remaining disability or medical condition causally related to her August 27, 2000 employment injury.

By decision dated April 21, 2003, the Office terminated appellant’s compensation benefits.

Appellant requested reconsideration and submitted additional evidence. In a report dated December 1, 2003, Dr. Pruitt related his treatment of appellant’s back condition and noted continuing low back pain that caused her to be disabled.

By decision dated January 7, 2004, the Office denied modification of the April 21, 2003 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.³ The Office’s burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

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

² *Mohamed Yunis*, 42 ECAB 325 (1991).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284 (1988).

establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁵

ANALYSIS

In this case, the Office properly determined that there was a conflict in the medical opinion evidence between Dr. Pruitt and Dr. Sterle as to whether appellant had continuing residual disability causally related to her August 27, 2000 employment injury accepted for a lumbosacral strain.

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷

In a March 5, 2003 report, Dr. Brodell reviewed a history of appellant's condition and treatment, the results of tests and findings on physical examination. He opined that she had no continuing disability or medical condition causally related to her August 27, 2000 employment injury. He stated that appellant's subjective reactions to his examination were not consistent with objective findings on examination or the results of objective testing such as x-rays and an MRI scan or true organic pathology. Dr. Brodell indicated that appellant had degenerative changes in the back due to the normal aging process, unrelated to the August 27, 2000 employment injury. The report of Dr. Brodell is based upon a complete factual and medical background and establishes that appellant had no residual disability or medical condition causally related to her August 27, 2000 employment-related lumbosacral strain. The Office properly based its April 21, 2002 termination decision on the report of Dr. Brodell.

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 she had an employment-related disability that continued after termination of compensation benefits.⁸ The evidence submitted by appellant in this case did not discharge her burden of proof.

In a report dated December 1, 2003, Dr. Pruitt, who is not a specialist in back conditions, related his treatment of appellant's back condition and noted continuing low back pain that caused her to be disabled. However, he did not explain why appellant continued to be disabled

⁵ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB ____ (Docket No. 01-1599, issued June 26, 2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁷ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁸ *Wentworth M. Murray*, 7 ECAB 570 (1955).

more than three years after her August 27, 2000 lumbar strain. Dr. Pruitt did not indicate that he had recently examined appellant. Furthermore, as Dr. Pruitt was on one side of the conflict of medical opinion which was referred to Dr. Brodell as the impartial medical specialist, his subsequent report is insufficient to outweigh or create a new conflict with Dr. Brodell's opinion.⁹

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits based on the thorough and well-rationalized report of Dr. Brodell.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 7, 2004 and April 21, 2003 are affirmed.

Issued: July 20, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁹ See *Dorothy Sidwell*, 41 ECAB 857 (1990).