

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

DORIS J. SIMMONS, Appellant)
)
and)
)
DEPARTMENT OF VETERANS AFFAIRS,)
LAKESIDE MEDICAL CENTER, Chicago, IL,)
Employer)

Docket No. 03-474
Issued: September 22, 2004

Appearances:
Doris J. Simmons, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 16, 2002 appellant filed an appeal of a merit decision of the Office of Workers’ Compensation Programs dated November 19, 2002 which terminated her wage-loss compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

This issue is whether the Office met its burden of proof to terminate appellant’s wage-loss compensation and medical benefits entitlement causally related to her June 25, 1985 employment injuries.

FACTUAL HISTORY

On June 25, 1985 appellant, then a 41-year-old nursing assistant, filed a claim alleging that she injured her back and legs as she caught a falling patient while helping him out of bed. She stopped work the day of injury. The Office accepted that appellant sustained low back strain

and chronic low back pain. On July 30, 1985 appellant returned to work in a light-duty position as a nurses' aide until August 2, 1986, when she stopped work completely.

Appellant submitted a claim for a recurrence of disability commencing August 4, 1986. She complained of progressive intensity of back pain and neck pain. The Office accepted her recurrence claim.

The record supports that appellant's initial medical condition involved strained back muscles. However, she also had mild carpal tunnel syndrome diagnosed. She came under the care of Dr. James A. Hill, a Board-certified orthopedic surgeon, in August 1986. He noted that she was somewhat obese and had an excessive lumbar lordosis, that straight leg raising was positive on the right at 80 degrees and that she had decreased sensation in the S1 distribution. Dr. Hill opined that appellant's low back pain was of unknown etiology and that a computerized tomography scan revealed no evidence of herniated disc or bony spinal stenosis.

Appellant was treated by Dr. Hill from August 1986 through November 4, 2002, for the diagnosed condition of chronic lumbar strain, and for a herniated cervical disc. He noted her obesity and recommended weight loss, in addition to physical therapy and exercise. On October 29, 1987 Dr. Hill noted that appellant continued to lose weight which had helped to decrease her low back pain. He diagnosed resolving chronic lumbar strain.

On an October 26, 1992 work restriction evaluation Dr. Hill opined that appellant had reached maximum medical improvement and could work eight hours per day with some restrictions on walking, lifting and without bending, squatting, climbing, kneeling, twisting or standing.

On January 26, 1998 Dr. Hill indicated that appellant's lumbar spasms were related to her work injury of 1985, but that her cervical herniated disc occurred in 1993 and was not related to her 1985 work injury. On March 26, 1998 Dr. Hill opined that appellant's lumbar strain had not resolved and had turned into a chronic problem which caused her chronic pain.

On January 31, 2002 the Office determined that a second opinion examination was necessary and it referred appellant, together with a statement of accepted facts and questions to be addressed, to Dr. Leonard R. Smith, a Board-certified orthopedic surgeon.

By report dated February 20, 2002, Dr. Smith reviewed appellant's factual and medical history, noted her previous treatment, reported his results upon examination, noted that she complained of numbness that did not follow any anatomic pattern, noted that Fabre's, Laseque's, pelvic flexion and iliolumbar torsional tests were negative, but that Waddell's tests for final compression and distraction tests were positive, as was the Burns test and the Hoover sign. Dr. Smith noted that appellant's principal problems were related to her cervical spine, possible carpal tunnel syndrome and knee problem, all of which were unrelated to her employment injury of 1985. Dr. Smith noted that regarding appellant's back, she continued to have some back pain on the basis of obesity, poor postural mechanical factors, increased lumbar lordosis and deconditioning from not working for a long period of time. He also noted that there

were other aspects of the examination in which objective findings did not corroborate the subjective complaints as evidenced by the positive Waddell's tests.

By letter dated March 20, 2002, the Office requested clarification of Dr. Smith's opinion regarding appellant's back condition. The Office asked whether there was any objective evidence that appellant suffered from any residuals of her low back strain injury or chronic low back pain and whether she had completely recovered from her 1985 work injury.

By letter dated April 10, 2002, Dr. Smith replied that, insofar as the lumbar strain was concerned, there was no objective evidence to support continuing disability. He continued that insofar as her chronic lower back pain was concerned, it was on the basis of obesity, poor postural mechanics, increased lumbar lordosis and deconditioning. Dr. Smith continued that insofar as further findings, there was nothing to support any residuals of her lower back injury and therefore it was his opinion that appellant's low back strain/sprain had resolved with complete recovery. Dr. Smith also completed a work capacity evaluation form indicating that maximum medical improvement has been reached and that appellant could work eight hours per day with limits of six hours of sitting, walking and standing and six to eight hours of pushing, pulling and lifting.

The Office found that a conflict in medical opinion evidence arose between Dr. Hill and Dr. Smith on the issue of whether appellant had residuals of her accepted employment injury. It referred her, together with a statement of accepted facts and questions to be resolved, to Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon, selected as the impartial medical specialist.

By report dated August 28, 2002, Dr. Sidell reviewed the factual and medical history, noted the results of his physical examination and opined that appellant had a normal sensory and motor examination. Dr. Sidell found that appellant had normal flexion without discomfort, normal full lateral bending and tilting, right and left, that she had a negative Spurling test, no signs of muscle irritability or spasm, no scoliosis, no trigger points to palpation, full range of motion, including fingertip to toe touch, full extension and lateral bending and trunk rotation without obvious discomfort, normal deep tendon reflexes at the knees and ankles. He did find complaints of left buttock pain with internal rotation of the left hip, but no tenderness to left buttock palpation. Dr. Sidell diagnosed general deconditioning and lumbar spondylosis with chronic low back pain which he felt was due to her age, her general physical condition and normal age-related degenerative arthritis. He noted that she did not have any objective evidence that would indicate that any injury in 1985 was still active and ongoing. Dr. Sidell noted that she had minimal objective pathological findings, which were compatible with a patient of her age and size. In answering the Office's questions Dr. Sidell noted that there was no objective evidence existing that indicated that appellant was suffering from active residuals of her low back strain and chronic low back pain she suffered due to the 1985 injury, that she could return to her date-of-injury job as a medical assistant and that appellant's subjective complaints of pain were due to her age, her general level of physical conditioning and her weight and that they were part of the normal aging process and not the injury of 1985.

On October 4, 2002 the Office issued appellant a notice of proposed termination of compensation and medical benefits on the basis that her accepted injury-related conditions of low back strain and chronic low back pain had resolved without residuals. The Office gave appellant 30 days within which to respond to the proposed termination and to submit additional evidence if she disagreed with the proposed disposition.

By decision dated November 19, 2002, the Office finalized the proposed termination of compensation finding that she had recovered fully without residuals from her 1985 accepted employment injuries.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ 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.² Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁵

ANALYSIS

The Office met its burden of proof to terminate appellant's compensation and medical benefits with the well-rationalized medical report from Dr. Sidell.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁴ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

⁵ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

The opinion of appellant's treating physician, Dr. Hill, who supported ongoing employment-related disability during the period 1986 through 2002, conflicted with the opinion of Dr. Smith, who found that appellant's principal problems were all unrelated to her employment or her employment injury of 1985 and instead involved a cervical spine problem, carpal tunnel syndrome and a knee problems. The Office properly found a conflict in medical opinion evidence and referred appellant to Dr. Sidell for an impartial medical examination resolution of the conflict.

The Board finds that the opinion of the impartial medical examiner, Dr. Sidell, constitutes the weight of the medical opinion evidence. Dr. Sidell's report is due special weight because it is based upon a proper factual and medical background, is well rationalized and based upon findings on physical examination. The report establishes that appellant has no further disability for work or residuals requiring further medical treatment. Dr. Sidell found that appellant had normal flexion without discomfort, normal full lateral bending and tilting, right and left, that she had a negative Spurling test, no signs of muscle irritability or spasm, no scoliosis, no trigger points to palpation, full range of motion, including fingertip to toe touch, full extension and lateral bending and trunk rotation without obvious discomfort, normal deep tendon reflexes at the knees and ankles. Dr. Sidell diagnosed general deconditioning and lumbar spondylosis with chronic low back pain which he felt was due to her age, her general physical condition and normal age-related degenerative arthritis and he noted that she did not have any objective evidence that would indicate that any injury in 1985 was still active and ongoing. Dr. Sidell noted that appellant had minimal objective pathological findings, which were compatible with a patient of her age and size and he noted that there was no objective evidence existing that indicated that she was suffering from active residuals of her low back strain and chronic low back pain she sustained due to the 1985 injury, that she could return to her date-of-injury job as a medical assistant, and that appellant's subjective complaints of pain were due to her age, her general level of physical conditioning, and her weight, and that they were part of the normal aging process and not the injury of 1985.

Relying on Dr. Sidell's impartial medical examiner's report, the Office properly terminated appellant's wage-loss compensation and medical benefits, finding that she had no further disability for work or residuals requiring medical treatment causally related to her 1985 employment injury.

CONCLUSION

The Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits entitlement on the grounds that she had no further disability for work or injury residuals requiring further medical treatment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 19, 2002 is affirmed.

Issued: September 22, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member