United States Department of Labor
Employees' Compensation Appeals Board

LORI D. FOWLER, Appellant	)	
and	)	**Docket No. 04-2284**
	)	**Issued: March 8, 2005**
DEPARTMENT OF AGRICULTURE, U.S. FOREST SERVICE, Brush Creek, CA, Employer	)	

Appearances:
Gordon Reiselt, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 20, 2004 appellant filed a timely appeal from the October 21, 2003 and June 22, 2004 merit decisions of the Office of Workers' Compensation Programs, which denied modification of an earlier decision to terminate her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review these decisions.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation benefits; and if so, (2) whether appellant has met her burden to establish that any subsequent disability is causally related to her accepted employment injuries.

FACTUAL HISTORY

On June 13, 1990 appellant, then a 34-year-old fire prevention technician, injured her low back in the performance of duty when she bent down to help roll over a sofa.[1] The Office accepted her claim for lumbosacral strain. She returned to regular duty on June 26, 1990.

On October 9, 1990 appellant injured her low back while cutting line with a hand tool for hours. The Office accepted her claim for lumbosacral strain and paid compensation for wage loss on the periodic rolls.

On July 1, 1992 Dr. Justin Howland, an orthopedic surgeon and Office referral physician, reported the following history:

> "This 36-year-old woman was injured on June 13, 1990 when she was bending over to help roll over a sofa in the employee barracks and felt pain in the lower back. Actually, she recalls that she had bouts of low back pain even before that, and she had been working in that particular locale for the previous three months starting from April and unfortunately the truck she was in was such that the suspension was not good, and she would feel the effects of riding over bumpy roads more than she thought she should. She would have considerable amounts of low back pain at the end of each day after riding in the truck…. She returned to work, but on October 9 she hurt her back after four hours of cutting line with a hand tool called a McCloud."

Dr. Howland noted that lumbosacral x-rays taken on October 29, 1990 were within normal limits. An April 12, 1991 magnetic resonance imaging (MRI) scan showed a reduced signal at the lumbosacral space consistent with disc derangement/desiccation but no evidence of herniation. He diagnosed lumbosacral disc derangement and stated that this was related to factors of employment as described in the Office's statement of accepted facts, although appellant had low back pain prior to June 13, 1990: "It was, therefore, precipitated by riding in a truck with poor suspension, but became bad enough to seek medical attention on June 13, 1990." He explained that her condition was not expected to get any better or any worse: "The reason it has reached this permanent point is that a disc when it is injured to the point of undergoing desiccation is not apt to heal because of poor, or no, circulation to the disc itself." Dr. Howland reported that the prognosis for recovery was nil.

The record indicates that the Office accepted appellant's claim for the additional condition of L5-S1 disc derangement.

On March 17, 1999 Dr. Jerald Jarrett, an attending orthopedic surgeon, reported that appellant was markedly improved: "She has done extremely well on Celebrex. She no longer

[1] OWCP File No. A13-0927618.

has the aggravating shoulder pain and practically no lumbar discomfort." On August 4, 1999 he reported some divergence between appellant's complaints and his opinion of her work capacity:

> "I believe that she has a lumbosacral strain of a mild nature. She only has a 1+ lumbar spasm and muscle tightness in the levator scapula and trapezius areas of her shoulder, with no evidence of nerve root irritation or other abnormalities.
>
> "She states that she cannot do even her sedentary type work, *i.e.*, sewing. I don't know that work can get much lighter than that. I believe that she can do light work, however, she claims rather adamantly that she cannot. She is somewhat of an enigma and I have not been able to help her a great deal. She will return in two weeks. I would like to see her become more active and involved, however any move I seem to make regarding suggestion of work, appears to be met with challenge."

On January 17, 2000 Dr. Jarrett released appellant to return to work without restriction:

> "[Appellant] was seen today and she has not had much in the way of low back symptoms. She is the best I have seen her.
>
> "There is no spasm in the lumbar spine. Her straight leg raising is negative, with very little if any, spasm in the trapezius and levator scapula. The levator scapular has a 1+ spasm.
>
> "She is to continue Soma as needed and return on an as needed basis. She has no permanent residua and can return to a working situation of her choice."

On March 27, 2000 Dr. Jarrett released appellant to return to full duty effective that date with no limitations or restrictions:

> "[Appellant] comes in today stating that she is moving to Texas. She is wondering about a job in a prison. The patient could qualify for such a job and she is not placed on restrictions and was encouraged to take the job and be trained for it. She will no longer be seen in the office, per her move."

In a decision dated June 23, 2000, after appropriate notice, the Office terminated appellant's compensation benefits on the grounds that she had recovered from the accepted employment injury. The Office found that the medical evidence, as presented by the treating physician, established that her condition had improved to the point that she suffered no disability or residuals of the October 10, 1990 low back injury and could return to work without restriction or limitation.

On October 12, 2001 a hearing representative affirmed the termination.

Thereafter, appellant requested reconsideration without success. She submitted a July 25, 2001 report from Dr. Leonardo Salcedo, a specialist in internal medicine, who noted that an x-ray showed mild lumbosacral scoliosis and decreased joint space at L5-S1, suggestive of degenerative disc disease. He reported: "In conclusion, after evaluation of [appellant's] medical

history and also the guidelines that she brings me for a forestry aide and firefighter technician's requirements and qualifications, and also review of her lumbar spine x-ray, I believe that [she] will not be able to go back to her previous job of forestry aide and firefighter."

On November 8, 2001 Dr. Dennis A. Ice, a specialist in physical medicine and rehabilitation, reported that a lumbar spine MRI scan showed noncompressive annular bulging and degenerative disc disease at L5-S1 with early Modic Type II end plate changes. No herniated discs were noted. X-rays showed moderately severe degenerative disc disease at L5-S1. Noting that appellant had unabated back pain for 10 years after an injury while working as a firefighter: "This injury has resulted in some degenerative changes in the back." He diagnosed chronic low back pain, degenerative in nature, related to initial injury. He added: "After an injury such as the one she had, facet degeneration can occur, which can give back pain which is chronic in nature. This is the type of pain she has."

On January 14, 2003 Dr. J. Brett Gentry, a neurosurgeon and associate of Dr. Ice, reported that appellant had fairly severe degenerative changes at L5-S1: "I can see how these changes could be causing her pain. I can't say how long this has been there or when this occurred." Dr. Gentry noted that it was appellant's opinion this happened while working in 1990.

In a decision dated October 16, 2003, the Office reviewed the merits of appellant's case and denied modification of its prior decision.

Appellant again requested reconsideration on June 10, 2004. She noted that the Office accepted her claim based on Dr. Howland's opinion that she had sustained a permanent condition as a result of a work-related accident. Dr. Jarrett, on the other hand, performed no objective medical testing and gave no explanation of how a permanent injury sustained in 1990 could disappear by 2000.

In a decision dated June 22, 2004, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that appellant's request did not address the deficiency of the medical evidence in her claim: "You have failed to submit any rationalized, probative and objective medical evidence to support that the work activities you have claimed have caused or contributed to your medical conditions."

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[3] After it has determined that an employee

[2] 5 U.S.C. § 8102(a).

[3] *Harold S. McGough*, 36 ECAB 332 (1984).

has disability causally related to 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.[4]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbosacral strain and L5-S1 disc derangement in 1900. By 1999, however, she was markedly improved, as Dr. Jarrett, her attending orthopedic surgeon, reported. She had practically no lumbar discomfort, and with only a 1+ lumbar spasm and muscle tightness in the levator scapula and trapezius areas of her shoulder and no evidence of nerve root irritation or other abnormalities, Dr. Jarrett diagnosed a lumbosacral strain of a mild nature. On January 17, 2002 he reported that appellant was "the best I have seen her." She had little in the way of low back symptoms and findings on physical examination were minimal, which led Dr. Jarrett to report: "She has no permanent residua and can return to a working situation of her choice." On March 27, 2000 he released her to return to full duty effective that date with no limitations or restrictions.

Dr. Jarrett's opinion was consistent with appellant's complaints and his findings on physical examination. Although Dr. Jarrett did not report that appellant's L5-S1 disc was no longer deranged or desiccated, he clearly supported that residuals of her accepted employment injuries had resolved to the point that she was no longer disabled from working in the employment of her choice and that she no longer required regular medical attention. There was no contemporaneous medical opinion evidence to the contrary. The Board finds that Dr. Jarrett's reports constituted the weight of the medical evidence and justified the Office's June 23, 2000 decision to terminate appellant's compensation benefits on the grounds that disability causally related to her federal employment had ceased. The Office met its burden of proof.

LEGAL PRECEDENT -- ISSUE 2

When the Office meets its burden of proof to justify a termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the accepted employment injury.[5] The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.[6]

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

[5] *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

[6] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

ANALYSIS -- ISSUE 2

None of the medical reports submitted after the Office's June 23, 2000 decision to terminate benefits purports to attribute any subsequent disability to the desiccated disc that Dr. Howland found in 1992. Dr. Salcedo, the specialist in internal medicine, noted a decreased joint space at L5-S1, but he explained that this was suggestive of degenerative disc disease. Stating that appellant would not be able to go back to her previous job of forestry aide and firefighter, he offered no opinion on whether this disability was causally related to her accepted employment injuries.

Dr. Gentry, the neurosurgeon, reported that appellant had fairly severe degenerative changes at L5-S1, and he could see how these changes could be causing her pain. But he made clear that he could not say how long these changes had existed or when they occurred, and so he offered no opinion on whether this degenerative condition was causally related to her accepted employment injuries.

Appellant has the burden of proof to establish that the reported degenerative disc disease is causally related to her injury on June 13, 1990, when she bent down to help roll over a sofa, or to her injury on October 9, 1990, when she cut line with a hand tool for hours, or to riding in a truck over bumpy roads earlier that year.[7]

The strongest evidence she submitted was the November 8, 2001 report from Dr. Ice, the specialist in physical medicine and rehabilitation. Dr. Ice reported that an MRI scan showed noncompressive annular bulging and degenerative disc disease at L5-S1 with early Modic Type II end plate changes. X-rays showed moderately severe degenerative disc disease at L5-S1. Although he noted that appellant had unabated back pain for 10 years after an injury while working as a firefighter, he did not describe this injury. In a November 5, 2001 report, he stated that appellant worked as a firefighter in 1990 "and hurt her back." So when he reported that "this injury has resulted in some degenerative changes in the back," it is not clear to what injury he is referring. Because he did not demonstrate that he had an accurate understanding of the activities appellant performed when she hurt her back in 1990, his opinion has little probative or evidentiary value.[8]

Further, Dr. Ice provided little medical reasoning for his opinion. He stated as a matter of medical fact that facet degeneration can occur after an injury such as the one appellant had, but he did not explain the physiological process. He did not explain how he knew that such a process had, in fact, occurred in appellant's case. Dr. Ice did not explain to what injury he was referring. To carry probative weight, Dr. Ice's opinion must be one of reasonable medical certainty, must be supported by affirmative evidence, must be explained by medical rationale and

[7] Appellant filed no claim for an injury arising from riding in a truck, but the Office accepted a deranged or desiccated disc based on the history reported by its referral physician, Dr. Howland. The Office does not dispute that she rode in a truck over bumpy roads in the performance of duty.

[8] Medical conclusions based on inaccurate or incomplete histories are of little probative value. *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

must be based on a complete and accurate medical and factual background.[9] It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.[10]

Although Dr. Ice offered some support to appellant's claim that her degenerative disc disease is causally related to her accepted employment injuries, his opinion has little probative value and is insufficient to discharge her burden of proof.

CONCLUSION

The weight of the medical evidence justified the Office's June 23, 2000 decision to terminate appellant's compensation benefits. The burden of proof then switched to appellant to establish that any subsequent disability was causally related to her accepted employment injuries. She has not met that burden; the medical opinion evidence she submitted is of little probative value.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2004 and October 21, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 8, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] *Connie Johns*, 44 ECAB 560 (1993).

[10] *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).