

May 12, 1996.¹ By letter dated June 28, 1996, the Office accepted appellant's claim for aggravation of lumbar disc disease.²

On April 10, 1997 appellant filed a claim alleging that she sustained a recurrence of disability on January 22, 1997. She stated that her pain had worsened and she found it hard to stand or walk. Appellant stopped work on January 22, 1997. After further development of the claim, the Office, in a January 5, 1998 letter, advised appellant that her claim for a recurrence of total disability due to her pain disorder had been accepted.

Based on a review of the case record, which revealed that appellant had not been treated for her accepted orthopedic condition since January 1997, the Office referred her, together with a statement of accepted facts, a list of specific questions and the medical record to Dr. Christopher Cenac, a Board-certified orthopedic surgeon, for a second opinion medical examination by letter dated February 6, 2003. Dr. Cenac submitted a report dated April 2, 2003 in which he provided a history of appellant's May 11, 1996 employment injuries and medical treatment. He also provided a history of appellant's prior back injuries and medical treatment and noted her treatment for an emotional condition. On physical and objective examination, Dr. Cenac reported:

“Reflex testing is normal in both upper and lower extremities. Waddell testing is abnormal consistent with symptom magnification and illness behavior. Grip strength testing is symmetrical in both hands. Long toe extensor function is 5/5 in both long toe extensors. Muscle spasm is not observed in the spine. Anterior neck and lower lumbar incisions are well healed. No sensory deficits are noted to pin prick and lite touch in the upper or lower extremities. [Appellant's] Tinel's test is negative. Motion in her neck is postsurgical. Her obesity limits lumbar motion. Tenderness is nonphysiologic. She can heel and toe walk without difficulty. She had a cane during the examination and I asked why did she use a cane and she indicated this was only for balance. Certainly I do not feel that she

¹ Appellant returned to limited-duty work as a clerk effective May 24, 1996 and the Office issued a decision dated August 7, 1996 reducing her compensation based on her actual earnings in this position.

² The Office noted that appellant suffered from concurrent disability not due to the May 11, 1996 employment injury but, due to an emotional condition, a cervical spine fusion performed in 1984 and lumbar disc disease and a discectomy/laminectomy at L3-4, which was performed in 1994.

Appellant previously filed a traumatic injury claim on July 30, 1987 alleging that she hurt her lower back while in the performance of duty. The Office accepted her claim for a low back strain. On December 12, 1992 appellant filed a claim alleging that she sustained a recurrence of disability due to her July 30, 1987 employment injury. The Office denied the claim by decision dated February 23, 1993. On March 15, 1993 appellant requested an oral hearing before an Office hearing representative, who issued a decision on June 24, 1994 affirming the Office's February 23, 1993 decision. Appellant requested reconsideration on July 27, 1994 and the Office denied her request for a merit review of the claim in a September 22, 1994 decision.

On August 20, 1993 appellant filed a traumatic injury claim alleging that she experienced low back pain on August 17, 1993 while in the performance of duty. By decision dated October 25, 1993, the Office denied appellant's claim.

needs her cane. Shoulder function is 5/5. There is no atrophy of either upper or lower extremity by direct measurement.

“Cervical x-ray studies confirm a solid fusion at C5/6. All disc spaces are maintained. The lumbar study shows postsurgical changes at L3/4 with some narrowing of the disc space.”

Dr. Cenac opined that appellant had “no objective clinical findings to prevent some type of gainful employment.” He diagnosed chronic pain, which he stated was subjective. Dr. Cenac scheduled appellant for a functional capacity evaluation (FCE), which he suspected would confirm some symptom magnification and illness behavior. He stated that appellant had long reached maximum medical improvement and she was employable with limitations noted on the FCE. He concluded that there was no additional anatomical impairment applicable as a result of the aggravation in 1996.

In a supplemental report dated April 15, 2003, Dr. Cenac indicated that he had reviewed the FCE results and as suspected, symptom magnification and illness behavior were confirmed. He further stated that appellant was employable within the limitations noted and probably at one level above, if it were not for the symptom magnification and submaximal effort. In an accompanying work capacity evaluation form dated April 15, 2003, Dr. Cenac indicated that there was no reason appellant could not work eight hours a day. He noted appellant’s physical limitations and that she exhibited symptom magnification.

In a May 7, 2003 letter, the Office requested that Dr. Frederic L. Henderson, a Board-certified psychiatrist and appellant’s treating physician, review Dr. Cenac’s report and state whether he concurred with the medical opinion.³

By letter dated October 8, 2003, the Office requested that Dr. Cenac provide a supplemental report to clarify his opinion that there was no additional anatomical impairment applicable as a result of the 1996 aggravation. The Office asked Dr. Cenac to provide whether the physical effects (temporary aggravation) of the work injury had ceased and, if so, whether appellant’s chronic pain condition, for which she was being treated, was related to the existing back condition and not to the aggravation which had ceased. In an October 9, 2003 response letter, Dr. Cenac opined that the physical effects of the temporary aggravation of the work injury had long since ceased. He also opined that appellant’s chronic pain condition, for which she was currently being treated, was related to the preexisting back disease condition and not to the aggravation which had ceased.

³ The record indicates that appellant was last treated for her emotional condition on August 15, 2001 by Dr. Henderson. Prior to receipt of the Office’s May 7, 2003 letter, Dr. Henderson submitted a January 29, 2003 work capacity evaluation for emotional conditions in response to the Office’s January 15, 2003 letter requesting an update on appellant’s condition. In this letter, he indicated that appellant suffered from chronic pain, anxiety and depression, which grossly impaired her ability to function. He noted that efforts to return her to even part-time functional activity had failed. Dr. Henderson opined that appellant was totally and permanently disabled. He further opined that she was unable to perform work which required sustained attention. Dr. Henderson concluded that all efforts to return appellant to functional activity had caused an exacerbation of her symptoms.

On October 23, 2003 the Office issued a proposed notice to terminate appellant's compensation benefits because the weight of the medical opinion evidence rested with Dr. Cenac who opined that she did not have any orthopedic condition, chronic pain condition or continuing disability due to her May 11, 1996 employment injuries. Appellant was given 30 days to submit additional evidence or argument.

In a November 10, 2003 report, in response to the May 7, 2003 letter, Dr. Henderson explained that his response was delayed due to appellant feeling overwhelmed by the process of a work capacity evaluation. He explained that he had been trying to support appellant and help her to accept the process and make rational choices. He reviewed the FCE findings and Dr. Cenac's impressions and stated that "I have no questions about the accuracy of the assessment and no objection to Dr. Cenac's findings from a purely orthopedic basis." He, however, stated that appellant's case was quite complex in that it involved anxiety, depression, traumatization and pain and that each of these symptom categories would bear on each of the others so that an office assessment of functional ability from an orthopedic point of view would be a very poor guide to appellant's ability to function in the work setting. He indicated that there was no doubt that appellant was extremely fearful of returning to work and that he was sure this influenced her performance on tests, such that in some cases she was found to be unwilling to perform. He noted the results of recent pain research using functional imaging techniques and opined that he could not rule out the possibility of lingering or exaggerating distress but, that his clinical impression was that appellant's suffering was real. Dr. Henderson noted that functional brain imaging might be useful in defining the nature of appellant's distress but, this was beyond his level of expertise. He further noted that appellant, with great anxiety, expressed a willingness to try physically low stress employment up to four hours a day. He completed a work tolerance survey for the employing establishment but was not optimistic about appellant's ability to remain in even part-time low stress employment. Dr. Henderson opined that to optimize the likelihood of her successful return to employment, he would severely restrict the hours of work, perhaps to two hours a day, three times a week. He stated that he believed appellant was sincere in saying that she would try working four hours a day, five days a week but, this was almost certainly a counter phobic response. He indicated that, if this were allowed, appellant would very likely become overwhelmed and withdraw from the work situation, reporting that she was having incapacitating pain and this would almost certainly be accompanied by greatly exacerbated anxiety and depression.

By decision dated January 2, 2004, the Office finalized the termination of appellant's compensation effective December 28, 2003 on the basis that she did not have any residuals or disability due to her May 11, 1996 employment injuries.⁴

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁵ After it has determined that an employee has disability

⁴ The issue in this case centers on the accepted orthopedic and pain conditions. The Office has not accepted appellant's claim for an emotional condition.

⁵ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

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.⁶ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷ However the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss due to disability.⁸ 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.⁹

ANALYSIS

The Office terminated appellant's compensation benefits finding that the weight of the medical evidence was represented by the opinion of the Office referral physician, Dr. Cenac, which established that she had no further employment-related residuals or disability. The Board has carefully reviewed the opinion of Dr. Cenac and notes that it has reliability, probative value and convincing quality with respect to the conclusions reached regarding the relevant issue of the present case. He found that there were no objective clinical findings to prevent appellant from performing some type of gainful employment and FCE results confirmed his suspicion of symptom magnification and illness behavior by appellant. Dr. Cenac opined that the physical effects of temporary aggravation of appellant's May 11, 1996 employment-related back condition had long since ceased and her chronic pain condition was related to a preexisting back condition and not to the temporary aggravation. Dr. Cenac provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, he analyzed the factual and medical history as well as the findings on physical and objective examination and reached conclusions regarding appellant's conditions which comported with this analysis.¹⁰ Dr. Cenac provided medical reasoning to support his conclusion that appellant did not have any residuals and disability causally related to her accepted employment injuries. Based on the foregoing, his report provided a sufficient basis for the Office's decision to terminate appellant's compensation.

Dr. Cenac's opinion is bolstered by the report of Dr. Henderson, who reviewed Dr. Cenac's findings and the FCE results and opined that he had no questions about the accuracy of the assessment and no objection to Dr. Cenac's findings from an orthopedic basis.

Regarding appellant's employment-related pain condition, Dr. Henderson opined that the interaction of appellant's anxiety, depression, traumatization and pain would make an assessment of her functional ability from an orthopedic standpoint, a poor guide for determining her actual ability to physically function in the work setting. He stated that he could not rule out the

⁶ *Lynda J. Olson*, 52 ECAB 435 (2001).

⁷ *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *Franklin D. Haislah*, 52 ECAB 457 (2001).

¹⁰ *See Melvina Jackson*, 38 ECAB 443 (1987).

possibility of lingering or exaggeration of distress by appellant, but his clinical impression was that her suffering was real. He further stated that despite appellant's willingness to return to work on a part-time basis, he was not optimistic about her return to even part-time low stress employment. Dr. Henderson, however, did not address whether appellant's pain and her disability for work were caused by the accepted May 11, 1996 employment injuries. Thus, his report is of diminished probative value as to whether appellant's continuing pain condition was caused by her accepted employment injuries.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective December 28, 2003 on the grounds that she no longer had any residuals or disability causally related to her May 11, 1996 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member