

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

LORI A. HOWARD, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Westmont, IL, Employer**

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**Docket No. 04-226
Issued: May 5, 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
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 3, 2003 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated August 26, 2003 and November 8, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issues are: (1) whether the Office properly terminated appellant's compensation effective November 8, 2002; and (2) whether the Office properly denied authorization for cervical spine surgery.

FACTUAL HISTORY

On June 20, 2001 appellant, then a 36-year-old part-time flexible carrier, filed a claim for a traumatic injury sustained that day when she pulled open a stuck door, after which she repetitively slid open the door of her postal vehicle. The Office accepted that appellant sustained a cervical strain, and later accepted a herniated disc at C4-5. Appellant received continuation of

pay until she returned to work with restrictions on August 4, 2001. The Office also accepted a recurrence of disability from October 29 to November 29, 2001.

In a report dated March 15, 2002, Dr. Walter Reeder, appellant's attending Board-certified orthopedic surgeon, noted her "multiple complaints of pain in the right shoulder, neck, lower back and left hip" and stated that "a great deal of this patient's findings are system magnified and hard objective findings are difficult to find except for possibly the right shoulder," for which he noted "a lot of complaints of pain with any motion." Dr. Reeder concluded that appellant could work with minimal restrictions.

On April 5, 2002 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. Richard Sidell, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated April 30, 2002, Dr. Sidell diagnosed "Chronic pain syndrome with cervical and lumbar discomfort of a soft tissue nature" resulting from three relatively trivial incidents of pulling and twisting. Dr. Sidell stated that appellant's current lifting restrictions were warranted by her chronic pain. He concluded:

"I do not find any evidence to support a medical connection between the claimant's current complaints and a specific injury, which occurred on June 20, 2001. It is my opinion that the pain she incurred on that day merely represented a temporary aggravation of a preexisting condition, which recurred on a regular basis. The specific temporary aggravation would have been only of short duration with a maximum of one to two weeks."

In a May 22, 2002 report, Dr. Daniel J. Harrison, a Board-certified neurosurgeon to whom Dr. Reeder referred appellant, reviewed a recent myelogram and CT scan and stated: "Overall I think she has borderline cervical spinal stenosis and I think I would offer her cervical laminectomy/decompression for this." In a May 24, 2002 report, Dr. Reeder stated that appellant's complaints of right shoulder pain were probably due to a mild impingement syndrome, as he knew from her magnetic resonance imaging (MRI) scan and arthrogram that she had no definite rotator cuff tear. In a May 31, 2002 report, Dr. George E. DePhillips, a Board-certified neurosurgeon, stated that appellant's cervical myelogram showed no evidence of spinal cord or nerve root compression. Dr. DePhillips recommended a fusion at the C4 to C6 levels. In a June 11, 2002 report on an Office form, Dr. Reeder diagnosed degenerative disc disease of the cervical spine, chronic low back pain, and mild right shoulder impingement syndrome. He answered no to the form question of whether these conditions were caused or aggravated by an employment activity, explaining that appellant's MRI scans showed no significant changes and that her symptoms were similar to those prior to her employment injury.

On June 5, 2002 the Office referred appellant, the case record and a statement of accepted facts to Dr. Steven E. Mather, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion between Drs. Reeder and Sidell. In a report dated July 22, 2002, Dr. Mather set forth appellant's history and complaints, reviewed prior medical reports including the numerous diagnostic studies, and described her findings on examination. Dr. Mather concluded:

"[Appellant] has complaints relative to the cervical, thoracic and lumbar spines, as well as the right shoulder that cannot be related to any structural cause that I

can substantiate by physical examination, or correlation [to] her imaging studies. Clearly, she has preexisting degeneration of C4-5 and C5-6, and I do not believe that her alleged injuries have substantially aggravated these preexisting conditions. Further, I do not feel she has any surgical condition.

“Regarding the cervical, thoracic and lumbar spines, I feel that patient is at maximal medical improvement, and requires nothing other than symptomatic treatment with over-the-counter analgesics. Also regarding the cervical, thoracic and lumbar spines, the patient may be released to full duties as a mail carrier without restrictions.”

* * *

“I do not feel that the patient’s right shoulder requires any further medical care, and she may return to her full work duties as a mail carrier relative to the right shoulder without restrictions.”

On July 24, 2002 appellant filed a claim for a recurrence of disability occurring on July 19, 2002, when she stopped work. She submitted a July 19, 2002 report from Dr. Reeder stating that she had an exacerbation of symptoms for which she was authorized to be off work.

In response to an August 8, 2002 Office inquiry, Dr. Mather stated in a September 16, 2002 report that a decompression would worsen appellant’s diffuse neck symptoms, that a fusion for neck pain alone with no root or cord compression was hazardous, and that appellant had no objective findings except mild degenerative changes.

On September 26, 2002 the Office issued a notice of proposed termination of compensation on the basis that appellant no longer had any medical condition attributable to her employment activities that would warrant treatment or disability. The Office also proposed denial of authorization for cervical spine surgery.

By decision dated November 8, 2002, the Office terminated appellant’s compensation and denied authorization of cervical spine surgery.

By letter dated June 11, 2003, appellant requested reconsideration, and submitted medical evidence. In a November 8, 2002 report, Dr. Scott E. Glaser, a Board-certified anesthesiologist, described appellant’s injuries, complaints and findings on examination, which included diffuse decreased strength and obvious decreased muscle mass of the right triceps. Dr. Glaser stated that cervical discography caused pain. In a December 11, 2002 report, Dr. Michel Malek, a neurosurgeon, described appellant’s injuries, complaints and findings on examination. Dr. Malek stated that he was not sure appellant’s symptoms could be explained by the findings on her discogram and myelogram, and concluded, “The fact that her discogram was done and showed pain with each injection at every level, in my opinion does not encourage surgical intervention as it is likely that the patient with such a discogram is not likely to improve from surgery.”

By decision dated August 26, 2003, the Office found that appellant had no employment-related condition that warranted treatment or disability, and denied authorization for cervical spine surgery.

LEGAL PRECEDENT -- ISSUE 1

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

ANALYSIS -- ISSUE 1

The weight of the medical evidence establishes that appellant had no disability or need for further medical treatment by November 8, 2002, the date the Office terminated her compensation. Dr. Mather explained that appellant's spine and right shoulder complaints could not be related to any structural cause that he could substantiate on physical examination or on appellant's imaging studies. Dr. Mather concluded that appellant could return to work without restrictions and needed no further medical treatment.

The opinion of Dr. Mather is consistent with that of appellant's attending physician, Dr. Reeder, who indicated on June 11, 2002 that appellant's conditions were not related to her employment, and explained that appellant's recent MRI scan showed no significant change from prior ones⁴ and that her symptoms were similar to those before her injury.⁵ Dr. Sidell, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion, also concluded that appellant's conditions when he examined her on April 30, 2002 were not connected to her June 20, 2001 employment injury, and that this injury only temporarily aggravated her preexisting conditions.

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

² *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

³ *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ Prior MRI scans included one taken prior to appellant's June 20, 2001 injury.

⁵ As early as October 1, 2001 Dr. Reeder reported that appellant's symptoms were out of proportion to her findings.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part:

“The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.”⁶

ANALYSIS -- ISSUE 2

The medical evidence does not support that the cervical spine surgery for which appellant sought authorization was likely to cure, give relief, or effectuate the other purposes of section 8103 of the Act. The two Board-certified neurosurgeons, Drs. DePhillip and Harrison, who recommended this surgery gave no explanation why it was necessary. Dr. DePhillip's recommendation of surgery seems contrary to his finding of no cord or nerve root compression.

Dr. Mather explained why cervical spine surgery was not warranted, stating that a decompression would worsen diffuse neck symptoms and that a fusion for neck pain alone with no compression was hazardous. Dr. Malek also explained why surgery was not warranted, citing results of a discogram. The weight of the medical evidence supports the Office's denial of authorization for cervical spine surgery.

CONCLUSION

The weight of the medical evidence establishes that by November 8, 2002 appellant no longer had an employment-related condition warranting further treatment or causing disability for work. The weight of the medical evidence supports the Office's denial of authorization for cervical spine surgery.

⁶ 5 U.S.C. § 8103(a).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2003 and November 8, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member